

DISCOVERY BY DEPOSITION

What is a deposition?

Your deposition is permitted as part of the discovery process. This means that you will be placed under oath and an opposing lawyer will ask you questions about this lawsuit. A court reporter will make a record of the questions asked and your answers. This record is later transcribed to written form. In some instances, your deposition may be recorded on videotape for use in the courtroom. Your attorney will be present at all times during this deposition. There will be no judge present.

Once the court reporter has transcribed the questions and answers given, a copy is provided to your attorney and to the opposing lawyer. Your attorney will notify you when the transcript is available and you will have an opportunity to review your responses and make corrections to the transcript. Usually, after you have had an opportunity to review the transcript, the court reporter files the original transcript with the court.

If your case goes to trial, your deposition will probably be used in court, especially in cross examination by the opposing lawyer. For example, if your testimony at trial is different from the testimony that you gave at your deposition, the opposing lawyer may attempt to use this difference to show that you are not a reliable or truthful witness.

Why is my deposition being taken?

1. The opposing lawyer wants to find out the facts you know regarding the issues in the case. He or she wants to know, in advance, what your story is going to be at trial.
2. The opposing lawyer wants to pin you down to a specific story now so that you will have to tell the same story at trial
3. The opposing lawyer hopes to catch you in a lie or an inconsistency, to show that you are not a truthful or reliable person. He or she would try to show at trial that your testimony should not be believed, especially on the crucial points.
4. The deposition may also assist the opposing lawyer in evaluating this case for settlement or mediation purposes. This will probably be the first opportunity to see you before trial. You should try to answer the questions in an honest, straightforward and confident manner, so that the opposing lawyer will be impressed with the fact that the judge will know that you are completely honest and sincere.

What can I expect of the opposing lawyer?

During this deposition, the opposing lawyer will ask you questions. He or she can ask questions that seem to be none of his or her business and that do not seem to be related to this case. In a family law case, these questions may be of a very personal or intimate nature. Your attorney will evaluate the appropriateness of the questions, and you should concern yourself only with

providing truthful and accurate answers to the questions.

If the attorney does begin to question you in a legally inappropriate fashion, we will object to the question and may instruct you to REFUSE TO ANSWER THE QUESTION.

Different attorneys have different techniques and manners for questioning deponents. Some attorneys wish to obtain as much information as they can from the witness in the shortest possible time; therefore, they are generally as courteous and respectful to you as you are to them. Other attorneys may try to bully and intimidate a witness so that the witness becomes flustered and upset. These attorneys believe this will cause a witness to provide contradictory and confusing answers. Contradictory answers could be used to suggest that you are lying or that your memory is faulty on some crucial points.

How should I handle myself in the deposition?

We know that you would not deliberately lie during your deposition; a lie may lose your case. However, it is very important that you are not trapped by the opposing lawyer into testifying to something that is inaccurate or exaggerated. Below is a list of things to keep in mind during your preparation for the deposition and during the deposition itself:

1. **LISTEN carefully to the question asked.** Wait until you hear the last word of the question before you answer.
2. **Do not answer a question until you understand it.** If the opposing lawyer drops his or her voice, or if there is a disturbance, or if you were distracted while the question was being asked, it is perfectly OK to ask counsel to repeat a question or to re-phrase the question in clearer language.
3. **Make sure the question is PRECISE.** If the opposing lawyer asks, *"What about the house?"*, ask the lawyer to explain what he or she means. If you are not certain about the meaning of a word, do not be embarrassed, just say so. The opposing lawyer might be showing off. Make him or her explain. Do not help him by assuming or saying, *"If you mean this, then my answer would be . . ."* Say only that you do not understand.
4. **THINK about each question BEFORE you answer it.** Listen to the exact question and answer only THAT question. Do not volunteer information to clarify the question or to provide "relevant" facts. Do not give a snap answer without thinking.
5. **Give FACTUAL INFORMATION about the case IF you have firsthand knowledge.** Do not offer *"someone told me"* or *"I heard someone say"* type of evidence, unless the opposing lawyer specifically asks you for such.
6. **You shouldn't try to memorize your answers.** Nobody is ever expected to remember every single fact concerning a case. Just listen to the question, and give an answer that is as straightforward and concise as possible.

7. **If you don't know, DON'T GUESS.** Just say, *"I don't know."* If you don't remember, say *"I don't remember."* The law only requires that you respond to your best memory. If, later during the deposition, you remember an answer to a question, you can indicate to the attorney that you now remember and can answer his or her question.

8. **DO NOT EXPLAIN OR JUSTIFY your answer.** You are there to give the facts as you know them. You should not apologize for the facts, or attempt to justify them. If you attempt to do this, then it might appear that you doubt the accuracy or truthfulness of your own testimony.

9. **DON'T VOLUNTEER information** that the opposing counsel hasn't thought to ask you. Do not ramble. Give a correct answer, then STOP. If the opposing lawyer wants an explanation, then he or she will ask you. If **WE** want you to explain further, then we will ask at the appropriate time, which may not be until trial. Do not try to assist your attorney, because it may turn out to be harmful to your case.

10. **AVOID words such as "never" and "always".**

11. **Be careful of COMPOUND QUESTIONS.** Ask the opposing lawyer to repeat each question, one at a time.

12. **Don't worry about silence.** Do not be tempted to fill the silence with words. Keep quiet and wait.

13. **Do NOT look at your attorney after a question is asked,** especially if the deposition is being videotaped. Your attorney will not tell you how to answer a question or give you a hint that you are on the right track. If you have a question concerning an answer you may want to give, but really need to clarify something with your attorney, then you may ask for a short break. However, don't expect your attorney to clarify every answer you give. You do not want to give the appearance that your attorney is "coaching" you or telling you what to say.

14. **Feel free to check your responses against any records you may have.** If counsel appears to be referring to some document or documents, then you may suggest that a review of those same documents will help you to refresh your memory.

15. **If you are shown documents,** take your time and silently read them, carefully and thoroughly. Look at the dates, the authors, to whom the documents were sent, and any other relevant information.

16. **If an objection is made by your attorney, STOP SPEAKING IMMEDIATELY.** Do not attempt to finish your sentence unless your attorney indicates you may do so. If your attorney instructs you NOT to answer a question, DON'T ANSWER IT.

17. **Remain calm and courteous at all times,** even if the opposing counsel is being outrageous and out of control. Do not argue with the opposing counsel or let him upset you. If you feel you can't remain calm, ask for a short break to get a drink or go to the restroom. Do not lose your temper; you could play right into the hands of the other side, and you may lose the case.

18. **Dress neatly.** Your deposition is not the time to try out the latest style or to try that new hairdo you've been dying to try. Do not chew gum.

19. **Be courteous** to everyone present at the deposition.

20. Remember opposing counsel is evaluating you at all times during your deposition to determine **what kind of witness** you will be in the courtroom. Therefore, remember to take care in your appearance, manner and remarks made.

21. **Not every question is a trap or a trick.** Your attorney will help you out by objection or other means when a question really is a set-up. If you attempt to find the "hidden meaning" in each question, you will give the appearance of calculation, hesitation, apprehension, or stupidity.

22. **Speak clearly.** Do not use "uh-huh" or "huh-uh", shrug your shoulders, nor shake your head to answer a question. The court reporter will attempt to record your answers as you give them, but he or she is more likely to take down exactly what you say if you respond verbally and say "Yes" or "No" to a question.

23. **It is OK to admit that you have met with your attorney to review the case for your deposition.** If the opposing lawyer asks you if your attorney has told you what to say during your deposition, tell him or her, ***"Yes, the truth."***

24. **Finally, remember that this is *your* deposition.** If you need a break or a glass of water, if you feel ill or become overly tired during the course of the deposition, then let your attorney know. We can take a short break or, if necessary, continue the deposition on another day.