



Legal Waypoints

Deposition – *Ten tips for being a Good Witness*

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Being deposed in a legal proceeding is a modern day rite of passage. Sooner or later you will likely be called to testify under oath on behalf of your business or as a third-party witness. Experienced litigators often say: "You can't win a case at a deposition, but you can lose one." To avoid a bad result under oath you must prepare.

Here are some simple tips for being a good witness:

- 1. Tell the truth.** You are under oath and must tell the truth. A lie may constitute perjury. Don't exaggerate. Your truthfulness reflects directly on your credibility.
- 2. Don't qualify favorable facts.** Be definitive – don't use qualifiers such as: I think; I might have; it seems; I assume; possibly, or correct me if I am wrong, etc. Qualified answers are viewed as weak answers. It is acceptable to indicate that certain assumptions must be made to answer a particular question or that a question poses an unrealistic hypothetical.
- 3. Never guess.** If you are not sure of the answer to a question do not guess. If you don't know the answer just say so. It is fine to say "I don't remember" if that is a truthful answer. If you do not understand a question just say so until it is clear to you.
- 4. Don't volunteer information.** You are a witness not an educator. If the counsel asking questions does not have a good grasp of the case or the issues, it is not your job to fill in the gaps. Just answer the questions asked. You are not obligated to "help" direct the testimony. Similarly, don't be lured into offering additional information if there is a time gap between your completed answer and the next question.
- 5. Don't apologize.** You have nothing to apologize for if you don't understand or have the answer to a question - it is not your fault. You can only testify as to your knowledge and recollections. Resist the natural tendency to clarify counsel's apparent confusion.
- 6. Take your time.** Listen carefully to the whole question and consider your response before answering. The length of time you take to consider a particular question will not be reflected on the transcript. Finish your answers but don't ramble. Take care to avoid providing a confusing response if interrupted during an answer.
- 7. Listen to objections.** Stop and listen to your counsel if s/he objects to a question. This may be followed by specific instructions from your counsel to either answer a particular question or not. Be consistent even when asked the same or similar questions in several different ways in an attempt to obtain conflicting or more favorable answers.
- 8. Stay calm.** Resist attempts to make you angry or excited. Avoid being drawn into an argument - keep your answers short and simple. You are at a deposition not a debate.
- 9. No jokes.** Testimony under oath is not the time for jokes, sarcastic remarks or flippant answers. Be professional, speak clearly and avoid non-verbal responses. Don't engage in any idle chitchat with attendees before, during or after the deposition. Put on your "game face" and don't let an opponent's friendly demeanor drop your guard.
- 10. Get a good night's sleep.** A deposition is hard work. Be well rested so you can stay sharp for the duration.