



## **Association of Corporate Counsel, Louisiana Chapter**

# **Preparing Client Representatives for Depositions and Trial Testimony**

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# What are Depositions?

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- Depositions are used to find out information, but mostly what can be used against you.
- What can I impeach this witness with?



# Types of Depositions

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- Discovery
- Perpetuation
- Telephone
- Video Deposition



*\* Usually a discovery deposition will take place followed by live testify at trial.*

# Preparing for a Deposition

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- Stipulations.
- We will meet with you to prepare.
- Get comfortable... it will take a long time!
- Remember:
  - Who you are
  - Your role
  - Who you represent



# What Background Information Will be Requested?

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## Personal Information

- Name
- Address
- Phone number
- Work History
- Education
- Claims Experience
- Prior Testimonies
- Involvement in bad faith claims

## Policy Information

- Coverage A
  - What was done in your investigation?
  - Analyzation and evaluation of damages.
- Coverages B, C, & D
- Coverage E
  - What investigation/analyzation ever used?
  - Tools/measuring mechanisms used to evaluate injuries and damages.
- Coverage F
  - What investigation have you done to assess injuries and damages.

# How Should I Answer Deposition Questions?

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- Short, succinct answers.
- Be slow and descriptive in your speaking to eliminate confusion.
- Let the attorney finish and complete his question.
- Do not let attorney cut you off.
- **DO NOT RUSH!**

# Questions & Exhibits

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## Questions

- All questions are allowed if they can lead to discovery of admissible evidence.
- Make sure you understand the question before responding.
- Do NOT answer compound questions.

## Exhibits

- **EVERYTHING** you write will be an exhibit.
- Organize exhibits into 1, 2, 3, etc. before the deposition.



# Tips & Tricks

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- Do not fall into the attorney's scheme...
  - “Would it be fair to say..?”
  - Answer “I do not know what you mean by fair, but I testify...”
- Allow us to object first.
- “I do not recall; I do not remember” is fine, look answer up in documents, IF other party knows and recalls, his word is golden.
- Conference with your attorney after answering if you have thoughts or concerns about the answer.



# Tips & Tricks

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- Only words are taken down by the court reporter.
  - No gestures, sounds, or inferences are available to help you.
- Attorney-client privileged information; work product; proprietary information is objected to.
- Provide all information.
  - Some names are hard to spell. Assume the court reporter has no information on how to spell these names or anything about the case.
- Attorney objects to the responsiveness of the witness to the question.
- Always read and sign.

# At the Trial

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- Attorney objects to the responsiveness of the witness to the question.
- The deposition may be read in its totality if you are unavailable.
- Always read and sign.
- Trial cross examination will go as follows:
  - Your answer
  - Attorney will state “You recall giving a deposition and answering \_\_\_\_\_, correct? That is contrary to today, correct?”

**There is only one right way to testify:**

**ALWAYS**

**TELL**

**THE**

**TRUTH!**

# Wrong Ways to Testify

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## Examples

- The client wants to tell his or her story or make their point.
- Not answering in short, simple answers.
- Assuming or anticipating the question that's being asked.
  - Ex. “Do you have the time?”
  - “Yes, it's noon.”
    - The proper answer is “yes” or “no.”
    - Let the examiner ask the follow-up question.

## Why is this a problem?

- Can be seen as evasive or non-responsive.
- You may be giving the opposing counsel fodder for more in-depth or detailed examination.
- You educate the opposing party to an issue that he may not have considered.

# Reasons Depositions are Taken

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- To investigate a claim.
- To discover information the other party may have.
- To preserve testimony for trial.
- To evaluate how your witnesses compare to the opposing witnesses.

*\* Depositions can be used for impeachment at trial or supporting or opposing various motions.*

# Things Adjusters Should Always be Prepared to Answer

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- How long have you been an adjuster?
- Your work history as an adjuster.
- Your licensing and credentials.
- When you first started working on the file being deposed about.
- Your direct supervisor, and his or her supervisors.
- Company policy on adjusting a loss or claim.
- How coverage determinations are made, and the determinations in the specific case you're being deposed about.

# Topics You Should Avoid Saying

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- You're overworked.
- Personal disputes with the insured, unless instigated by the insured and you can prove it.
- Criticism of your employer or co-employees.
- Generally deferring to the operation or field manuals.
- Guessing, assuming or speculating.

# Other Tips & Tricks

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## Avoid Gray Areas

- Ex. Testimony placing the ball in someone else's court – “That's not my job”.
- Answering questions where examiner gives lots of details, dates, and states.
  - Need to be truthful, but
  - Make sure your answers answer all of the questions, completely.
- Avoid sarcasm
  - Sign of being defensive
  - Shows you're making it a personal matter.

## Facing a Bad Examiner

- One problem you might have is facing a bad examiner.
- Examiners can be bad for different reasons:
  - Inexperience
  - Unprepared
  - Not understanding the subject matter





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