



SHUSTAK REYNOLDS
& PARTNERS, P.C.

SAN DIEGO | IRVINE | LOS ANGELES | SAN FRANCISCO | NEW YORK

GIVING A DEPOSITION

You have been asked to provide a deposition in a case in which you either are a party or a person with possible knowledge of facts relevant to the case. This memo outlines what a Deposition is; how to prepare for it; and how to conduct yourself during the deposition. There are a number of very helpful videos on YouTube that give a good idea visually of a typical deposition. Aside from reviewing the suggestions below, please search YouTube for “how to give a deposition”. Watch a few of the higher ranked videos. They only take a few minutes each and watching several will give you better insight into, and comfort with what to expect at your deposition.

What Is a Deposition?

A deposition is pre-trial oral testimony taken under oath. Testimony given in a deposition is the same as testimony given in a courtroom at trial. In a deposition, the opposing attorney (counsel) will ask you various questions, and those questions and your answers will be recorded by an official court reporter. There is little difference between testimony at a deposition and testimony in the courtroom, except that there is no judge presiding during a deposition. What this means is that certain matters – whether a question or answer will be admissible at trial – will be decided by the judge later on.

Purpose of a Deposition

Depositions are extremely useful to opposing counsel. In a deposition, the opposing counsel will want to find out what you know regarding the issues in your lawsuit so that they can prepare for your testimony in advance of trial. The testimony you give in a deposition may be read at trial, so opposing counsel hopes to catch you in a lie or omission, because, if they were to do so, they could claim at trial that you are not a truthful person. Having established your dishonest character, they could then argue that your testimony should not be accepted as evidence of any of the important questions at trial. Remember, opposing counsel has every right to take your deposition for these purposes.

Your attorney may ask questions of you during the deposition, but typically your attorney will only ask questions of you in order to clarify a confusing answer. Like opposing counsel, your attorney may schedule and take depositions to help build your case. If there are some issues

about your case that you consider worrisome, those matters should be discussed with your attorney before the start of the deposition.

Suggestions for Preparation

The following are suggestions to help you prepare to give you deposition:

Always tell the truth: Failure to tell the truth in a deposition constitutes perjury, which is a felony. It can also damage your case if the truth comes out at trial.

Listen to the question: Do not answer any question unless you hear it clearly and completely. You may ask the attorney or the court reporter to repeat a question.

Understand the question before answering: Do not answer any question unless you understand it fully. You may ask the attorney to explain or rephrase the question until you do understand it. Take your time! Listen and think about the question before answering. Make sure you fully understand the question and give the simplest, shortest answer you can. If you can answer the questions with a yes, no or I don't recall, those are the best answers you can give.

Pause after each question: This gives you an opportunity to think about the question and give an appropriate response. It also allows your attorney the time to make an objection to the question if one is appropriate.

Don't guess: If you do not know the answer to a question, you should say that you do not know. You may be asked to give your best estimate, and, if you can, you can give an estimate. But if you don't even have an estimate, and you simply would be guessing, just say you don't know. That's perfectly fine. No guessing.

You have a right to confer with your lawyer: At any time during the deposition, you will have the right to speak with your attorney privately regarding the question and your answer. Do not hesitate to exercise this right. The only exception is if there is a question is pending. You must answer a question before speaking to your attorney or taking a break.

Take as many breaks as you want. If you are tired, getting annoyed, or just want to speak to your attorney to find out "how am I doing" or ask another question, just indicate you need a short restroom break. That will give you time to speak to your attorney and refocus your attention. The conduct of a deposition is up to you. You can take as long as you want to think about the question; form an answer in your mind; ask the attorney to rephrase the question or take whatever breaks you wish.

Don't volunteer information: Do not give more information than is necessary to answer the question. Stop talking once you have answered the question.

Don't explain: Never attempt to explain or justify your answer. You are there to state what you know. You are not expected to justify your knowledge of the facts. If you try to explain, the attorney may believe that he or she has reason to doubt the accuracy or authenticity of your testimony.

Remain calm and polite: Do not lose your temper no matter how hard you are pressed. If you lose your temper, you may be playing into the other side's hands. Do not argue. Speak in the

same tone and manner that you would speak to your own attorney. Your attorney will object to any inappropriate questions or actions by the other lawyer.

Be aware of estimations: If you have to estimate distances or time in any of your answers, explicitly state that your response is an estimate.

Be careful of quoting others: If you are testifying about a conversation you had in the past, make it clear whether you are paraphrasing comments, or whether you are directly quoting what was said.

Don't prepare notes, documents or diaries: You cannot use any notes, diaries or any other documents to assist you during your deposition unless the document has been approved by your attorney prior to the deposition. A deposition is not a test. You do not prepare for it.

Bring copies of requested documents: You may have been instructed to produce documents at your deposition. If so, you should bring copies (not originals) of the documents. One copy will be provided to opposing counsel, one copy kept by you, and one copy kept by your attorney.

Documents you shouldn't produce: Do not volunteer to supply any documents or information. If you are asked to supply documents or information, refer the opposing counsel to your attorney. Do not reach into your pocket for a social security card, driver's license, or any other document, unless your attorney requests that you do so.

Admit to your mistakes: If at anytime during the deposition you realize you have given an erroneous answer or you have misspoken, correct your mistake as soon as you recognize it. You should tell either opposing counsel or your own attorney about your mistake at the first opportunity.

Don't always accept opposing counsel's statements/questions: Do not let the opponent put words in your mouth. Pay particular attention to the question. Do not accept opposing counsel's summary of your testimony unless it is completely accurate.

You aren't expected to know all the details: If you do not know all the details, relax. Simply state what you do know and leave out the details. Do not give an answer that requires you to consult records not available at the deposition or requiring you to consult your friends and associates for the answer.

Don't ever reveal the content of your discussions with your attorney: If asked what you discussed with your attorney, do not respond. Your discussions with your attorney are confidential and should not be revealed to the other side.

No jokes: Never indulge in humor when responding to a deposition. Avoid wisecracks and obscenities. Your humor may not be recognizable in the transcript and may look crude or untruthful.

Don't speak with opposing parties or counsel: After the deposition is over, do not chat with your opponents or their attorney. Do not let their friendly manner cause you to drop your guard or become chatty, as you may reveal something important to your case. You are not there to make friends. The opposing attorney, no matter how nice he or she may seem, is not your friend.

Don't speculate: Do not form an answer based on estimations, guessing, predictions, feelings, and other musings that cannot be verified.

How you conduct yourself during your deposition can make or break your case. Be aware at all times that your deposition is being taken to provide your opponent with legal ammunition to use against you at trial. Be cooperative, but always be mindful not to volunteer more information than you have to, and remember that you may consult your attorney at any time during your deposition.

SHUSTAK REYNOLDS & PARTNERS, P.C.