



Preparing to Testify at a Deposition

GuideOne Insurance Legal Pamphlet





Introduction

This pamphlet is a tool we provide to prepare you for your upcoming deposition, a procedure routinely used by lawyers to gather information. Knowing the basics — who will be at the deposition and how the process works — is the first step in making you a lot more confident and comfortable.

This pamphlet will also show you some common problems that you, the deponent, may face in answering the questions put to you during the deposition. You can use the principles in this pamphlet to learn the best strategies for answering questions.

Remember, the answers you give at your deposition will form a document of sworn testimony that can help or harm your case. Follow the guidelines given here, apply them to your own circumstances, and discuss any questions you may have about the process with your attorney before the date of your deposition. You will be on your way to becoming a better, more prepared deposition witness.

Thank you,

The GuideOne Insurance Legal Department



Copyright © 2012 GuideOne Insurance. GuideOne® is the registered trademark of the GuideOne Mutual Insurance Company. All rights reserved.



Table of Contents

The Basics

What is a Deposition?.....	3
What is the Purpose of a Deposition?.....	3
What Do You Have to Do?	4

The Guidelines

Be Forthright and Truthful	5
Do Not Volunteer	5
Avoid Guessing at the Facts	6
Do Not Guess the Meaning of a Question	6
Never Interrupt the Question/Pause Before Answering.....	6
Don't Advocate Your Case (Trust Your Attorney)	7
Be Consistent in Your Facts	7
Give Full Attention Throughout the Deposition.....	8

Watch Out For Trick Questions

Compound Questions	9
Questions that Assume Facts that Are Not True.....	9
Summary Questions.....	10

Do's and Don'ts During the Deposition

Do.....	11
Don't.....	11

Quick Reference Review

General Points	12
Rules.....	12
Watch Out for Trick Questions	12

Test Your Knowledge

Section 1	13
Section 2.....	15

Answer Key

Section 1	16
Section 2.....	17

Notes



The Basics

Testifying in a deposition may seem a bit threatening at first, but you'll find yourself a lot more relaxed and in control if you know what to expect. Here is what you'll need to know.

What is a Deposition?

A deposition, although not occurring in the courtroom, is a formal judicial proceeding at which a witness gives sworn testimony in the form of a question-and-answer session. As a deponent, you will be asked questions by the opposing attorney and your answers will become part of the official record of the case.

Deposition testimony is every bit as important as live testimony at trial. First, it is testimony given under oath and thus subjects the witness to the penalties of perjury. Second, it is testimony intended to be used at trial, and can be used against a witness if his or her story changes. As such, it is imperative that you, the witness, take your deposition seriously and prepare yourself adequately.

Your deposition will likely take place in your attorney's office, the office of the opposing attorney, or some other neutral site. Those present will be you, your attorney, the opposing attorney, the court reporter and, if there are other parties to your dispute, their attorneys.

What is the Purpose of a Deposition?

Information. A deposition is a routine procedure attorneys use for gathering facts and information about a case. It is an attorney's ethical responsibility to learn all the facts about a case, and a deposition is one method they use. Just as the opposing attorney will be asking you many questions, your own attorney may be questioning witnesses of the other side. In this way, much of the information about a case is available to both sides.

Credibility. The deposition is a chance for both attorneys to watch what you say and how you say it. They want to look at you, observe your manner of answering questions, and form an impression of the type of wit-



ness you will be in court. The attorneys are trying to decide who the jury will believe if there is a dispute.

Admissions. The deposition gives the opposing attorney a chance to look through your testimony for admissions— statements and facts that might weaken your own case and inadvertently strengthen the opposing party’s case. These admissions may later be brought out in court, along with any contradictory statements.

What Do You Have to Do?

Dress and Attitude. Your appearance and demeanor during your deposition are important for several reasons. First, your deposition may be videotaped and could be played to the jury at trial. Therefore, you should dress just as you would if you were testifying at trial. Second, it is important that you project yourself to the opposing counsel as a capable and confident witness, and someone who knows what they are talking about.

For these reasons, you should dress professionally and conservatively, and you should be well-groomed so as to present yourself in the best possible light. Your demeanor should be pleasant but professional and, when possible, address the opposing attorney as “sir” or “madam.”

Responsibilities. You have three main responsibilities: (1) listen carefully; (2) be sure you understand what is being asked of you; (3) answer carefully.

These responsibilities are not as simple as they sound. But you'll answer the questions a lot more easily if you don't let yourself feel pressured and if you take your time. Remember that while you must tell the truth, you don't have to know the answer to every question nor are you expected to know all the facts of the case.



The Guidelines

You want to be the best witness possible, and do everything you can to help your own case. But some common, simple mistakes can undermine the testimony of the best-intentioned witness. Here are some guidelines to help you avoid common mistakes.

Be Forthright and Truthful.

It is imperative that you are truthful at all times during your deposition. Remember, you will be under oath and if it is shown that you were less than truthful you may be guilty of perjury. Lying during your deposition can only be harmful. It is better to give a truthful but painful answer than to offer false testimony. The facts will come out anyway, and a forthright answer will make you look better than an answer that hides or softens the facts.

Remember, a deposition is not just a chance to gather facts. It is also a time to establish your credibility as a witness. A direct and honest statement of the harmful facts is likely to make the rest of what you have to say that much more believable.

An opposing attorney may ask you whether or not you have discussed your testimony with your attorney before the deposition. Deponents often worry that admitting that they have discussed the case will make them look bad.

There is nothing wrong with discussing your case with your attorney, so don't let the opposing attorney make you feel uncomfortable about admitting that you did.

Should the opposing attorney go further and ask you if your lawyer told you how to answer the questions, just say that your attorney advised you to answer the questions to the best of your ability and to tell the truth.

Do Not Volunteer.

Make sure that once you have answered the attorney's question, you stop talking. While it is important to be truthful, it is also important not to give more information than is needed to answer the question. Often wit-



nesses get caught up in talking about a particular subject and accidentally give out information that the opposing attorney might never have anticipated. Remember, you are talking to the opposing attorney, and any extra information you reveal may be used to weaken your case.

Avoid Guessing at the Facts.

When asked a question, most of us want to give a helpful response. However, it is not at all helpful to your own case if you let the opposing attorney lead you into guessing at an answer. A guess may result in an inconsistency that can later be used against you in court.

If the opposing attorney seems annoyed with you for not being able to give an answer, remember that you are not expected to know the answer to every question or be certain of every fact. Your job is to answer each question to the best of your ability, and sometimes the best answer is, “I don’t know.” Answering a question with “I don’t know” doesn’t make you less intelligent, it simply means you are being honest after carefully listening to and weighing the question and simply do not know the answer. Such an answer is always better than a guess at the facts.

Do Not Guess the Meaning of a Question.

Just as you shouldn’t guess at an answer to a question, never guess at the meaning of a question if it hasn’t been stated clearly. If you answer a question when its meaning is not clear to you, the opposing attorney will assume you did understand the question. As a result, you may end up contradicting your own testimony.

Always ask the meaning of any words you don’t know. Attorneys sometimes use legal language that is unfamiliar to most of us. It is your right to ask an attorney to explain words or phrases you do not fully understand.

Sometimes, even when you know the meanings of all the words used, the way a question is asked is still confusing. If you are at all unsure, ask the attorney to rephrase the question, and keep asking until you are certain you understand.



Never Interrupt the Question/Do Pause Before Answering.

This one is important for several reasons. First, you want to make sure that you give yourself time to think about the question, identify any pitfalls, and consider your response before blurting out an answer. This can be difficult because in every-day conversation it is common to anticipate a person's question and begin answering before they are finished. Don't fall into that harmful habit during your deposition.

Another reason it is important to pause is that it gives your attorney time to object to the question for the record if he/she so desires. Always pause a second or two after the conclusion of the question before you start your answer.

Don't Advocate Your Case (Trust Your Attorney.)

You feel strongly about your case and believe you are in the right, and yet the opposing attorney is asking questions as if you were the suspicious party. The natural response is to become angry and try to defend yourself.

But if you do become upset and defensive, you may end up making many of the mistakes we have already discussed. As you defend yourself, you may find you are elaborating on a question unnecessarily, answering unclear questions, or hiding harmful facts that will have to be admitted later. Or, you may find yourself using words like "never" or "always," and making other overstatements or generalizations.

Angry or defensive behavior does not make a good impression and it also may reveal a weakness that the opposing attorney may use to make you look bad in court if your case goes to trial.

So stay calm, listen carefully, and answer the questions politely no matter how annoying they may seem. Leave it to your attorney to bring your side of the argument to light.

Be Consistent in Your Facts.

Before you have your deposition taken, go over the facts of your case. Which facts are certain to you? Which ones are not quite clear? Also,



check to see that the facts don't contradict each other. If the facts don't seem to fit together, discuss this with your attorney.

Once you are clear about the facts, you may want to write them down and review them before your deposition. This list of facts will be useful to review later if your case goes to trial. Remember, you may hurt your case if you testify to one set of facts as a deponent and another set as a trial witness.

On the other hand, do not let your concern about getting your facts straight drive you to memorizing full answers to questions. You may run the risk of sounding rehearsed and thus damage your credibility.

So know your facts, but listen to each question as it comes, and answer it in your own words.

Give Your Full Attention Throughout the Deposition.

During the course of the proceedings, your attorney may object to something the other attorney has said. Because the two attorneys are talking to each other for the moment, not to you, this might seem like a good chance to relax.

However, this is a time to pay very close attention. Your attorney may be concerned about an unclear or improper question that has been asked. If an objection is made, pause until is "on the record" and don't proceed until instructed to do so by your attorney.



Watch Out For Trick Questions

Compound Questions

These are questions that contain two or more questions disguised as one. By giving an answer to one, you may accidentally be binding yourself as to the other. To spot a compound question, listen carefully to the entire question and determine whether the attorney is really making more than one inquiry.

For example:

“Wouldn’t you agree that the stop sign was clearly visible and that it had been raining for several hours at the time of the accident?”

If you suspect that a question may be compound, say to the attorney, “That sounds like more than one question, would you mind breaking it down for me?” Keep asking until you feel comfortable that only one question is being asked.

Questions that Assume Facts that Are Not True

Be careful that the opposing attorney does not try to slip a false statement in with the question. By answering the question, you may inadvertently be making an admission as to the statement.

For example:

“After the car in front of you put on his turn signal, describe to me the chain of events that led to the wreck.”

If the driver in front of you did not really turn on his signal, then answering the question without clarifying that fact could be dangerous. Don’t get caught up in the question and forget about the statement. If you think a question has assumed a fact that is not true, correct the attorney about the fact before you begin answering the question. “First, Mr. Jones, let me make it very clear that the driver in front of me never turned on his turn signal, so it’s not really possible for me to answer the question the way you asked it. I would be happy, however, to describe to you the events that led to the wreck.”



Summary Questions

Beware of the opposing attorney asking a blanket question that summarizes your testimony and then asking you if you agree with his statement.

For example:

“Let me make sure I understand, you’re saying that a,b,c,d,x,y, and z. Is that right?”

Often times, the attorney’s summary is inaccurate and thus you may be agreeing to something that is not true. Make sure you listen carefully to what the attorney is saying, and if you feel like he/she has not fairly characterized your testimony, do not agree with the attorney’s statement.



Do's and Don'ts During the Deposition

Do

Feel free to say “I don’t know” or “I don’t understand.”

Ask the opposing attorney if he/she has a document that might help refresh your memory.

Treat the opposing attorney with respect.

Ask the attorney to repeat the question if you are unsure about its meaning.

Ask for a break if you need one. This can be a good time to consult with your attorney privately.

Answer questions with “yes” or “no” if the question calls for it.

Don't

Use phrases like “In all honesty” or “I’m doing the best I can.”

Use words like “Always” or “Never.” (If you do, the opposing attorney need only find one exception to make you out to be a liar).

Be lulled into a relaxed conversation where you might let down your guard.

Give long narrative answers where you might accidentally provide more information than needed to answer the question.

Look to your attorney for answers in the middle of a question.

Use words like “uh-huh” or “mm-hmm,” since they can be misinterpreted by the court reporter.



Quick Reference Review

General Points

- Dress conservatively and act professionally at all times.
- Treat the opposing attorney with respect.
- Don't let the attorney put words in your mouth.
- If you don't know the answer to a question, say so.

Rules

- Be Forthright and Truthful
- Do Not Volunteer/Answer Only the Questions Asked
- Avoid Guessing at the Facts
- Do Not Guess the Meaning of a Question
- Never Interrupt the Question/Pause Before Answering
- Don't Advocate Your Case (Trust Your Attorney)
- Be Consistent in Your Facts
- Give Your Full Attention Throughout the Deposition

Watch Out for Trick Questions

- Compound Questions
- Questions that Assume Facts that Are Not True
- Summary Questions



Test Your Knowledge

The following questions will test your skills at spotting and handling dangerous questions. Read each question carefully and answer in the space provided. To see how you did, check the answer key at the end.

Section 1

Identify the trick questions and describe how you would handle them.

1. “After Mr. Johnson (the Defendant) stopped for the stop sign, what did you do next?”

Response: _____

2. “Mr. Jones, isn’t it true that you purchased a gun on August 15th, and that you let your brother borrow that gun on several occasions?”

Response: _____

3. “So let me see here Mr. Wilson, you have testified that the light was green, that you never saw the pedestrian, and that the car in front of you had started turning left, is that correct?”

Response: _____



4. “Betty, after you agreed to let Mrs. Smith trim your shrubs, did you leave the gate unlocked?”

Response: _____

5. “Weren’t you at the Quick Stop convenience store that night and didn’t you see James Smith there?”

Response: _____

6. “Just to make sure I understand you, you’re saying that the nurse sent you home, you got sick again later that night, and the next day you and your wife went to see Dr. Patterson?”

Response: _____



Section 2

Identify the mistakes this witness makes in the following dialogue.

1. Attorney: What were you doing immediately prior to the accident?

Witness: Well, when I left the house, after I checked the oil, I had to wait for the bus – all the kids were crossing – and then there she was right there.

2. Attorney: You had your son with you, right? Was he scared before the accident?

Witness: Well, I assume you mean when we left home. Yes, he was sort of nervous about his piano recital and was crying all the way there.

3. Attorney: If you were driving the speed limit, wouldn't you have had time to brake or swerve to avoid the accident?

Witness: Honestly, I always drive the speed limit. I just didn't have time.

4. Attorney: But if you were driving the speed limit as you claim, shouldn't you have been able to avoid the accident?

Witness: Listen buddy, I've told you once already but I'll tell you again – I was driving the speed limit. Don't accuse me of breaking the law!



Answer Key

Section 1

Answer 1. Beware! This question makes an assumption that may not be true. If Mr. Johnson did not stop for the stop sign and you answer the question, you may inadvertently be making an admission as to that false statement. You should point out to the attorney that Mr. Johnson *did not* stop for the stop sign. Then you should ask the attorney to rephrase his question before you answer.

Answer 2. This is a compound question. The attorney has asked if you bought a gun on August 15th *and* if you let your brother borrow it on several occasions. A good response would be, “That sounds like more than one question sir. Would you mind breaking it up for me?”

Answer 3. This is a summary question. Before agreeing to the accuracy of the statement, make sure that each assertion made by the attorney *actually is* something you’ve testified to. If you are unsure at all, ask the attorney to re-ask the question. If the summary is incorrect, simply refuse to agree with the statement.

Answer 4. This question makes an assumption that may not be true. If Betty did not agree to let Mrs. Smith trim the shrubs, she should make that clear *now*. Then, she should ask the attorney to rephrase the question.

Answer 5. This is a compound question. The attorney has asked if you were present at the Quick Stop convenience store on the night in question *and* if you saw James Smith there. A good response would be, “That sounds like more than one question sir. Would you mind breaking it up for me?”

Answer 6. This is a summary question. Before agreeing to the accuracy of the statement, make sure that each assertion made by the attorney *actually is* something you’ve testified to. If you are unsure at all, ask the attorney to re-ask the question. If the summary is incorrect, simply refuse to agree with the statement.



Section 2

Answer 1. In the first exchange, the witness volunteered information that the attorney had not asked for. This mistake may inadvertently reveal other problems the attorney might not have otherwise discovered.

Answer 2. Here, the witness has broken the cardinal rule of guessing the meaning of the attorney's question. It is possible that the attorney meant "Was the child scared just prior to impact?" When the witness guessed the meaning of the question, she revealed she may have been distracted by a screaming child.

Answer 3. By beginning the response with "honestly," the witness has implied that perhaps the rest of her testimony has been less than honest. It is best to refrain from using words or phrases such as "honestly," or "to tell the truth," etc.

Answer 4. In the final exchange, the witness has become angry and argumentative with the attorney. By allowing yourself to become emotional, you lose credibility with the jury, and increase the likelihood that you will not pay adequate attention to subsequent questions.



Copyright © 2012 GuideOne Insurance. GuideOne® is the registered trademark of the GuideOne Mutual Insurance Company. All rights reserved.