

**PRESENTED AT:**

UT Law Winning at Deposition: Skills and Strategy

June 28, 2018

Houston, TX

**Preparing Your Witness for Deposition**

**Erica W. Harris**

Author contact information:

Erica W. Harris

Susman Godfrey L.L.P.

Houston, TX

[eharris@susmangodfrey.com](mailto:eharris@susmangodfrey.com)

713-653-7810

Frequently the jury's only exposure to a witness is through a 10-minute, highly edited excerpt of his deposition. This stark fact should guide the attorney who prepares a witness for a deposition. Below are some guidelines for preparing a witness well.<sup>1</sup>

**I. PREPARATION BEFORE YOU MEET WITH THE WITNESS**

**A. Prepare a cast of characters**

You need to know who the deponent is and how he fits into the story. A cast of characters is often the best starting point for this effort. A cast of characters lists everyone relevant to the case, their company affiliation and title, and a ten word or less description of each person's knowledge.

**B. Conduct interviews**

You will need to have interviewed not just the deponent but also all other relevant witnesses to whom you can gain access without the need for a subpoena. Consistency between witnesses on your side of the case is important. Interviewing everyone on your side of the case is the only way to discover any inconsistencies. You want to be able to test your deponent's story during the preparation session. Knowing only the deponent's story in isolation will not allow you to prepare sufficiently for the mock cross examination.

**C. Prepare a written chronology**

You need to have prepared a written chronology before you prepare your witness. A written chronology is a time-sorted listing of key events. It includes all key facts, not just those that are good for your case. It ties the facts to particular sources of information, such as a document, deposition, or interview.

---

<sup>1</sup> Some of the guidelines below are not original but rather taken from my firm's internal memoranda.

**D. Highlight key documents in the witness file**

The next step is to review the witness file. The witness file should include every document on which your witness' name appears. Do not include only those documents authored or addressed to your witness. Include all documents on which your witness was copied. Affidavits executed by the witness, interrogatory answers, and copies of the live pleadings are also crucial to the witness file. If your witness is an employee of a corporate client or is aligned with another entity or person on the same side of the "v," interrogatory answers of that other entity should also be reviewed. The deposition notice should also be included so that the deponent is clear as to place, time, and whether the deposition will be videotaped. Finally, if your witness is testifying as the corporate representative of an entity, then the witness file will also need to include whatever documents, depositions, written discovery or other materials are necessary to fully prepare the witness to speak credibly on each topic noticed for deposition.

You should highlight the key documents within that witness file that are likely to be shown to the witness so that the witness does not see the document cold for the first time at the deposition. Because witnesses tire easily, preparation time with the witness is precious, and you will not want to waste valuable time with the witness going through every single document a witness received or on which he was copied. Instead, you will use during the live preparation of the witness only those key documents that you have identified as warranting discussion.

If you show the witness a computer generated box of all documents that have his name on it, you have done nothing to prepare him. If you ask him the toughest questions the other side can throw at him and then review with him his answer, he will feel a great sense of comfort when he is deposed, whether you or a potted plant is at his side.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Preparing Your Witness for Deposition

Also available as part of the eCourse

[2018 Winning at Deposition eConference](#)

First appeared as part of the conference materials for the  
2018 Winning at Deposition: Skills and Strategy session  
"Preparing Your Witness for Deposition"