

10 Tips to Prepare Your Client For a Successful Deposition

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A deposition you defend is unlikely to make your case but, as many lawyers have learned the hard way, it may very well break your case. An ill-prepared client is your worst enemy. So it is up to the lawyer to make sure that the witness is ready when deposition day arrives. The key to a successful deposition is a successful deposition preparation session.

In order to properly prepare the client, you must prepare yourself first. Understand what the case is about. This means becoming familiar—if you are not already—with both the facts and the law at issue. It also means developing a familiarity with the documents. Depending on the complexity of the case, there may be a sizable amount of documents that have been produced and you need to dive in and find the ones your client may be asked about.

But equally as important as understanding the case and the documents, is understanding your client. Each meeting, each telephone call, each interaction with your client is a chance to assess and recognize your client's style and personality in order to gauge any potential pitfalls for deposition day. This includes



evaluating which type of client you have. Examples may include: the chatty client, the easily intimidated client, the cocky client, or the nervous client. Understanding who you are dealing with will help you guide them and afford you an opportunity to stress the advice most relevant to your client. The cocky client, for example, may not need you to remind him to be clear and confident in his answer. The nervous client may. Emphasizing with the chatty client the need to listen to the question and to answer only the question being asked will be key. Pay attention to your client and adapt your preparation session accordingly.

The preparation session should be scheduled close to the deposition, ideally a few days before, so that the information you discuss and review is fresh in the client's mind. You also want some time before the deposition to address any issues that may come up at the preparation session. A follow-up session may be needed the day before the deposition.

Key documents should be reviewed at or, if lengthy, in advance of the session. This is also the time to explain the deposition process and purpose to your client. Be sure to explain how her deposition testimony can—and cannot—be used during the litigation. You

should also walk your client through the procedural aspects so there are no surprises. This includes the role of the court reporter and taking sworn testimony, objections that will be made for the record, and breaks that will take place. It is also a good time to remind the client about the scope of the attorney-client relationship and privilege.

Once you have gone through the process with your client, it is time to get to the substance and advise the witness how to be a good witness. I have found, though, that the key to preparing any witness for a deposition, whatever the case is about and whatever role your client played in the underlying event or transaction, can be boiled down to the following 10 tips you should give your client about the deposition:

1. Review key documents and prior sworn testimony.

If your client has not looked at the documents you pulled yet, you should give a reminder at the deposition preparation session that he or she needs to look at these documents before the deposition. This includes key case documents and, of course, emails. Pay special attention to emails when preparing your client. Answers that contradict the emails of a witness because the witness simply did not take the time to review them are never fun to deal with. You will also want to remind your client to look at any verified pleadings, sworn affidavits, or prior testimony in any related case.

2. Listen to the question you are asked.

This is the most important tip you can give your client. Make sure your client knows that it will not benefit anyone if he jumps the gun and interrupts a question because he assumes that he knows where the attorney questioning him is going. Tell your client to listen and make sure he understands the question. It is okay to ask the attorney to rephrase the question if at all unclear. The witness should only answer the question that is asked and nothing more.

3. Pause before answering.

This is a simple instruction but one that witnesses sometimes find hard to implement. A pause even for just a moment—a breath—if utilized, can be tremendously helpful. It will give your client a chance to think about the answer. It will also give you a chance to get any objection on the record before the witness starts answering.

4. Answers should be short and to the point.

This is where the discussion you should have had with your client at the beginning of the preparation session about the purpose of the deposition will come in handy. This is not the time for your client to try to persuade anyone that she is right and the other side is wrong. Just answer and move on. The time will come later in the

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litigation process to make or defend your case. Yes and no answers are fine. In fact, where appropriate, they are ideal.

5. If you are asked a question about a document, you can ask to see it.

Don't let your client feel intimidated by the questioning attorney. If she is asking about a document, it will probably lead to better results if your client simply asks to see the document. If necessary, you should ask.

6. If you don't remember something, it's okay to say so.

Often the underlying events at issue will be years gone. And your client's memory may have faded too. That is fine. Be sure your client knows that it's perfectly acceptable to respond with "I don't remember" or "I don't recall" if that is the case. A deposition is not

meant to be a guessing game. If you don't know, then you don't know.

7. Be consistent.

Lawyers like to ask the same question again—and sometimes again—in a different way, hoping for a different result. But your client should be advised not to let this confuse him. The witness should simply stick to his original answer even if the questioning lawyer seems dissatisfied.

8. Stay calm and be polite.

Different lawyers have different styles—some will treat the witness like her new best friend. Tell your client: they are not. Other attorneys can be quite aggressive. Tell your client: don't let this rattle you. The deposition process can be frustrating but to be a good witness you must stay calm and steer clear of any urge to be rude. No good can come of that.

9. Don't be afraid to ask for a break if you need one.

This is not a marathon. Bathroom breaks, water breaks, or even breaks to talk to your lawyer are fine (except if a question is pending). Ensure that your client knows this before the deposition begins. If your client has never been deposed or even attended a deposition, he may not realize how mentally exhausting it can be. If the witness forgets to ask for a break, do it for them.

10. Be truthful.

This is the holy grail of witness preparation tips. If you skip everything else I mentioned, don't skip this. The witness must understand that this is sworn testimony and to be sure to give honest answers. Your client may be nervous about some aspect of the case, but if he is not truthful, it may come back to bite him later. It is trite but certainly true: **Honesty is the best policy.**