How to Take a Great Deposition: Top 11 Tips

Summary: Every lawyer will need to know how to take depositions, and these 11 tips will help him or her take a great one.

Here are some tips for conducting a great deposition.

1. No Head-Butting

Let a belligerent witness talk. Give him enough rope, and he’s going to hang himself. What a witness with an aggressive personality does not realize is that it is not his game. He’s playing your game.

2. Avoid Scripts

Too often young lawyers enter a deposition clutching typed lists of tightly worded questions. Preparation is essential, but by adhering too closely to a script, you risk not listening. Some of the best testimony will be something the witness says that’s not in response to the question you’ve asked. Plus, you’ll spend half your time scouring your geeky notebook when you should be looking at the person. Deposing a witness is a lot like picking up a member of the opposite sex in a bar. If you don’t look the person in the eye and you don’t listen, he or she isn’t going to go out with you. Trial work is a people business. It’s relating to people, understanding people, and, ultimately, persuading 12 people to see your point of view.

3. Let Go of Your Ego

Part of what makes great lawyers great is tenacity, but depositions are times to rein in the ambition. If you think about what kind of people succeed in law, it’s the ones who are aggressive. But you have to modulate those tendencies when taking a deposition, because it’s not about you. It’s about the case. The person who’s truly powerful is the one who doesn’t have to use that power. Deflect attention from yourself whenever possible. If what you’re about to say begins with ‘I,’ rethink it.

4. Know Why You’re There

Some witnesses are deposed simply to collect facts. Others are well-compensated experts. Some are questioned during discovery and their answers can lead anywhere. Before you start hurling questions, think about what you need from the witness on the receiving end. That will dictate the kind of questions you’ll ask. If you’re there to find out about the case, ask open-ended questions. If you’re trying to confirm—to preserve testimony that you’re going to use when you go to trial—ask leading questions.
5 Adapt

It’s sort of like being a pitcher. Every batter is different, and every pitch is different. What can I throw to get by this batter? What can I do to strike him out? Maybe you’ll have a witness who can handle a fastball question fine. So, you throw him a curve ball.

6 Warm Up

Lawyers attend depositions all the time. But for many witnesses, sitting for a deposition is a big deal. Unleash a stinging interrogation on a meek office assistant, and he’ll be reduced to a puddle—not especially useful. Start by asking their name and where they went to high school, or about their family. It’s not that you’re interested in these things, but it gets them used to your rhythm, the rhythm of answering your questions. You condition them to answer your questions.

7 Plan Your Time

A good deposition lasts six hours or less—most states even have time limits—but you’d be surprised by how quickly the time flies. In your average commercial case you’ll have 50,000 pages of deposition, but there may be only 20 pages you’ll use at trial. It’s like taking notes in class all semester, and those questions aren’t on the test. But you’ve got to cover the waterfront because you don’t want to be unprepared for your presentation. Treat every factoid as equally important at first, and weed out the stuff that might not be on the test.

8 Don’t Talk Like a Lawyer

Speak plainly. Juries are not made up of lawyers. That means go easy on the legalese—and even avoiding adjectives or adverbs. The more of them you use, the more wiggle room you allow a witness. Adjectives and adverbs have no place in a deposition. It’s a lot of who, what, when, where, why, and how. Don’t ask, ‘Did you consider this to be egregious?’ That’s an interpretive question. Ask, ‘Is this a violation of company rules?’ Don’t ask, ‘Was it a bad accident?’ Ask, ‘Was it an accident?’

9 Once More, with Feeling

You have to unlock that Pandora’s box by asking, ‘How do you feel about that?’. Sometimes you can strike gold by tapping into pent-up frustration. For example, people in management tend to blame people further down the line. Ask the witness how he feels about being blamed.

10 Poke, Prod, Press

Many witnesses work themselves up into a fit of righteousness and overconfidence before giving testimony. But confront them with their own position in plain terms, and their bluster has a way of vanishing. Somebody will sue for fraud or misrepresentation, and you’ll ask the witness, ‘Are you calling my client a liar?’ Most people are hesitant to do that. If the witness says no, he’s backing away from the essence of his lawyer’s allegation. If he says yes and can’t prove it, the jury will hang him.

11 Clean Up

Don’t leave any kernels of doubt on the floor. Any arsenal of questions should include the following standbys: Is there anything else you can possibly tell us about the subject? You haven’t left any details out, have you? Is that everything you can remember? Always think of those questions as sweeping the floor when you’re done.