

## **GUIDELINES FOR GIVING YOUR DEPOSITION**

Written By: Harry Tindall  
Attorney at Law  
Houston, Texas

## **GUIDELINES FOR GIVING YOUR DEPOSITION**

### **WHAT IS A DEPOSITION?**

A deposition is your testimony under oath. You will be asked questions by the opposing attorney, and the questions and your answers will be recorded by an official court reporter. There is little difference between testimony at a deposition and testimony in the courtroom except there is no judge presiding. Rulings over inadmissible matters will be made by the judge at the time of the trial, not on the taking of the deposition.

### **PURPOSE OF A DEPOSITION.**

Opposing counsel is taking your deposition for four reasons:

- 1 . They want to find out what facts you have in your actual knowledge and possession regarding the issues in your lawsuit. They are interested in what your story is now and what it is going to be at the trial.
2. They want you to testify to a specific story so that you will have to tell the same story at the trial and they will know in advance what your story is going to be.
3. Your testimony given in a deposition may be read at trial. They hope to catch you in a lie or omission because if they were to do so, they can claim at the trial that you are not a truthful person and, therefore, your testimony should not be believed on any of the points, particularly the crucial ones.
4. A deposition may be used to narrow the issues in your case. Stipulations of fact and other agreements may be made during the course of the deposition which may substantially shorten the trial.

All of the above are very legitimate purposes and opposing counsel has every right to take your deposition for these purposes and in this fashion. Your attorney has the right to ask questions of you during the deposition, but usually, your attorney will only ask you questions

to clarify an answer which may be confusing. Likewise, we have the same right to take the deposition of the opposing party and witnesses.

If there are some issues about your case that you consider worrisome, those matters should be specifically discussed with your attorney before the start of the deposition.

## **SUGGESTIONS FOR PREPARATION**

The following are suggestions to help you prepare to give your deposition. Please study these suggestions carefully:

1. **ALWAYS TELL THE TRUTH** when giving your deposition. Failure to tell the truth in a deposition constitutes perjury, a crime under the Texas Penal Code. You may assume that the attorney questioning you has the ability to make anyone who is playing fast and loose with the truth very uncomfortable.

2. **LISTEN TO THE QUESTION.** Do not answer any question unless you hear it completely. If you did not hear the question asked, ask the other attorney to repeat it or ask the court reporter to read it back.

3. **UNDERSTAND THE QUESTION BEFORE ANSWERING.** Do not hesitate to ask the other attorney to repeat or rephrase the question until you do understand it.

4. **PAUSE AFTER EACH QUESTION.** This gives you an opportunity to think and make an appropriate response. It also permits your attorney to formulate an objection to the question if one is appropriate.

5. **DO NOT GUESS** at any answer. If you do not know the answer to a question, even though you feel you would appear ignorant or evasive saying that you do not know, you should nevertheless do so, because a guess or estimate is always wrong.

6. **RIGHT TO CONFER WITH LAWYER.** At any time during the deposition you will have the right to confer with your attorney privately regarding the question and any proposed answer. Do not hesitate to exercise this right.

7. **DO NOT VOLUNTEER INFORMATION.** Answer the question that is asked of you and then stop.

8. **NO EXPLANATIONS.** Never attempt to explain or justify your answer. You are there to give the facts as you know them and you are not supposed to apologize or attempt to justify those facts. Any attempt at such would make it appear that you doubt the accuracy or authenticity of your own testimony.

9. **BE VERBAL.** Speak loudly enough so everyone can hear you. Do not nod or make gestures; these cannot be recorded by the court reporter.

10. **REMAIN CALM AND POLITE.** Do not lose your temper no matter how hard you are pressed. If you lose your temper, you may be playing into the other side's hands. Do not argue with the other attorney. Give him the information in the same tone of voice and manner that you do in answer to your own attorney's questions. The lawyer has the right to ask questions, and your own attorney will object to any inappropriate questions or actions by the other lawyer.

11. **BE AWARE** of questions involving distances and time. If at any time you estimate distances or time in any of your answers, state that it is an estimate.

12. **QUOTING OTHERS.** If you are testifying with regard to conversations, make clear whether you are paraphrasing comments made by you or other persons, or whether you are quoting directly what was said.

13. **NEVER SAY NEVER.** Eliminate adjectives and superlatives such as "never" and "always" from your vocabulary.

14. **DO NOT TESTIFY** about documents, or about what other people know, or about your state of mind at a particular time unless you are specifically asked.

15. **NOTES, DIARIES, ETC...** Do not plan to use any notes, diaries or any other documents to assist you during your deposition unless such document has been specifically reviewed by your attorney. Use of notes to refresh your memory or any other such documents may be examined by the other side.

16. **DOCUMENTS TO BE PRODUCED.** You may have been instructed to produce documents at your deposition. If so, you should bring three copies of the documents. One copy will be provided to opposing counsel, one copy will be kept by you, and one copy will be kept by your attorney. You should also bring the originals in the event there is any question as to the accuracy of the copies.

17. **DOCUMENTS NOT PRODUCED.** If information is in a document which you need to see in order to testify truthfully and accurately, request the other attorney to provide you with a copy of the document. Do not agree to supply any documents or information. If you are asked to supply documents or information, refer the other lawyer to your counsel. Do not, without the request of your attorney, reach into your pocket for a social security card, drivers license, or any other document. Do not ask your lawyer to produce anything which is in his file. Do not turn to your attorney and ask for information or do not turn to another witness, if one should be present, and ask him for information. When confronted with documents, examine them carefully, If you haven't seen a particular document before or did not prepare it, don't try to guess what it means. Do not vouch for the accuracy of a document. Also, be careful not to interpret a date shown on a document as being the true date of its writing.

18. **MISTAKES.** If at anytime during the deposition you realize you have given an erroneous answer or you have misspoken, correct your answer as soon as you recognize your error. Either tell the opposing lawyer that you misspoke, or tell your own attorney at the first available opportunity.

19. **LISTEN.** Do not let the opponent put words in your mouth. If necessary restate or rephrase in your own words the attorney's question. Pay particular attention to introductory clauses preceding the question. Do not accept the other attorney's summary of your testimony unless it is completely accurate.

20. **RELAX.** You are not expected to know by memory all details of what was said when, by whom and where over a long period of time. Do not offer an answer requiring you to consult

records not available at the deposition or requiring you to consult your friends and associates for the answer.

21. **DON'T BE EMBARRASSED** about admitting that you have met and consulted with your attorney prior to giving your deposition. If asked what you talked about, simply say your attorney merely instructed you to be truthful and honest. What else you and your attorney discuss is confidential and should not be revealed to the other side.

22. **DO NOT BE AFRAID.** There is no one who is going to harm you and there is no need to show fear or anxiety or to be afraid to answer questions truthfully.

23. **BEWARE** of questions by the other attorney beginning with words similar to "Is that all?" **THE OTHER SIDE IS ATTEMPTING TO FREEZE YOUR TESTIMONY.** A good answer to such a question would include phrases such as "To the best of my recollection at the present time." Also, beware of compound questions.

24. **NO JOKES.** Never joke in a deposition. Try to avoid wisecracks and obscenities. The humor would not be apparent on the cold transcript and may look crude or untruthful.

25. **OBJECTIONS TO QUESTIONS.** There may be one or more questions asked of you during the deposition which your attorney will find objectionable because it is not part of the proper discovery in the case. In such an instance, your attorney will instruct you not to answer the question. Occasionally, the opposing attorney will ask that such question be "certified" meaning that it will be presented to the judge at a later date to determine whether you should answer the question.

26. **DO NOT CONVERSE WITH OPPONENT.** After the deposition is over, do not chat with your opponents or their attorney. Remember, the other attorney is your legal enemy. Do not let his friendly manner cause you to drop your guard or become chatty.

27. **DO NOT SPECULATE.** Do not try to figure out before you answer whether a truthful answer will help or hinder your case. Answer truthfully. Your attorney can deal with the truth effectively, but is handicapped when you answer any other way.

28. **FINAL ADVICE.** Your deposition is being taken to provide the opponent with information to be used AGAINST you. You cannot "win" a deposition. So please answer the questions truthfully, but concisely. Do not provide more information than the other attorney has asked for. You are free to consult with your attorney during the deposition and you should if you have any questions about how to answer.

29. **READING AND SIGNING OF THE DEPOSITION.** After your deposition is concluded, the court reporter will transcribe the record into a typed written deposition. You will then be given an opportunity to read the deposition and make corrections, either in misspellings, mistaken dates, or other such changes. You will also need to give a reason for each such change.

30. **COPY OF DEPOSITION.** Since the other side is taking your deposition, they will purchase the original deposition from the court reporter. We strongly advise that a copy of your deposition be purchased because it will be difficult to recall your testimony between the time of deposition and the time of trial. We can estimate the costs of the copy at the conclusion of your deposition. You can save on expenses by making your answers brief and directly responsive to the question.

31. **OTHER DEPOSITIONS.** Your attorney may schedule other depositions at the same time as your deposition. This is a matter of time availability. It may be that your attorney will take other depositions on another date.

32. **VIDEO DEPOSITION.** Should your deposition be scheduled as a video deposition, it will be necessary for you to dress appropriately. Try to avoid bright flashy clothes. Dress in a manner that does not draw attention to your clothing.

33. **WHO MAY BE PRESENT AT A DEPOSITION?** Only the lawyers, the parties, and the court reporter may be present at the deposition, unless your attorney has been given advance notice of someone else in attendance. Occasionally, a legal assistant will be present at the deposition. This is permissible.

34. **SUPPLEMENTATION.** Should facts and answers given at the deposition later be proven incorrect or no longer current, It will be necessary to supplement your answers to the deposition.

35. **MULTIPLE DEPOSITIONS.** Occasionally, a party will be called upon to give more than one deposition. You will be given advanced notice in the event that you will be deposed more than once. The same rules as above would apply.