

## **YOUR DEPOSITION**

The day may come when you are called upon to give a deposition in connection with a lawsuit. Your deposition may be sought in your capacity as a business owner, employee, investor, consumer, third-party witness, or otherwise. In the event you have never had your deposition taken before, you will almost certainly have many questions, and possibly concerns, about the purpose and process of the deposition. Here are some basic concepts to keep in mind.

### *What is a deposition?*

A deposition is an integral part of the American system of civil justice where parties to a lawsuit have the opportunity to gather facts and information through the live questioning of witnesses. The witnesses, also known as "deponents," are placed under oath and provide testimony in response to questions from the attorneys representing parties in the lawsuit. A deposition is a serious and important event. The testimony provided in a deposition has the same force and effect as if provided before a judge in court. Your deposition could be as short as an hour, or as long as several days.

### *Who will be your attorney?*

If you are already a party to the lawsuit in which the deposition is being taken, then you already have an attorney that will represent you at your deposition. But, if you are not a party to the lawsuit, then you will need an attorney. Who will be assigned as your attorney, and who will pay for your attorney, depends in large part on your relationship to the lawsuit and the parties. For example, if you are a current or former employee of a party, then that party will likely provide you with an attorney for the deposition. Similarly, if you are a current or former employee of a third-party that has some involvement in the lawsuit, e.g., a third-party consultant or contractor who worked as the agent or representative of one of the parties, then they will likely provide you with an attorney. If, however, you are simply a witness to certain events at issue in the lawsuit, then you will have to find and retain your own attorney on your own dime to represent you at your deposition. The other option -- appear at your deposition without an attorney -- is not advisable for reasons discussed below.

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*How should you prepare for your deposition?*

With certain exceptions, there is no duty to prepare at all for your deposition. The reality, though, is that if you or your company are a party to the lawsuit, the testimony you provide at deposition can make or break your case and your business. And, even if you are a third-party witness unaffiliated with any of the parties to lawsuit, if you prepare for your deposition, you will be less anxious, more focused, more likely to provide testimony that is complete and accurate, and less likely to look foolish or potentially untruthful. The key is to be willing to invest the time and energy necessary to fully prepare with your attorney for your deposition. That includes reviewing with your attorney, in confidence, the likely areas of questioning, the relevant documents and events, and any potentially problematic issues and the need to deal truthfully with the same. Hold your attorney's feet to the fire by never hesitating to ask questions or request additional preparation time, if needed.

*What to expect at your deposition?*

If you have properly prepared, your attorney will have advised you to expect thorough and persistent questioning by the attorneys at the deposition. You will be asked many questions, but before you answer, make sure that you understand the question. And, always pause before answering so that your attorney may assert any objections to the question. Do not talk over the questioning attorneys because, among other things, the stenographer who is recording the deposition can only take down the words of one attorney at a time. If for any reason you need to take a break during the deposition, let it be known – there is no prize awarded for the witness who sits uncomfortably and refuses to take a break or ask for a glass of water, when needed. Lastly, if you do not know the answer to a question, simply say so rather than guessing or providing an answer that may turn out not to be true and later subject you to accusations of dishonesty under oath.

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