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Young Lawyers

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TAKING YOUR FIRST DEPOSITION

Thousands of young attorneys will sit down to take their first deposition with a lot of dread and very little training. If you’ve never taken or attended a deposition there are some things that seem obvious to a veteran lawyer, but are not as appreciated, or noticed, by the novice lawyer.

Have a Purpose

What is your purpose in taking the person’s deposition? It often helps to consider whether or not you are:

- (1) trying to just gather information;
- (2) seeking specific admissions of key facts; or
- (3) preserving testimony for later use at trial.

No matter what your purpose you should determine that purpose and fully understand it prior to walking into the deposition.

Be Prepared

This suggestion probably goes without saying; however, before stepping into a deposition you want to know the case facts, the parties’ legal theories and theme, the primary areas of dispute and legal concepts. Once you understand the theme and theory of both your case and your opponent’s case, you can structure your questioning to determine what questions, and more importantly what *answers*, will support your theory and rebut the opposing party’s themes and theories.

Furthermore, you want to know everything you can know about the person you are deposing. Do your due diligence and find out everything you can. Do a background search to determine if the person has a criminal record. Do a Google search to see if the person has their own website or blogs or comments on the same. Do a litigation search to see if the person has ever sued or been sued before. If the person has been sued, track down any depositions the person gave, along with the answers to interrogatories he signed. Do a bankruptcy search to see if he has ever filed for bankruptcy. If appropriate, get his medical, employment, IRS, Social Security, Medicare and military records.

It’s All in the Questions

How you ask questions depends on what you are trying to accomplish. If you are trying to gather information, asking informal, open-ended questions is best. In this scenario, all your questions should begin with one of the following words: who, what, where, when, why and how, after which you can coast along for quite some time with, “And then what happened?” and “What happened next?” You can then tie the ribbon with a bow by asking, “Do you recall anything else?”

If you are asking “did you” questions, you’ll either fail to get useful answers or, even worse, answers that suggest responsive testimony but aren’t.

If you are trying to get specific admissions of key facts, pin the witness down, then use leading questions. Lastly, if you are trying to preserve testimony, use the exact method you would use in trial, which is likely a methodical approach, taking into account evidentiary issues.

Documents

If you have documents that the witness prepared or received you should assemble those documents in chronological order. Have several sets of the documents that you expect to go over with the witness available: one set for you, one set for the witness and one set for each of the lawyers that will be attending the deposition. If you make a document an exhibit, you should immediately hand a copy to the court reporter, marking it as an exhibit. Remember to establish the foundation for each exhibit and to authenticate the document. Lastly, do not forget to identify things on the record; the record is not visual and descriptions are always needed. For instance, when a witness refers to “this document,” follow up with, “You are referring to the document marked as Exhibit 1 to this deposition, correct?”

Although the foregoing pointers should serve as a helpful starting point, there are numerous courses (my favorite: the NITA – Deposition Skills Program) and books that can assist you with fine-tuning your deposition skills. More importantly, your own experience with taking depositions will always be your best teacher. ■