

FURTHER GENERAL INFORMATION REGARDING DEPOSITION

For a party or witness to testify effectively in a deposition or trial, considerable thought and preparation are necessary. Appropriate answers to questions on direct examination and cross-examination do not just happen. Satisfactory answers are the result of careful review and analysis of the facts and issues in the case. This information is offered to familiarize you with the principles of and approaches to testimony at a deposition or trial so you will have the confidence and ability to handle any question asked, no matter how they are asked, in an intelligent and straight-forward manner.

Remember that when you testify as a party or a witness, you are involved in an adversarial proceeding. All the principles of communication come into play. Your voice, enunciation, speaking ability, and body language all affect your credibility and the impact you have on the judge who will try the case.

General Information About Depositions

A deposition is a court proceeding that takes place out of court. No judge is present. A deposition may be scheduled at a lawyer's office. A lawyer will ask you certain questions that you are duty-bound to answer. You are under oath, and your answers are recorded word for word by a court reporter. The questions and answers are usually transcribed and become part of a deposition transcript.

If I consider any question asked at a deposition objectionable, I will give you instructions on how to respond. I will object to the questions and instruct you either to answer the question over the objection or not to answer the question.

The purposes of a deposition are fourfold:

1. The opposing lawyer wants an opportunity to observe you as a witness and to find out what kind of a witness you will be and how you will relate to the judge at the trial. The lawyer will evaluate you as a witness;
2. The opposing lawyer wants to determine what you personally know about the case;
3. The opposing lawyer wants to obtain admissions to reduce the proofs at the trial; and
4. The opposing lawyer will attempt to get you to commit to a set of facts. If your testimony at the trial varies from these facts, the lawyer will attempt to impeach your credibility, that is, make you seem to be a person who cannot be trusted.

Please remember that the lawyer representing the opposing party is trying to do his or her best for that person. He or she is your opposition. Do not develop a false sense of confidence. If he or she appears to be nice to you, fair-minded, or aboveboard, be careful.

At your deposition, I will probably maintain a low profile. A deposition is not a trial. The lawyer cannot testify for you. Your deposition testimony is your responsibility, and only you can fulfill this duty.

The Importance of Your Deposition

Under the Michigan Court Rules and Michigan Rules of Evidence, deposition testimony may be used:

1. For impeachment-to attack your credibility.
2. As an admission against interest by a party.
3. In place of your testimony at trial if you are unavailable as a witness.

Preparation for Your Deposition

To be fully prepared and knowledgeable, you should read, study, and remember certain basic information. This information would include that listed below.

1. Facts and claims made in the legal pleadings filed in the case—the plaintiff's complaint, the answer to the complaint, the defendant's counterclaim, the interrogatories, the answers to the interrogatories, and any depositions taken.
2. You will probably be asked your personal knowledge questions about
 - a) the date of the marriage;
 - b) the circumstances at the time of the marriage, such as your age, occupation, and financial circumstances;
 - c) your employment and activities during the marriage;
 - d) if any children were born of the marriage—their names, ages, birth dates, and educational backgrounds;
 - e) income, expenses, assets acquired, and liabilities incurred during the marriage and your estimate of the fair market value of your assets;
 - f) the cause of the breakdown in the marriage, including what caused it and how your conduct or that of your spouse might have contributed to it;
 - g) your knowledge and claims in connection with any disputed issues in the case; and
 - h) the relief you are requesting in this divorce case.

How to Present Yourself at a Deposition or Trial

Witnesses and parties are judged by what they wear. Women should dress neatly and modestly, avoiding extreme or controversial fashions such as big hats, too much jewelry, or revealing necklines. Men should dress neatly, wearing a coat and tie with conservative colors. Your hair should be trimmed in an acceptable fashion.

Witnesses and parties are also judged by how they speak. You should speak clearly and distinctly with words that a lay person can understand, using a normal tone of voice. Speak with conviction. Keep your hands away from your mouth. When a question is asked, look at the questioner. When answering questions at the trial, direct your responses alternately to the questioner and the judge. In a deposition, look directly at the questioner as you answer.

When you are sworn in by the court reporter or court clerk to tell the truth, it makes a good impression to state clearly and emphatically, "I do." Always tell the truth, and do not exaggerate. Do not avoid a question if you know the answer. Do not hesitate to correct any mistakes in your testimony.

Avoid expressions like "I imagine," "I guess," "it might have happened," "in my opinion," or "to the best of my recollection." In other words, avoid using powerless "weasel" words. Also avoid phrases like "truthfully," "well, to tell the truth," "honestly," or "well, to be honest with you."

Do not look to your lawyer or the judge for guidance in answering a question. Neither I nor the judge can testify for you. You cast suspicion on your answers if you look to someone else for help in answering a question.

If you do not know the answer to a question, there is nothing wrong in saying that you do not know. Likewise, if you do not remember, do not guess or speculate. If you do not understand a question, do not answer it. Answering a question that you do not understand might give erroneous information or damage your case. State that you do not understand the question. Do not let the opposing lawyer put words in your mouth; make sure you understand the question before you answer.

If you know the answer, answer the question fully and completely and then stop talking. Do not ramble or think out loud when answering. Do not volunteer information. Do not make any commitments to help opposing counsel. Just answer the question asked.

If the attorney insists on a yes-or-no answer but it is impossible to answer that way, do not do it. Politely tell the attorney that the question cannot be answered yes or no. The court will usually help you.

If an objection is made to a question, do not answer the question until advised to do so by me (at a deposition) or by the judge (at the trial). Do not answer before the controversy on the question is resolved.

Do not put on false airs. Most judges and lawyers, like other people, are attracted to people who speak plainly, directly, and with sincerity. Do not be self-righteous. Do not speak in a condescending manner.

Do not be argumentative. Do not be abrasive or hostile to the opposing lawyer. Answer his or her questions politely and courteously, the same way you would answer my questions. Do not lose your temper; remain calm and composed.

Do not belittle or make fun of any other witness. Do not joke or wisecrack.

Do not exaggerate your problems, difficulties in your life, or expenses.

Never chew gum. Never smoke in the hallways at an intermission.

REMEMBER:

1. Answer the question, not some other question. Say no more than is necessary to answer the question. Do not volunteer extra information or explanations.

2. You are the witness - not the lawyer:

- a. Do not argue with the other side;
- b. Do not object;
- c. Do not try to sell the case;
- d. Just answer the questions - do not lose your credibility as a witness.

3. Watch out for questions that paraphrase your answers. Lots of times the lawyer may take your ideas and put them in other words (changing your meaning in ways that you might not catch at the time). If a lawyer asks if his/her paraphrasing is accurate, you are entitled to say that you would rather stand on your answer and stick with the way you put it.

4. Beware of absolutes - questions that have the words "always" and "never".

5. Admit preparing for the deposition.

6. If you discover you have made a mistake - tell me before the deposition is over. We will fix it. Mistakes happen, but they do not fix themselves.

7. If you get tired, ask for a break. If you need to go to the bathroom, or get a cup of coffee, say so.

8. Always tell the truth.

Keeping these principles in mind, you will do a good job in testifying at the deposition or trial.

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