

# Depositions: Rules and Guidance for Witnesses

by Practical Law Litigation

## Overview

This video explains rules that a witness should follow when testifying at a deposition and provides guidance to the witness concerning demeanor, taking breaks, objections to questions, exhibits, and advice to keep in mind ahead of and during the deposition. Attorneys may show this video to their client as part of their deposition preparation.

Video chapters:

- Key Rules and Advice
- Appropriate Demeanor
- Taking Breaks
- What to Do If Your Attorney Objects
- Reviewing Exhibits
- Final Tips



# Video transcript

## Introduction

**Irina Kobylevsky:** Hello and welcome to this video on rules and guidelines for deposition witnesses. My name is Irina Kobylevsky and I am a Senior Specialist Legal Editor with Practical Law's litigation service in the US. Prior to joining Practical Law, I was a litigator in New York for about a decade.

This video is intended to be shown to witnesses preparing for their deposition. After you watch the video, your attorney is going to give you additional instructions and will discuss the particulars of your deposition with you. If you have any questions or concerns, you should raise them with your attorney.

At the deposition you are going to be answering questions under oath. Typically, a court reporter transcribes everything said on the record and you are given an opportunity to review that transcript afterwards. Your deposition may also be videotaped.

Your attorney is going to accompany you at your deposition. Their role there is to protect you and the record by objecting to improper or inarticulate questions, helping you guard the attorney-client privilege, and ensuring that you have adequate breaks and are otherwise treated appropriately by the attorney taking the deposition.

This video is going to cover the rules to follow when answering questions at the deposition, guidelines for your behavior, what happens when your attorney makes an objection to a question, what to do with documents that are presented to you as an exhibit during the deposition, and some concluding instructions for you as a witness.

## Key Rules and Advice

The attorney taking a deposition is going to ask you a series of questions which you must answer under oath. Here are the rules that you should follow when answering questions at the deposition.

The most important thing is to tell the truth. This is of utmost importance because at the beginning of the deposition, you are going to swear an oath to be truthful, subject to the penalty of perjury, as if you were testifying in court before a judge. Lying under oath is a crime and your lie may be revealed by other documents and testimony in the matter. If the other side thinks you've engaged in perjury, they are going to engage in extensive motion practice, which can really distract from the merits of the case. Your attorney may also have an ethical obligation to inform the court if they believe that you did not testify truthfully.

If you are going to take only one thing away from this video it should be the importance of telling the truth at your deposition. Every case has bad facts and your attorney can help you figure out how to handle those bad facts truthfully during your deposition. You should raise any concerns that you have with your attorney during your depo prep session.

After each question, you should pause briefly before you start to answer. This gives you a chance to collect your thoughts and make sure you are giving a thoughtful and truthful answer to the question being asked and you are giving your attorney an opportunity to object if necessary.

You should answer the questions orally, not with a gesture, like a nod, or a verbal expression, like "mm-hmm." You should speak slowly and clearly to help the court reporter accurately transcribe your testimony. When you are answering questions, try to look at the deposing counsel and not at your counsel.

Listen carefully to the question being asked and give as short and direct an answer as possible. Answer only the question that is being asked of you and give the deposing attorney a chance to finish their question before you start to answer. If the question can be answered with a simple "yes" or "no," there is no need to say anything more. For example, if the question is: "are you wearing a watch?" The answer should just be: "Yes." And not: "Yes, it's 11 a.m." If the question requires more than a "yes" or "no" answer, try to be as direct as possible within the scope of

the question. Do not volunteer additional information unless you and your attorney decide during depo prep that certain subjects should be addressed in more depth.

Do not keep talking just to fill any long silences. If you are done answering the question, sit quietly and wait for the attorney to ask you their next question. It is okay to let an uncomfortable silence hang in the room.

Your answers should be based on personal knowledge unless you've been designated as an entity representative under Federal Rule of Civil Procedure 30(b)(6) or an analogous state court rule. In that case, your attorney will give you additional instructions.

When answering questions, you should not guess or speculate. As mentioned, it should be based on your personal knowledge. "I don't know" or "I don't remember" are perfectly acceptable answers if they are truthful. And finally, make sure that you are not answering questions that are unclear or that you do not understand. If something is unclear, you should ask the attorney to rephrase the question before you provide an answer.

### Appropriate Demeanor

It is important that you remain calm, composed, polite, and professional throughout the deposition. Remember that everything that you say is being recorded in a written transcript. For this reason, you should avoid making jokes or sarcastic comments because they do not translate well in a written transcript; avoid being combative with the deposing counsel or evasive in your answers; and, you should ignore any heated exchanges or arguments among counsel that may occur. Your only job is to answer questions truthfully. Allow the attorneys to work out any disagreements among themselves.

You should be especially aware of your demeanor if the deposition is being videotaped. Remain calm and collected and avoid fidgeting or making exaggerated facial expressions.

### Taking Breaks

Sitting for a deposition can be quite draining and it is critical that you are focused throughout the day. For this reason, it is important to take periodic breaks. Your attorney is likely to suggest breaks periodically throughout the day, and if they suggest taking a break you should agree. You can take a break at any point during the deposition unless a question is pending. The only exception is if the answer implicates a possible privilege and you need to confer with your attorney. In this case, you should let the deposing attorney know that you need to talk to your counsel about a privilege issue before you answer the question.

### What to Do If Your Attorney Objects

Your attorney may object to some questions that the deposing attorney asks you. If your attorney makes an objection, the court reporter is going to note the objection on the record, and then you should answer the question despite the objection, unless your attorney instructs you not to answer the question. If your attorney makes an objection, you should think carefully before you start to answer.

### Reviewing Exhibits

The deposing counsel may show you some documents during the deposition and ask you questions about them. They are going to hand the document to the court reporter first and ask them to mark it as an exhibit. Then they are going to give you the document and ask you to review it. You should make sure that you review the document in its entirety before you answer any questions about it. If you receive an email chain, make sure to pay particular attention to the dates, authors, and recipients of each email as that may change as the chain progresses. You should be careful when answering questions about documents that you did not create and make sure that you are only answering based on your personal knowledge. And you also should not volunteer to look for or produce

additional documents related to the subject matter you're being asked about or documents you're being shown. You are not there to help the deposing attorney, only to answer their questions.

### **Final Tips**

A few more things to keep in mind ahead of your deposition. You should not talk to anyone other than your attorney about your upcoming testimony. Try to get a good night's sleep ahead of the deposition so you can be as alert and focused as possible. Do not bring any documents with you to the deposition because the deposing attorney is likely to ask you about them. Before the deposition begins, make sure you turn off your electronic devices, including your mobile phone and your smart watch to limit distractions. During the deposition, you should limit your off the record conversations with others in the room to pleasantries and small talk. Remember, that once you are back on the record, the deposing counsel can ask you about things you've said while off the record, so it is best to remain neutral and avoid matters of substance.