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## **CHECKLIST FOR DEPOSITIONS**

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### **SUGGESTIONS FOR GIVING ACCURATE TESTIMONY**

These are useful pointers to assist you in giving deposition testimony. Even if you have been deposed many times already, these pointers will be helpful. While testifying is potentially stressful, you will comfortably provide accurate and truthful testimony if you carefully review and follow these suggestions. You can minimize anxiety, confusion, and other problems by remembering and following these rules.

First and foremost: **TELL THE TRUTH.** This sounds easy, but it is not. To tell the truth, you must follow many other rules.

### **UNDERSTAND THE QUESTION**

Listen to the question. Pay attention. You can not tell the truth if you have not heard and understood the question. If you do not understand the question, you must ask the questioner to make the question crystal clear before you answer it. Many problems arise from failure to listen to the question. This often happens when the witness assumes that he knows what the question is and stops listening before it is finished. Watch out for ambiguous references to "he/she", "they", "it" and vague time references in the question. Here's an example.

**Question:** She says that you were there an hour later when she did this. Is that true?

To answer this truthfully, you must know what is meant by "she", "there", "this", and "an hour later".

It is not a sign of ignorance, weakness, or lack of cooperation to require reasonable clarification of questions. Understand that lawyers often ask confusing questions because they are thinking ahead to the next question, are not using notes, have confused or misstated the facts, have misunderstood your earlier answers, or are intentionally ignoring your earlier answers.

### ***THINK BEFORE ANSWERING***

Do not say "no" if the true answer is "I do not recall". "No" means absolutely not. "I do not recall" means what it says. By the same token, do not say, "I do not recall" if the answer is "no". If you know that the answer is "no" or if the question clearly can be answered "yes" or "no", saying "I do not recall" sounds evasive or suggests that the answer may be "yes".

***Question:*** Have you ever met a person named David Jackson?

This question refers to your entire life and is so broad it is doubtful that you can truthfully say "no". It is not the truth to say "no" if the correct answer is "I am not sure".

***Question:*** Have you ever seen this document before?

If your answer is not "yes", the true answer is likely "I am not sure" or "I don't think so" because, otherwise, you are stating, under oath, that you know absolutely that you have never seen that document in your life.

***Question:*** Did Mr. Jones tell Mr. Smith in your presence that the Company was firing Mr. Smith because of his age?

If the answer to this question is not "yes", the accurate response is likely to be "no". If Mr. Jones had said something this outrageous, you would remember.

### ***DO NOT ACCEPT OPPOSING COUNSEL'S STATEMENTS***

Do not accept a "fact" merely because the attorney questioning you says it. While the fact may be accurate, if you do not know that, you cannot truthfully accept it.

**Question:** You discussed the problem with Mr. Smith when you reviewed this letter with him, didn't you?

While you may have discussed "the problem" with Mr. Smith, if you do not recall having reviewed *the letter* with him, say so.

### ***FOCUS ON THE QUESTION***

Devote all of your energy to answering the question accurately and not worrying about why it was asked. Give every question your complete concentration and focused attention. There is no such thing as an unimportant, minor, or "throwaway" question. A careless answer to a casual, "unimportant" question is not the truth. If you are distracted, say so and pause to collect your thoughts. Never answer without complete focus on the question.

**ANALYZE DOCUMENTS CAREFULLY**  
**BEFORE ANSWERING QUESTIONS ABOUT THEM**

If a document is important enough for the attorney to use in questioning you, you should give it the same importance and scrutinize it carefully before you answer. Do not assume that you know the document already. You can easily confuse it with some other document. For example, if you are asked to "look at" a letter, before answering questions about it, do just that and take all the time you need. Look at:

- a. the letterhead, if any;
- b. the date;
- c. the person to whom it was sent;
- d. the recipient's full address;
- e. the name of the author of the letter; and
- f. persons to whom copies are noted.

Only after examining these parts of the letter should you read -- carefully -- the content of the letter.

If you follow these rules, you will indeed have "looked at" the letter and you will be prepared to tell the truth in answering questions about it. You cannot do this if you simply glance at the letter and ask for the question.

If the document is lengthy, you are not required to review and absorb it instantly. You can request a recess and take all the time you need or, if you can do so comfortably, you can simply and slowly review that document for as long as necessary while everyone waits. Do not be rushed.

### ***DO NOT ARGUE***

Lawyers argue. Witnesses testify. Answer questions truthfully without arguing with the attorney asking the questions. You will be distracted by argument. You will be diverted from telling the truth and you will not focus on the question. Let the questioner be the one who is upset. Understand that if the questioner harasses or bullies you, it is because you are a strong witness and your testimony is frustrating the lawyer. Stay above the battle. Let the jury focus its anger on the lawyer by your contrasting patient and reasonable behavior.

### ***HARASSMENT***

Know that I can object if opposing counsel harasses you, but I will not necessarily object at every single opportunity. Do not be distracted if opposing counsel's sequence of questions seem to jump around in time, or if counsel is otherwise disorganized in presenting the sequence of events.

### ***DO NOT VOLUNTEER***

Respond only to the question asked. Do not volunteer information not requested. If you are asked for your name, do not give your address, social security number, date of birth, and the names of all members of your family, as some people do through nervousness. None of those things were asked for and they are not responsive to the question. You need only answer the question asked. If the attorney asking the questions wants more information, he will ask another question. If you volunteer, you will needlessly prolong your testimony.

Don't worry about filling up "dead air." If you've given an answer, be quiet! It's up to the lawyer to start talking.

### **PAY ATTENTION**

You must concentrate on the proceedings at all times while giving a deposition. Do not relax and become inattentive after you have become comfortable in the witness chair. Pay attention to everything that occurs while you are testifying. Do not permit occasional boredom with familiar and irrelevant questions to affect your close attention.

### **TAKE YOUR TIME**

You are not subject to a time clock or a deadline. If you need time to tell the truth, take the time. Pause after every question (a) to be sure you have heard and understood it; (b) to decide if you know the answer; and (c) to consider the accurate answer. Remember that if you were giving your deposition by writing your answers instead of orally, you would devote time and energy to writing accurate answers. Your oral answers require the same time and concentration.

Do not let the examiner control the rhythm of the testimony by giving quick, rapid answers to rapid questions. Take your time to answer even the simple questions so you will remember to take time with the more complex questions.

Do not be lulled by a series of quick short questions, e.g., four in a row to which the answer is a simple "yes" and a fifth throwaway question at the end to which the answer is *not a simple "yes"*.

**Question:** You told Mr. Smith to write this letter?

**Answer:** Yes.

**Q:** And he wrote the letter?

**A:** Yes.

**Q:** And he sent the letter?

**A:** Yes.

**Q:** And you had approved it?

**A:** (Be alert not to give an automatic "yes" answer.)

### ***CORRECT MISTAKES***

If you realize that you have said something that was not accurate, interrupt the questioning and correct your answer. Otherwise, you are not telling the truth. You should do this even if the inaccurate statement was given long before you realize your error. You should not finish your testimony without correcting testimony that must be corrected if you are to tell the truth. Everyone makes mistakes -- and it is perfectly normal; but you do need to correct it. You are not telling the truth if you knowingly leave the mistake uncorrected. If you do not realize a mistake has been made until you have left the witness stand at trial, inform us as soon as possible of this mistake.

### ***PREPARATION***

Understand that it is perfectly proper for you to have reviewed these suggestions and to have met with counsel in preparation for your deposition. You will likely be asked to describe all documents which you reviewed in preparation for your testimony and to identify any persons, in addition to counsel, with whom you spoke as part of your preparation.

## ***YOUR OWN KNOWLEDGE***

Be sure to distinguish between what you know from your own knowledge and what you have *heard*. Assume your wife told you she came home at 10:00 p.m. on a certain night. You came home at 11:00 p.m.

**Question:** What time did your wife come home that night?

**Answer:** I don't know.

**Q:** Do you have any knowledge about when she came home?

**A:** Not of my own knowledge, but I know what she told me.

**Q:** What did she tell you?

At this point, there may or may not be an objection to what she told you. Note that each of these answers accurately responds to the question but does not volunteer information.

## ***OBJECTIONS***

Listen to the objections made during your testimony. If you do not immediately understand the objection, pay no attention to it. Do not get distracted by objections which are not clear to you. If the objections mean something to you, fine. If they are confusing, forget them.

If an objection is made, do not answer the question until your lawyer tells you to. If you can't remember the question after the lawyers have talked to each other, ask the lawyer questioning you to repeat the question.

## ***REFRESHING RECOLLECTIONS***

If the other attorney shows you a document or a photograph or tells you someone else's testimony, and asks if that refreshes your recollection, tell the truth. If your recollection is not refreshed, say so. Do not accept the lawyer's suggestion that your recollection *must* be refreshed by this material.

If your lawyer tries to refresh your recollection with something, and your recollection is not refreshed, do not worry about this. If you do, you will not pay attention to the questioning.

## ***PERSONAL BEHAVIOR***

Do not take medication before your trial testimony or, if you must, be sure to tell me what effect it may have on you. Do not chew gum or candy while testifying.

Use your own words and not someone else's. Avoid phrases like, "to tell you the truth" or "to be honest". Do not repeat the question before answering.

## ***SUMMARY***

1. Be honest.
2. Listen carefully to the entire question.
3. Answer only the question asked.
4. Keep your answers as short as possible.
5. Do not volunteer information.
6. Don't be afraid to say "I don't know" or "I don't remember."
7. Testify only as to personal knowledge.
8. Estimate, if asked, but don't guess.

9. Request the document if you are being questioned about one.
10. Correct previous answers if you believe they are incorrect.

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