

## YOUR DEPOSITION

To help put you at ease and at the same time inform you, we want you to read the following carefully so that you will have a clear understanding of what to expect. We will discuss and thoroughly prepare you for your deposition. This pamphlet is merely a guide that applies generally to all cases.

**WHAT IS A DEPOSITION?** A deposition is merely a series of answers that you will give to questions asked by the opposing attorney. You and an attorney from this firm will go to the court reporter's office or some other mutually agreed upon office and answer these questions in front of a court reporter. You will be placed under oath by the court reporter. Your attorney will be present throughout the entire procedure. This will not take place in a courtroom and neither a judge nor a jury will be present.

Although the procedure is informal, it is very important. However, there is nothing about which you should be nervous. Our preparation with you will allay many of your fears.

There is no way of telling how long the deposition will last, since this depends on how complicated your case might be. Generally, it will be scheduled for a specific amount of time.

The opposing attorney is interested in finding out many things about you and the facts of your case. You should make a complete, honest and frank disclosure of anything you are asked, but do not volunteer any information you are not asked. Every question should be answered without any unnecessary explanations and as briefly as possible. Simple "Yes, sir" and "No, ma'am" answers are preferred. If the deposition goes along the usual course, your attorney will not ask you any questions at the end of the deposition. You should adopt the attitude during your testimony that you are telling the absolute truth and not feel that any explanation is needed in order for anyone to believe your testimony. Merely state a truthful answer and do not try to convince anyone as to why it may be a logical answer. It is only natural to feel somewhat defensive in going through these proceedings, but the deposition is not a place for you to explain your position.

Whatever you say will be transcribed by the court reporter and may be filed in your case. If transcribed, we will receive a copy of the questions and answers and these will be available for you to read at a later date. The opposing attorney will also receive a copy of these questions and answers. If appropriate, opposing counsel will be able to confront you with your prior testimony at any subsequent hearing or trial.

**PERSONAL APPEARANCE AND CONDUCT:** One of the things that the opposing attorney will discover during the deposition concerns your personality and appearance. Your dress and appearance should be neat, clean and conservative in style. We want you to be extremely polite during the deposition and treat the other attorney with respect and courtesy, regardless of the opposing attorney's attitude or treatment of you. However, do not hesitate to disagree and remain firm in your version of things, even if the attorney on the other side is suggesting a different version to you or because he or she may repeat a question. Do not try and make friends with the opposing attorney. They may be friendly to you but their loyalty lies with your spouse.

**TYPES OF QUESTIONS:** Make absolutely sure that a question is completely finished before you give your answer. Take all of the time that is necessary to completely understand the question before you give your answer. Do not ever be embarrassed to say that you do not understand a question and/or a particular word in a question. Also be careful that you do not say "yes" or "no" to a double-barreled question that may contain two different questions. Do not try to guess whether an answer will help or hurt your lawsuit. Tell the truth as best you can and leave it to others to judge the result.

**PRIOR PERSONAL LIFE:** You may be asked if you have ever been convicted of a crime and about your personal life in general. None of us have lived a perfect life and if you have any skeletons in your closet, please make sure you discuss it with us before the deposition. Any other matters concerning prior divorces or personal problems should be discussed with your attorney because you will be required to give answers in this regard. Anything that you say to your attorney is absolutely confidential and privileged and we cannot and will not repeat it. We must know the full picture, however, so that we can adequately represent you.

**BE BRIEF:** You will be asked in great detail about different facets of your marriage. A general question might be asked of you, and in response to this, you should give an answer that is truthful, but brief. Remember that you are under oath and every word you say will become part of the permanent file that can be used either for you or against you. Therefore, if you can tell your story in fewer words, there will be less trouble. Never forget that if you truly do not know the answer to a question, the only truthful answer is, "I don't know."

**PSYCHOLOGISTS AND PSYCHIATRISTS:** There may be a privilege that exists between you and your psychologist, psychiatrist, or mental health counselor. However, in some cases, you may be asked about mental health counselors. It is not necessary that you remember the date of every visit or the amount of every bill. Usually, the doctor tells the patient very little about the diagnosis and even less about what the future holds. Tell what you **know** of your own knowledge, but do not guess about opinions of your doctors. You will be asked what your condition is today and what your complaints are. Do not downplay or minimize this aspect of your case. Be honest.

In summary, the following are the rules that you should observe:

1. **TELL THE TRUTH.**
2. Be responsive. Answer only the questions asked. It is not our purpose to give the opposing party any more information than we have to. This is no time to convince the other side of the value of your case. We will do that at another time. Therefore, only answer the questions asked and answer them with as few words as possible.
3. Do not be afraid of the lawyers.
4. Take your time to formulate your answer and speak slowly and clearly. Answer audibly. Do not nod. Do not say "uhm" or "uh huh".

5. If you do not understand the question, ask that it be explained.
6. Do not answer the question unless you have heard it and clearly understand it.
7. Answer the question directly, giving concise answers to questions, and STOP TALKING.
8. NEVER VOLUNTEER any information. Wait until the questions are asked, answer it and stop. If you can answer, "Yes, sir" or "No, sir," do so, and STOP.
9. Stick to the facts and testify to only that which you personally know.
10. Do not exaggerate.
11. Do not guess or speculate. Sometimes the other attorney may ask you to give your best guess as to the answer to a question. If you cannot do so, tell them that. If you can do so, provide your best estimate.
12. Testify only to "facts" and do not attempt to give opinions or estimates unless you have good reason for knowing such matters.
13. If you do not know, admit it. Your deposition is not an intelligence test. Some witnesses think they should have an answer for every question asked. You cannot know all of the facts and you do yourself a disservice if you attempt to testify to facts with which you are not acquainted. It is imperative that you be **HONEST** and **STRAIGHT-FORWARD** in your testimony.
14. Do not try to memorize your testimony. Justice requires that you give your truthful answers.
15. Do not lose your temper. Do not be sarcastic or make jokes.
16. Do not bring any notes, journals or anything of that nature unless told to do so either by subpoena or by your attorney. Do not volunteer that you have any such items or to retrieve these items unless directed by your attorney.
17. If you need a break to talk to your lawyer, or for any other reason, tell your lawyer and a break will be taken.
18. Many of the questions you will be asked will not be admissible at the trial, but the opposition is entitled to an answer in order to help them prepare their case. Many cases are lost because the witness tried to hide something. Many of the questions cannot be used in the trial unless you have not told the truth, and then your false answers can be later shown to the Judge. This will most certainly hurt your case.

19. If we object to a question, stop talking. After we object, we will instruct you to either answer the question or not answer it.

20. After your deposition is over, do not discuss anything in the presence of the opposing lawyers or the reporter. Anything you say may then reopen the deposition. If you want to discuss something after the deposition, wait until you and your lawyer are alone.

21. Perhaps the most important aspect of your lawsuit is YOU. If you give the appearance of earnestness, fairness and honesty, and if in giving your deposition you keep in mind these suggestions, you will be taking a great stride toward successful and satisfactory completion of the litigation. What you do at the deposition can help you or hurt you depending on your attitude, truthfulness and appearance. Remember, your job in a deposition is to:

- Listen to the question.
- Answer it truthfully.
- Stop.

22. At least one appointment will be set for us to prepare you for your deposition. Perhaps you could make a list of all facts, questions, issues, or procedures that concern you and address those concerns with us during the preparation meetings.

It is our goal to make your deposition a positive component of your case. Preparation is the key to that result.

We hope this information will orient you briefly to the legal procedures of the deposition and thereby put you at ease as much as possible. Your attorney will personally review with you all of these and other matters of your particular case prior to the deposition date.

Law Offices of  
KOCH, SMITH & HOFFMAN, P.A.