

Be Prepared When Giving a Deposition

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Some of you may have given a deposition in response to a lawsuit that named you as a defendant or subpoenaed you to testify because you were an occurrence witness. You may recall that a deposition is a form of discovery in a lawsuit.

The deposition can be oral or written (called “written interrogatories”). In either event, your answers are taken under oath, with all parties and their attorneys present, and what you say can be used in the actual trial of the matter, either to “impeach” you (saying something different during the deposition that you now state during the trial) or, if the deposition is an evidence deposition, it can be introduced into evidence at trial due to your inability to be at the trial (e.g., death, on vacation, out of the country). 1

Preparation is essential before giving an oral deposition. Your attorney will want to meet with you beforehand to prepare you as to the format of the deposition, who will be asking questions, what the focus of the deposition will be, and so forth. Your attorney’s advice is critical to a successful deposition that will highlight the truth and, at the same time, protect you from any unnecessary exposure to further potential liability. Be truthful with your attorney as to what happened and any role you played in the matter at hand.

General guidelines for giving a deposition include the following:

- Always testify truthfully;
- Speak clearly and confidently;
- Always wait for the complete question asked of you before answering;
- Hesitate slightly before answering to give your attorney a chance to object to the question, if need be;
- Do not guess at an answer;
- Do not estimate distances or other facts if you cannot do so accurately;
- If you don’t understand a question, ask for clarification;
- If you don’t hear a question, ask that it be repeated;
- Control your emotions (e.g., anger, fear, frustration);
- Only answer questions asked of you;
- Dress conservatively for the deposition; and
- Remember to follow your attorney’s advice concerning the deposition.

The deposition is a good practice run for testifying at trial, should the case proceed to a trial. However, what you say, how you act, and how you look when you give your deposition can not be a “first

practice” event. Rather, it should be a practice run for the trial, one that exactly mirrors what you will say and how you will present yourself during the judicial proceeding.

Please note: *It is your duty as an insured to notify your professional liability insurance of any subpoenas, depositions or incidents that may result in a claim / suit against you. As a CPH & Associates policy holder, you may do so by logging into your CPH Customer Portal and selecting “Report a claim or incident” or “Report a subpoena or deposition” to fill out the appropriate form to notify CPH & Associates.*

FOOTNOTES

1. Bryan A. Garner (Editor) (2004). Black’s Law Dictionary. (8th Edition). St. Paul, MN: West, 472.

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