

INFORMATION CONCERNING YOUR DEPOSITION

1. PROCEDURE

Under the law, the opposing lawyer has the right to take your “discovery deposition.” This means that you will be put under oath, just as you would be in Court, and he will ask you questions relating to the case. His questions and your answers will be taken down by a court reporter. One of your lawyers will be present.

There will be no judge or jury present. After the deposition is over, the reporter will type the questions and answers, and all parties will receive copies.

If your case goes to trial and you are present, this deposition can be used at the trial in cross-examination by the other lawyers if your testimony at trial differs from your testimony at the time of the deposition.

It is extremely important, therefore, that you have everything in mind about the case at the time of the deposition. We will review the case with you before the deposition, but it is helpful if you refresh your recollection before you meet with us.

The other lawyer in this discovery deposition can ask you questions that are admissible in court under Rules of Evidence. In addition, he can ask you questions that may seem to you are none of his business and would not be admissible in court. The courts allow “discovery” in these depositions and you may be asked for “hearsay” and other things that will enable the other side to make further investigation of the case. Do not be surprised if we do not object to questions that may seem to you to be out of line. If the defense attorney questions you on any subject that is not proper on a “discovery deposition,” we will object to the questions. If we object to the questions and instruct you not to answer it, then you should **REFUSE TO ANSWER THE QUESTION**. Please do not refuse to answer the question that we have not instructed you to refuse to answer.

2. REASONS FOR TAKING THIS DEPOSITION

Depositions assist each side in evaluating the case for settlement purposes. This is often the first and only opportunity the other lawyer has to see you before the case comes to trial. You should answer the questions in an honest and straightforward manner so the other lawyer will be impressed with the fact that the judge or jury will know, if the case is tried, that you are completely honest and sincere.

The attorney for the other side will get all possible information regarding names and witnesses to assist him in completing his investigation and preparation for the trial.

He will commit you, under oath, to all of the facts about your side of the case and the nature and extent of your damages, if any, so that you cannot say anything different at trial without being subject to impeachment with this deposition on cross-examination.

One of the most effective ways to try to a case is to be able to prove that the other side has misstated facts in some way. Proving such misstatements under oath on a deposition is almost as effective as catching a witness in a misstatement in the courtroom.

3. PRE-DISPOSITION RECOMMENDATIONS

- a. **REFRESH YOUR RECOLLECTIONS** by reading any notes that you made about the case.
- b. **VISIT THE SCENE** of the event, if possible, and refresh your recollection concerning visibility, obstructions, distances, speeds and the like.
- c. **DO NOT MEMORIZE** any statement you have given or anything that you are going to say in answer any question concerning it.

4. HOW TO HANDLE YOURSELF IN THE DEPOSITION

We know that you would not deliberately state a falsehood, but it is important that you not be trapped into something that is not true. For this reason, **LISTEN TO EACH QUESTION CAREFULLY AND BE SURE THAT YOU UNDERSTAND IT BEFORE ANSWERING.** If you do not understand it, ask the other lawyer to repeat it or rephrase it so you understand it. When you understand the question, then answer it honestly and in a straightforward manner. If you don't know the answer, say that you don't know or recall, but don't let the other lawyer get you in the trap of answering question after question with "I don't know," No one can remember every minute detail. However, the important things you will remember and you should give an honest and full answer to questions on these points.

The other lawyer will probably be friends and will not "bully" you in any manner. His theory will probably be that the more he can get you to say, the more apt you are to put your "foot in your mouth" An incorrect statement may lose the case. In a lawsuit, as in all other matters, honesty is the best policy. Telling the truth means more than refraining from telling a deliberate falsehood. Telling the truth requires that a witness testify accurately about what he knows. If you tell the truth and tell it accurately, nobody can cross you up.

- a. **UNDERSTAND THE QUESTION** before you attempt to give any answer. You can't possibly give a truthful and accurate answer unless you understand the question. If you don't understand, ask the lawyer to repeat it. He will probably ask the court reporter to read it back. Keep a sharp lookout for

questions with a double meaning and questions which assume that you testified to a fact when you have not done so.

- b. **TAKE YOUR TIME.** Give the question such thought as it requires to understand it, formulate your answer and then give the answer. Do not give a snap answer without thinking.
- c. **ANSWER THE QUESTION** that is asked and then stop. Don't volunteer information not called for by the question you are asked.
- d. **GIVE AN AUDIBLE ANSWER** so the court reporter can get it. Don't nod your head yes or no.
- e. **DON'T LOOK AT THE LAWYER FOR HELP** when you are on the stand You are on your own except for protection from improper statements and harassment.
- f. **BEWARE OF QUESTIONS INVOLVING DISTANCES AND DISTANCES AND TIME.** If you make an estimate, make sure that everyone understands that you are estimating. Think clearly about speeds, distances and intervals of time. Remember that time can easily be computed from time and distance. Be sure your estimates are reasonable.
- g. **DON'T FENCE OR ARGUE WITH THE LAWYER** on the other side. He has a right to question you. Don't answer with a question unless the question you are asked is not clear.
- h. **DON'T LOSE YOUR TEMPER** no matter how hard you are pressed. Lose your temper and you may lose the case. If you lose your temper, you have played right into the hands of the other side.
- i. **IF ASKED WHETHER** you have talked to the lawyer on your side or to an investigator, admit if freely. This is perfectly proper.
- j. **AVOID JOKING WISECRACKS.** A lawsuit is a serious matter.
- k. **GIVE A POSITIVE ANSWER** when you can. Don't let the lawyer on the other side catch you by asking you whether you are willing to swear to you version of what you know by reason of seeing or hearing. If you were there and know what happened or didn't happen, don't be afraid to "swear" to it. You were "sworn" to tell the truth when you took the stand. Avoid such phrases as "I think," "in my opinion" and "probably."

- I. PLEASE FOLLOW OUR RECOMMENDATIONS at the deposition. You do not have to watch us as we will not "signal" you how to answer. However, the other lawyer sometimes asks the client if he is willing to sign an authorization to allow the other lawyer to obtain medical reports, or if he is willing to allow an examination by a doctor of the other lawyer's choosing, or to permit inspection of papers to furnish other information. If something such as this is asked, you may simply state you will follow your lawyer's recommendation. Don't worry about remembering these questions. If they are asked, we will interrupt and ask you if you will follow our recommendations and you may simply say "yes."

5. WAIVER OF SIGNATURE

When the deposition is concluded, the proceedings are usually transcribed for use at trial. This generally takes about two weeks. You then have the right to be notified by the court reporter and return to the reporter's office to read and sign the deposition. You cannot change any of the wording, but if you feel there is an error, you can make such notation in the margin. However, this procedure can be waived and the deposition filed without signature. The waiver is agreed to in a vast majority of cases since the reporters are accurate and you do not then have to make a second trip to the reporter's office. We will make a recommendation as to waiver at our pre-disposition conference. However, the final decision is yours.

POINTERS ON HOW TO ACT WHEN GIVING YOUR DISCOVERY DEPOSITION

Under the rules of practice in this State, each side in the lawsuit has the right to take the discovery deposition of the opposing party. Thus, when you become a plaintiff or defendant in any litigation, the opposing party may require you to appear at a specified time and place and give your oral testimony under oath, which testimony is taken down by shorthand or mechanical means and transcribed for future use in the lawsuit.

Your deposition properly given can go a long way in assisting you lawyer in handling your litigation either by way or settlement or at the trial. What YOU do at the deposition can help you or hurt you, depending on your attitude, truthfulness and appearance.

The following information and instructions are offered in an effort to better acquaint you with what is expected of you and how you can be an effective witness at discovery deposition time.

1. WHAT IS DISCOVERY DEPOSITION?

In its simplest form a discovery deposition is the oral testimony of a witness taken under oath before trial and at which time most of the objections available at trial do not apply, the basic rule being that the questions asked need only address themselves to information that is relevant to the case or to discovering relevant facts.

2. PURPOSE OF DISCOVERY DEPOSITIONS?

- a. The purpose of the discovery deposition is to pick the mind of the witness of all the facts which he may have in his possession which will assist the lawyers in the preparation and trial of the lawsuit.
- b. Evaluate how you will appear to a jury.
- c. Determine the settlement value of your case.

3. YOUR PHYSICAL APPEARANCE.

You should remember, that usually the first opportunity that the opposing counsel has to see you comes at the time of the giving of the discovery deposition. It is important that you make a good impression upon opposing counsel and his client and you

should appear at the deposition on time dressed as you would expect to dress if you were actually going to Court to appear before the jury.

- a. You should wear clean, neat clothing.
- b. Treat all persons in the deposition room with respect.
- c. Come prepared to exhibit any and all injuries which you have suffered.
- d. Have with you the facts and figures with respect to your time lost from work, amount of wages lost, doctor bills, hospital bills and all other facts with respect to the damages caused as a result of your injury.
- e. Consider this any important and solemn occasion and avoid "getting chummy" with opposing counsel or his client.

4. HOW TO ACT WHILE GIVING YOUR TESTIMONY.

- a. Tell the truth.
- b. Never lose your temper.
- c. Don't be afraid of the lawyers.
- d. Speak slowly and clearly.
- e. If you don't understand the question, ask that it be explained.
- f. Answer all questions directly, giving concise answers to the questions, and STOP TALKING.
- g. NEVER VOLUNTEER any information. Wait until the question is asked, answer it, and STOP.