

# Practical Tips For Taking A Deposition

By: John MacLeod

April 27, 2018



Here are 5 practical tips that can help improve the effectiveness of taking a deposition.

1. Understanding the purpose of the deposition. Deposition testimony is often taken to confirm or establish testimony which can be used as evidence at trial or in pretrial motions, as well as for impeachment purposes. However, it is also a tool for discovering other sources of relevant information not previously known to the attorney. Where the goal is to use the testimony as evidence it is important make sure the question is clear and has not been properly objected to such that the objection will be sustained and the testimony deemed inadmissible. If you think that the question was not phrased properly and the objection has merit, consider rephrasing and re-asking your question to cure the defect during the deposition. However, do not let opposing counsel's objections deter you from asking questions concerning proper subject matter.
2. Consider conducting written discovery prior to the deposition. Propounding interrogatories and document requests is an effective method to discover relevant facts, documents, and potential witnesses that may be used to identify witnesses for deposition and incorporated during the deposition. The discovery responses may help counsel develop particularly relevant areas of inquiry in advance of the deposition. The responses and documents can also be explored and tested during deposition. Having written discovery responses in advance of the deposition can reduce the risk of failing to ask relevant questions before the close of the deposition.
3. Knowledge of the claims and defenses. Familiarizing yourself with each element of the relevant claims and defenses is essential. This will get you started formulating relevant questions about those elements in advance of the deposition, which should be considered together with any facts and documents known or obtained during written discovery. This will help avoid gaps in testimony that might be used to establish a claim or defense.
4. Consider preparing an outline. Many lawyers prepare for deposition by drafting an outline in advance of the deposition for use during the deposition. The level of detail of the outline varies by preference, but it may be as detailed as having each question written out and organized by subject matter, claim or defense, chronological order, or some combination of the above. The simple practice of preparing an outline helps counsel be organized, focus on important issues, ask questions with proper form, determine potential exhibits and the timing for introducing exhibits, and develop additional relevant areas of inquiry. This also helps avoid gaps in questioning and helps the attorney stay on track, especially where other areas of inquiry are explored or the testimony is interrupted. While an outline is useful, the attorney should be flexible and willing to depart from the outline to follow up on and explore the testimony given.
5. Be thorough. Because counsel usually has only one opportunity to depose each witness it is important to obtain as much relevant testimony in useable form and explore as many relevant areas of inquiry, as possible. Counsel taking the deposition should attempt to pin down critical testimony so that the witness cannot provide an alternative explanation at a later time. Because counsel has limited time, it may be important to prioritize highly relevant inquiries where counsel has a lot of ground to cover.