

## DON'T WASTE YOUR DEPOSITIONS

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Trial lawyers have limited opportunities to learn about their opponents' cases prior to the first day of trial. It is crucial that attorneys use these opportunities wisely and not waste them getting embroiled with meaningless, form-over-substance battles with opposing counsel, and talking, not listening. If you let the sole chance to talk to adverse parties or witnesses slip by you, you will be unprepared for trial and waste a lot of your client's money.

Newer lawyers don't often get the primary purpose of a deposition – learning what the other side's case is all about and what evidence they have to prove it. Perhaps lawyers are misled by what they see on television or in the movies. Depositions are rarely dramatic; witnesses rarely crumble underneath a clever line of questions. Often times, lawyers leave depositions knowing only a fraction of what the other side might put forward at trial. There are a number of ways to maximize your deposition.

### 1. THE GOAL OF A DEPOSITION: LEARN ABOUT THE OTHER SIDE'S CASE

### 2. LISTEN AND LEARN

Murphy's Rules for an effective deposition:

- Never use an outline.
- Never accept an ambiguous answer.
- Never ignore unexpected answers or even answers that are entirely off the subject.

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- Immediately follow up on answers as soon as they are given.

### **3. ASK OPEN-ENDED QUESTIONS**

### **4. IGNORE THE OTHER LAWYER**

### **CONCLUSION**

Depositions should be used to get information, not as an attempt to convince others how good a lawyer you are. The best way to get information is simple: (1) don't be afraid of "bad" answers, (2) don't use a detailed outline, (3) listen to the answers and follow up until you have exhausted the subject, (4) ask open-ended questions and (5) talk to the witness and not to the other lawyer. The end result will be a wealth of information (some good and some not so good) that best enables you to prepare for trial.

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