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Taking Depositions in Construction Cases

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TAKING DEPOSITIONS IN CONSTRUCTION CASES

Top Ten Reasons Why You Take Depositions in the Case

1. To gain admissions.
2. To get a preview of coming attractions and to test the strength of the other side's case.
3. To limit the scope of damaging testimony – to box witnesses in and get them to commit to certain facts.
4. To create an impression with the other side that they should settle the case on your terms.
5. To gather information which you don't already have.
6. To solidify and support facts and information you already have in hand.
7. To preserve testimony – witnesses ill, dying or will be in a faraway place at time of trial.
8. To establish facts for a Motion for Summary Judgment.
9. To establish facts to support an expert's opinion.
10. To improve the settlement posture of the case.

How to Ask a Question in a Deposition

- Simpler is better.
- Avoid endless qualifiers.
- Use simple conversational English.
- Avoid lengthy convoluted questions.
- Avoid hypotheticals unless you are dealing with an idiot.
- Work hard to get a clean, direct, simple question and answer on the record despite objections.

How to Begin

- The introduction – who you are and who you represent.
- Deposition will be taken according to the rules.

- The witness will read and sign.
- Correct me if you don't understand or if you don't hear my question.
- There is little reason to go through any more song and dance at the opening of the deposition.
- Have you understood me so far?

The Difference Between Friendly and Unfriendly Depositions

- If the witness is friendly, you have met with the witness before, and you know what the witness is going to say.
 - Use open-ended questions.
 - Do not suggest the answer to increase the likelihood that the question and answer can be read into the record if necessary.
 - More persuasive if the witness is telling the story and not obviously being led.
- If you are dealing with an unfriendly witness, establish the basis for the adversity to allow for you to cross-examine the witness.
 - Ask the question in leading and non-leading ways. I guarantee that you will be able to use one or the other at trial.
 - Bees and honey: avoid arguing with a witness except in situations where it is clear that the witness is acting in a hateful or a completely unreasonable way.
 - Arguing with a witness does not come off very well on a video tape.
 - Cross Examination: One view of it is to cut up your closing into digestible small bites and ask the witness to agree with the points you make. Simple.

Top Questions to ask in Depositions

1. Have you ever been arrested or convicted? (You would be surprised)
2. Who? What? Where? When? Simple.
3. Why? Not so simple.

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Also available as part of the eCourse

[Construction Law Litigation Part 1: Pre-Litigation and Litigation Deadlines; Preparing Witnesses for Deposition; and Taking Effective Depositions](#)

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"Construction Litigation: Taking Effective Depositions"