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FAQ: What to expect at a deposition

As the economy declines, business lawsuits typically increase, with more companies and individuals taking legal action to recover losses. Business professionals are often unfamiliar with business litigation practices such as depositions, meant to uncover information relevant to a lawsuit. To learn how depositions work, the Houston Business Journal asked for general information from Chris Hanslik, vice chairman of the firm and a shareholder in the litigation group at Boyar & Miller.



Hanslik

Q Who can be deposed?

A Most depositions are agreed upon by the parties. Certainly, any of the parties named in a lawsuit can be deposed. Also, individuals with knowledge of discoverable information regarding the facts and allegations in the lawsuit can be deposed.

In addition, a corporation may be asked to designate a “corporate representative,” who is a person or persons whom possess the most knowledge regarding certain identified topics. High-level executives within a company can be protected from a deposition — except under certain circumstances.

Q Who will be there, and how long will it last?

A Those named in a lawsuit and their spouses are entitled to be present at any deposition, as well as a designated representative of a corporate party. The parties’ respective attorneys will be present. And any designated experts may also attend. A stenographer will always be present to record the deposition and in many cases a videographer will video the deposition.

A deposition arising out of lawsuit filed in Texas state court cannot last more than six hours — excluding any breaks. Federal court allows seven hours. So depending on the subject matter and the person’s knowledge, some may last a short time while others take a full day. By agreement, parties can also lengthen the available time for a deposition.

Q Where will the deposition take place?

A Generally, a deposition must occur in the wit-

ness’ county of residence, or where the witness is employed. If the person is a party to the lawsuit, the deposition may take place in the county where the lawsuit was filed. Most often, the parties agree to the location and the deposition takes place in an attorney’s conference room, but it may also occur by telephone or other remote electronic means.

Q What personal and other information can I be asked?

A Under the Texas Rules of Civil Procedure, an attorney may instruct a client not to answer in only four limited instances: To preserve a privilege, to comply with a court order, to protect a witness from an abusive question or one for which an answer would be misleading or to secure a ruling from the court regarding the deposition itself.

Thus, attorneys have fairly wide latitude when it comes to the scope of a deposition. The standard for what constitutes “discoverable information” in Texas is whether the question is reasonably calculated to lead to the discovery of admissible evidence. So it’s not simply a matter of whether the question is relevant, but whether the question might lead to the discovery of relevant information. Additionally, questions can be asked to address issues of credibility or bias.

Q How should I prepare?

A The key in preparing for a deposition is to avoid any attempt to educate yourself on a subject you weren’t personally familiar with before the deposition.

Instead, refresh your memory regarding key dates and events within your personal knowledge. Review the pleadings and discovery responses filed in the case, especially if you participated in drafting the responses or supplied documents to attorneys.

Keep in mind, however, that you should not bring notes or documents with you to the deposition. You should also expect the attorney conducting the deposition to ask how you prepared, for example, what you reviewed and who you spoke to, etc.

Q Do I need to bring anything with me to the deposition?

A No. Don’t bring any notes or documents with you to the deposition itself. In some instances, however, a party may formally request that you bring specific documents with you for production at the deposition. Obviously, in that circumstance, you must comply based upon your attorney’s direction.

Q Is there a certain way I should answer questions?

A There are two major points to be aware of. First, make sure you understand the question that’s being asked.

Second, truthfully answer only that question. An old saying is, “If an attorney asks you what time it is, you tell the time. You don’t tell him or her how to build a watch.”

Too often, people feel a need to provide the context or basis for an answer, but less is more. Not every question asked by an attorney has a point — sometimes a lawyer is just fishing. A witness will say something unrelated to the actual question and that statement will introduce an entire line of questioning the attorney did not intend to undertake.

Individuals also sometimes feel that a deposition is their first chance to tell their side of the story and they can win the case once the other side hears what they have to say. You can’t win a case in a deposition, but you can certainly lose one.

Q What else do I need to be aware of?

A It is also important to understand the distinction between “I don’t know” and “I don’t recall.” Saying “I don’t know,” means that you do not know now, you never did know and you never will.

On the other hand, “I do not recall” says that you do not remember at that moment, but you might remember later. The distinction is important, primarily because the true audience for the deposition is not the attorney asking the questions, it is the jury. Always be aware, you are talking to the jury and you are under oath.

Also, if you later recall a certain event or conversation, at trial for example, an attorney will attempt to impeach you based upon your previous answer during the deposition. At that time, “I don’t know” versus “I don’t recall” can certainly make a difference.