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Memorial Day

“Tip of the Month”

Discovery Depositions

Cases in court often involve depositions. These are in-person interviews, under oath, in the presence of a stenographer who is taking everything down. The interview is conducted by an attorney whose questions are designed to find out as much as possible from the witness.

Depositions are a form of discovery, which is part of pre-trial procedure. The court affords each party the opportunity to learn about the opponent’s case. This is supposed to reduce surprise and to avoid trial-by-ambush. Theoretically, the parties also have a better chance of settling without need for a trial if they know in advance what all the evidence will be.

Witnesses should prepare for their depositions. Because the deposition is all “on the record,” the witness should be careful to keep the record straight. The witness should not guess or speculate, but should stick to the facts. If not sure of the answer, or fuzzy remembering, the witness should say so.

Sticking to the facts makes for a better transcript. It also helps avoid trouble down the road. If a witness says one thing in the deposition, and tells a different story at trial, the witness might be confronted with an inconsistent transcript during cross-examination. Better to say, “I’m not sure,” than to fill in the blanks with imagination.

To help the stenographer, and the transcript, the witness should articulate each answer – no nodding, and avoid interrupting. If the deposing lawyer interrupts, just stop talking until the room is quiet. If a lawyer objects to a question, wait until the discussion is complete. The witnesses usually must answer the question anyway, despite the objection, unless instructed not to answer. A witness is usually not allowed to turn to his or her lawyer for help with an answer.

Even though this is not exactly cross-examination, the three rules of cross-examination still apply: (1) be brief; (2) be polite; (3) take your time. Focus in on exactly what the question is asking. Squash that urge to tell your life story with each answer. Stay away from sarcasm or expressions of anger.

Generally, the witness wants to exercise that zen-like transcendence that keeps the big picture in mind. Facts is facts. We are not here to change history, but only to say what we know for sure or believe with reasonable certainty.

If you need help with civil or commercial litigation, or to prepare for a deposition, please give us a call at 668-1971 or contact us through the internet at *Meslaw @ aol.com*.

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