

Here are the things I try to keep in mind as I approach a deposition. Some of these things your attorney should suggest for you, and some he or she may not like. But in any event, I have found these pointers to be helpful in accomplishing the chief objective, namely to tip the power more to you than to the opposing attorney, who will likely take pride in making you uncomfortable, powerless, confused and guilty, even though there is nothing to feel guilty about. That is his or her job, and you are well advised to think about those things being tattooed on his or her forehead every time he or she is asking you a question. Here are my pointers:

First and foremost, put \$50 in cash into your pocket before you leave for your deposition.

Take everything about your deposition with great gravity. It is vital that you do your homework before entering the room. Read and understand each and every document you have provided to the opposition during discovery, which precedes the deposition phase of the case. Be an expert on the subjects, facts and documents likely to be raised during your deposition. You should presume that the opposition will be expert on all these subjects, facts and documents, and you will not enjoy being shown to be more ignorant than the opposition when you are being deposed. Deep familiarity with all the subjects, facts and documents in connection with this case will go a long way toward preparing you for a decent outcome during your deposition.

What you say in your deposition is part of the permanent record of the case, so it is critical that you take great care in what you say. If you misstate something in your deposition, you run the risk of being confronted by that misstatement during the trial. You do not want to have to answer questions at trial which will paint you as deceitful, ignorant or wrong. Painting you that way is exactly the job of the opposition. So, be very careful before answering any question asked of you in your deposition.

Often the strength of your presentation, strength or weakness, and demeanor at your deposition can persuade the parties to settle before the trial itself. Take your deposition very seriously and do not allow the opposition to fluster you or push you around. Realize that is his or her job. Your attorney may or may not be aggressive in protecting you. While you need to heed your attorney's advice, you should demand that he or she aggressively protect you from overreach by the opposition. Stand your ground when you are certain, and remember that there is no law requiring to you remember everything and understand everything.

Do NOT try and be personable or funny. The opposition is NOT going to be won over by how cool or sweet you are. You know you are a good, kind and pleasant person, and your job is NOT to convince the opposition that is so.

Being decent and respectful to everyone is fine, but do not be friendly.

Remember at all times that the most likely result of your deposition is going to be only the written record (transcript), even if there is audio and video equipment running. The opposition will use your transcribed words, and that suggests several things.

Time does not appear on the face of your answers, so TAKE YOUR TIME in answering. Freely ask the opposition to restate his or her question.

Do not keep your hands on top of the table or otherwise visible, for if you tend to have your hands tremble or shake under stress, it puts you at definite disadvantage. Do not drink anything from a glass or cup placed on the table. Take a separate beverage container you keep at your feet or otherwise away from the top of the table. You are not there to handle anything, and you do not have to handle anything. Sit on your hands if you must. Do NOT allow the opposition any free glimpses into your mental or emotional state. If you are handed anything, have it placed before you where you can read it, but do not handle it.

Consider taking a tablet (electronic or paper), holding it in your lap (so as to not give away the appearance of any hand-trembling), and writing down each question, word for word, before you answer. That will forcibly slow the process down, and it will ensure that you do not quickly answer a question you may later regret having answered as you did.

Do NOT jump to answer, even if the answer is obvious. If you do not bring and use a tablet, read the question back either silently or aloud. Be sure to count to at least ten before answering ANY question.

Think through what the question is really asking. Make absolutely sure you understand it fully. Answer it fully in your mind before you answer it with your mouth.

If you have any question about the question you are being asked (and that should happen often if you are listening critically), say, "You need to rephrase your question, Counselor." That will immediately put the opposition at unexpected disadvantage. Stick to your guns. If he or she asks you what is wrong with the question or what you do not understand about it, say, "Counselor, my job is not to help you formulate understandable questions. My job is to answer questions which are reasonably well crafted." That will SURELY piss him or her off, and that is just fine. If he or she presses the issue, say, "Counselor, I am not here to answer questions about your questions about this case."

Often the opposition may tire of your answer or otherwise decide to withdraw his or her question. Do NOT allow him or her to do that. Remind him or her that the oath you took at the beginning of the deposition requires you to answer every question fully and truthfully (or words to that effect), and that the oath does not allow you to leave unanswered fully and truthfully any question he or she asks. Say, "If you do not want to hear my answers, then do not ask me questions." If he or she presses the matter, consider saying, "Counselor, if you can withdraw a question then I reserve the right to withdraw an answer." This is not legally effective, but it helps you define boundaries. Do NOT allow him or her to control your answers, for that is YOUR job. Do NOT shorten your answer just to accommodate his or her petulance with the fact that he or she does not like the direction your answer is taking. That said, also be aware that generally the shorter your answer, the better for you.

If you think you have already answered the question he or she is posing, say, "Asked and answered, Counselor." That may force a stop to review the transcript. This is important, for frequently an attorney will take several approaches/passes at a given point, slightly modifying the parameters or terms of the

question, hoping to create a bit of light between you and your answers. If he or she is able to do that, you are likely to at some point face a question like this: "First you answered the question this way, and then you answered the question another way. Which time were you being untruthful? Why should the court believe you now?" This is the sort of thing lawyers are famous for doing, so you should keep this in mind as you formulate your answers. Be absolutely clear on understanding every part of his or her questions.

If he or she hands you something and tells you to turn to a certain page or section, politely refuse to do so. Make him or her turn the pages for you and only as you are ready to go on to the next page. After he or she blows up at you for being uncooperative, remind him or her that you are there to answer questions and not to turn his or her pages. Do NOT allow your attorney to turn pages, for you are not paying him or her to turn pages, but, rather, to keep you safe and to keep your deposition fair; neither of those purposes is served by his or her turning pages of a document the opposing attorney is forcing you to read.

If he or she hands or shows you ANYTHING, often a document for you to review in advance of a series of questions about it, take a very long time to review it fully. Even if you immediately recognize it, do not say so or visually give away clues that you do or do not recognize it. Remember that the written record will not reflect the time you take, only the words you say. Do NOT put time on his or her side.

Unless you are absolutely certain of another answer, you may answer, "I do not presently recall, Counselor." Make sure you include the word *presently*, so as to make it possible to later modify your answer if there is need and reason to do so. That is the way life is, for some days we can recall things with greater facility and precision than other days. You may have to remind him or her of your experience of that being so. Be careful with this sort of thing, however, for if you indicate that your memory is flexible, be prepared to defend that statement when he or she later turns that around on you and says something like, "Earlier you said that your memory was better or worse at different times, and I am wondering whether you are being truthful now or I would have to ask you on another day." Remember, it is his or her job to make you look deceitful, ignorant, unreliable, crooked and wrong, so expect to be jabbed in such ways.

Generally speaking, the rules at play in a deposition are that once a question is asked, you must answer it before asking for a break. However, you may certainly address your attorney if you have a question about the question, and that may or may not be allowed. Never be afraid to address your attorney at any time; he or she may or may not be able to help you at that moment, but there is nothing at all wrong with your asking for help. He or she is there to help you. NEVER allow the opposition to have any idea what you are saying to or hearing from your attorney.

You will be asked questions which are not in proper legal form, and your attorney will object. But then you will be asked to respond anyway. That is one of the unnerving things about depositions. Be aware that your attorney's objection is important to listen to and understand, for it may well give you clues about what your attorney is trying to protect you from. In such cases, be very wary of your answer. Consider putting on your *I do not presently recall, Counselor* hat, assuming that is a truthful statement.

Ask for frequent breaks, for that allows you to stay calibrated with your attorney and to interrupt the pace of the deposition.

You may end up pissing off the opposition, and if you do, it is constructive for you to remember that there are really only two things he or she may do. One is to be nasty to you, bossing you around and trying to intimidate you. That is simply not something you have to endure, and if your attorney does not defend you against that, do it yourself. The other thing the opposition can do is to threaten to call the judge and force you to answer his or her questions. That's it. Your opposition is strictly a two-trick pony, period. Do not delude yourself into thinking the opposing attorney is a good person, for even if that would be true on the golf course or at the grocery store, it is likely not going to be true during your deposition. He or she is against your best interests, and never for a moment forget that fact. That is his or her job, and likely he or she is good at it.

If he or she turns nasty, try saying something like this: "Counselor, with all due respect, I refuse to allow you to punish me for anything, and I am feeling punished here. If you are dispossessed of the capacity to be respectful to me and to ask questions which are relevant, understandable, able to be answered within the confines of the oath you have compelled me to take, and likely to constructively inform the court as to the facts in this case, then this proceeding is over, as least as far as I am concerned." This is pretty much guaranteed to piss him or her off, but read this carefully and you will see that you are only disallowing him or her from punishing you, and the rest is just a warning. If the opposition grills you about what he or she has asked that is irrelevant, etc., point out that you did not say he or she had asked irrelevant questions and he or she apparently is not a good listener. That will SURELY piss him or her off. If the opposition denies punishing you, remind him or her that punishment is determined and gauged by the person being punished, and not by the person or persons designing or administering the punishment. Example: The opposition attorney may think this is a really fun time everyone is having here at this groovy little deposition, and, therefore, that it is not punishment; however, I may know damn good and well that it feels like punishment to me, and, therefore, it *is*, ipso facto, punishment to me.

If he or she threatens to call the judge to compel you to answer his or her questions, try saying something like this: "Counselor, with all due respect, the judge in this case has the right to punish me, for he or she has earned that right by having been elected or appointed to the bench. You do not have the right to punish me, unless I confer that right upon you, and, Counselor, I do not so confer that right upon you." Essentially, you are calling his or her bluff, and I assure you the last thing he or she wants to do is to bother the judge with something as silly as this. It shows the judge that the opposition is not good at his or her job, among other things. Also, if this actually were to involve a judge at this point, that judge is not necessarily going to be the judge who will ultimately hear the case, if the case proceeds to trial at all. You are likely not fouling the water in the well by standing up to the opposition if you are being pushed around.

You are not expected to be a lawyer. You are expected to be an ordinary person being put under extraordinary pressure, and you are expected to be truthful. That is your job. You do not have to be compliant, subservient, pleasant, funny, witty, cool, charming, all-knowing or free in offering any kind of

information not specifically asked of you. Your job is NOT to help the opposition get its questions phrased properly or to help him or her better understand the situation.

Do not *ever* just try to explain the situation. That is often a huge trap, as innocent as it seems and as natural as it feels to try to explain things. If everyone just understood what you have had to deal with! Well, forget that right now and forever. The moment you start explaining things, you start walking into a dark and dangerous swamp. Keep your answers short, to the point, concise and truthful to a fault. Unless you are certain, you do not recall or you do not know.

If your answer is that you do not know, often the opposition will ask you, "Who, then, would know?" Be careful in answering this question, for if you name a person, likely that person will end up being deposed, also, and hating you for being invited to this really crappy party. You also run the risk of having that person contradict what you have stated in your deposition, even though the contradiction may be minor or inadvertent. In any event, it is not good. Consider answering the question about who might know the answer to that question being something like this: "Counselor, I do not know what I do not know." If he or she asks you to guess, consider saying something like this: "Counselor, I was commanded to appear today to answer questions about this case and not to make guesses. My answer to your question stands: I do not presently know, Counselor."

Take your attorney's advice and trust your gut. You are a truthful person and you have done nothing wrong, irrespective of what the opposition suggests, says or does. Stand your ground and don't allow the opposition to intimidate you.

One additional point to remember is that when you go to any court proceeding, the maximum you may expect to receive is a decision, not justice. A decision is all you will receive in this matter, too, and the odds are just as great as not that you will not be pleased with the decision. Just being realistic here.

When your deposition is over, go to the nearest bar, take the \$50 cash out of your pocket and slam down a couple of stiff drinks. Be sure to tip your hat in gratitude to a universe which in some fashion delivered to you something of value which is the subject matter of this stupid-ass case.