



The Expert

This is a newsletter dedicated to helping individuals and agencies work within a world that the average person can easily view with anxiety, feelings of intimidation and confusion

News Letter

Witness

Volume 1. Number 1. January 2006

The Deposition and Testimony in Court

Finding yourself involved in a lawsuit, either as the plaintiff or the defendant, can be a cause for a high degree of anxiety. What most people know about this environment, they have learned either as members of a jury or from watching a variety of shows on television. None of these situations are effective in teaching one what to expect either during a deposition during actual court testimony.

One of the services that I offer is coaching for those individuals who may be called upon to testify at a deposition or in court. I am also a visiting lecturer at our local graduate School of Social Work. One of my favorite presentations is called Social Workers as Expert Witnesses. So, it seems appropriate that the first article in my news letter addresses this topic.

Let us take a look at how to prepare oneself for this experience, because, while nobody expects to be sued; nobody is immune.

The Deposition:

My attorney friends like to call the deposition a “fishing expedition”. In my experience, each attorney has his/her own style. In some ways the deposition is also a mini version of the courtroom. However, it differs in some important ways. Like a courtroom, attorneys for both sides are present, but there is no judge or jury. You are sworn to tell the truth but one tip is to never answer any more than the question asked, never elaborating on you answer unless asked to do so in a very specific way. Since this a much less formal atmosphere, attorneys are free to do a lot more probing and searching for weaknesses. Some attorneys use techniques designed to through you off balance or cause you anxiety or confusion. One common ploy is to switch back and forth between subjects. Another is to pose a hypothetical situation and then follow that line as if you agree that the hypothetical were real. Still a third is to act theatrically skeptical about what you are saying in an effort to get you doubting yourself. The most important thing to remember is that this is not a personal attack so do not let yourself become upset or defensive. Breath deeply and give a four or five count before attempting to answer any question. This will help you to relax, give your answer some thought and allow your attorney to object if he/she wants to. It is important to answer

Some attorneys

call a
deposition

“a fishing

expedition!”



(continued)

(continued) Testimony

questions with words as opposed to a nod or a grunt. There will be a court reporter taking down testimony and it is difficult to type a head nod or “uh huh” and get the full meaning. Your attorney will have prepared you for some of what is happening but he/she cannot tell you what to say. It is also difficult to prepare you for the behavior of the other attorney. It is up to you to prepare yourself as best you can under the circumstances. After the deposition is completed, the court reporter will type up a transcript of your testimony, including everything the attorneys say that is on the record. You will get a copy at which time you will be allowed to make small changes in wording or make a clarification or addition but do not make material changes in your testimony as the opposing attorney can use the when cross examining you. Keep in mind:

1. If, during any part of the deposition, you make an honest mistake, correct it immediately.
2. If you don't know, or remember, say so.
3. If you don't understand, ask for clarification. Don't answer what you don't understand.

The Courtroom:

During both processes it helps to put the experience into a more familiar context. Mine is to think of the courtroom or the attorney's office as a stage. I see each person, including myself, as having a role to play. In this way, if an attorney is attacking my testimony, I see it as his job and I am not required to be defensive as I also have a role. I see the judge and jury as my audience and it is my job to educate them about what I know. I address my testimony to them.

I sit at the witness stand with one arm on the railing and the other in my lap. Occasionally, I sit forward for emphasis. My demeanor is congenial and helpful. I never treat the opposing attorney as if he/she is the enemy and am unfailingly polite, never condescending even when I feel that my viewpoint is under attack.

The secret to all effective testimony is preparation:

As an expert witness I spend many hours in preparation. While it is impossible to anticipate all avenues of questioning, I cover all of what is obvious very thoroughly. I study all pertinent regulations.

If I can not remember the exact wording during testimony, I offer to look it up. One thing to remember is that “this too will pass.”

There is much more to be learned if you will be testifying. For complete training you may contact me for consultation.

“I see the courtroom as a stage....we are all actors in a play....we each have a role....the judge and jury are the audience...”



Important

If you would like more information, a training for your staff, or coaching for an upcoming law suit, you may contact me at the contacts below. If you are going to be testifying, talk to your attorney before you call me.

marblini@aol.com

Written and edited by
Daniel M. Marble, LCSW