

How to Survive a Deposition by Charles R. McConnell

In these litigious times it's becoming more and more common for businesses and individuals to become involved in legal actions. In recent years lawsuits brought by employees, former employees or would-be employees alleging discrimination of various kinds have steadily increased. An expanding body of legislation affecting employment continues to open channels of redress for an increasing variety of complaints. Filings continue to mount, with the fastest growth and largest absolute numbers attributable to complaints of sexual harassment and age discrimination.

Unless a lawsuit is disposed of early via settlement (a usual occurrence) or outright dismissal (you should be so lucky), you can look forward to a period of information gathering known as discovery. During the discovery process, information is acquired from documents and from people. Documents are brought under examination by way of a legal instrument known as a notice to produce. Once one of these notices is received, all documents requested must be provided. (To receive a notice to produce and suddenly decide to "clean out the files" and just coincidentally get rid of a few questionable documents is a violation of federal law). Information from people is obtained by way of the deposition process.

Depositions are usually taken in attorneys' offices and occasionally in available conference rooms, but it is important to remember that everything said in a deposition carries the full weight of courtroom testimony. Forget the television-inspired notions concerning "surprise witnesses" and critical out-of-the-blue testimony in the courtroom; all witnesses are to be known to both sides in advance, and most if not all courtroom testimony will have been aired for both sides via depositions.

The minimum contingent for a deposition includes the attorneys representing both sides, a court reporter having the power to swear in witnesses and the individual being deposed. There may also be present a representative of the organization, often the

individual coordinating all case activities for the employer and perhaps the plaintiff(s). Full transcripts are generated exactly as would be done for courtroom testimony.

Anyone who is called upon to testify, as well as any expert witnesses utilized, will be prepared for deposition testimony by the company's attorney. One who is being deposed is subject to questioning by the attorney from the other side, so being deposed is not a process that most people happily look forward to, and many are inclined to look for some way to avoid becoming involved. Once called, however, there is little a person can do to avoid participating legally, providing deposition testimony is not optional. However, with a modest amount of preparation -- and by remembering a few simple but critically important guidelines -- anyone can readily weather this sometimes frightening process.

Should you be called upon to deliver deposition testimony:

Listen carefully to each question before attempting to provide an answer. If any question seems ambiguous or otherwise unclear, ask for clarification before answering.

Never volunteer extraneous information, but answer each question exactly as it is asked without embellishment or expansion.

If what is asked seems to encompass more than a single question, ask to have the questions separated and restated.

Never guess at answers. Depositions frequently involve questions concerning what happened months or even years earlier, and often the most honest and accurate answer is "I can't recall" or "I don't know."

Never permit yourself to be rushed. Take whatever time is needed to think about the question and deliver a thoughtful response.

Be careful to avoid being trapped into admissions of wrongdoing in response to "questions" that are in fact accusations framed as questions. Your attorney will help

guard against this.

Don't be flippant or sarcastic, and never try to be funny. The deposition process has no patience with deliberately attempted humor, and trying to be funny will only hurt your position.

Deposition can require a person to be away from the job anywhere from a few hours to several days, with an equal or even greater amount of time having to be devoted to preparing to be deposed. If you're called for a deposition, your participation is mandatory, so rely on the foregoing guidelines and make the best of the situation.