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## Do's, Don'ts, and Deps: Tips and Tools for Prepping Your Witness for Deposition

by Pamela R. Kaplan



While the Benjamin Franklin quotation "if you fail to plan, you plan to fail" may not always be true, in the context of deposition preparation, it could not be more on target.

You've just been assigned to defend your first solo deposition, and now you begin thinking about how best to prepare your witness. As you sit down with the file and start writing notes, what should you focus on? What are some of the common pitfalls? What should you do? What should you avoid doing at all costs? Below are five tips for preparing your witnesses and ensuring that their depositions go as smoothly as possible.

### #1. Take Your Time

This might seem obvious, but in the context of deposition preparation, time is one of your greatest assets. Whether you are preparing the CEO of a billion dollar company or the low-level unpaid intern, do not cut corners, and do not allow yourself to be bullied into cutting preparation sessions short. As young attorneys, it is sometimes hard to stand up to older and experienced businessmen and women, but it is essential that the client realize that while he or she might have the most background information, be it on a particular consumer product, contract dispute, or slip and fall location, the attorney is the one with the tools for best handling the deposition setting. Make sure you reserve enough time to adequately prepare the witness, and push back if the witness seems annoyed or frustrated at taking time out of his or her day to review the materials. Try to avoid last minute preparation, such as the evening before the deposition or the morning of the deposition. You want to set aside enough time so that in case you need to go back and research any issue further, or locate an important document or portion of deposition testimony, you have the time and opportunity to do so, and can then follow up with the witness to confirm that you are on the same page. Efficiency is important, but so is adequate preparation. In the end, it will make the deposition all the more effective.

### #2. Repetition. Repetition. Repetition.

As lawyers, we often think in themes, and this can be useful in the deposition preparation context. Before the preparation session, think about what the most important themes for the deposition will be, and make sure to emphasize them – again and again – during the preparation sessions. Make sure the themes are clear and concise, and that the witness has a chance to process them in several ways. Write them out on a whiteboard, have the witness repeat them back, and then bring them up at the very end to close out the preparation session. Go over them again on the morning of the deposition. Having themes to fall back on can be extremely important for a witness, especially a nervous one, who faces tough questions in a deposition. For example, in a product defect case, one of the themes might be that the company adheres to all federal and state regulations in an effort to ensure the safety of all of its products. If a company representative starts to get tough questions about safety, he or she can fall back on the themes, answering the questions by explaining that as a company dedicated to full and complete compliance with federal and state regulations, safety is key. Having some of the vocabulary in hand can be extremely helpful for a witness, and although this aspect of the preparation may sometimes feel tedious, the client will thank you when these safety nets ease the tense moments of a deposition.



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### #3. Don't Assume Anything

Litigators are often taught how dangerous it can be to assume. Prepare your witnesses with this warning in mind. Do not assume that because a company witness has had his or her deposition taken fifty times in the past, no preparation is required. Do not assume that just because a witness is involved in the day to day operations of a company, he or she knows all of its inner workings and can competently answer any question posed by the opposing attorney. Do not assume that just because a witness was the author of a series of emails produced in discovery, he or she is familiar with them or with the information contained in them. Make sure to review every aspect of the client's anticipated testimony, including all relevant documents, and go over the procedure for the day. While the preparation session of a novice will likely look very different than the preparation of your "go-to" corporate representative, you will want to confirm that both have the requisite experience, knowledge, and familiarity with the proceedings prior to being sworn in for their deposition.

### #4. Don't Skip the Basics

Especially when you are dealing with more inexperienced witnesses, always start from the beginning. Explain what a deposition is, where it will be held, and who will be in the room. Explain what the court reporter does. Describe what the transcript will look like. Tell the witness where they will be sitting, and where you will be sitting. Go through the rules of what you, as the attorney, are permitted to say during the deposition. Explain the different objections that you may put on the record. And then, after all of that, go through the instructions that the opposing attorney will give your witness on the morning of the deposition. This may seem like overkill, but it is important because it will put your witness at ease when the deposition begins. Usually, you can sense the moment during those instructions when your clients realize that they are prepared for what is to come. They will understand how the day will unfold, and will appreciate feeling adequately prepared and ready for the questions to follow.

### #5. Conduct a Mock Deposition

You might have the most knowledgeable witness ever. He or she might know more about the company than anyone else. The preparation session might fly by because the witness is so calm, collected, experienced, and prepared that you do not have any more information to relay. Still, do not skip the mock questioning. These questions are vital for two reasons. First, you make sure that beyond just knowing the information, your witness knows how to distill that information effectively at a deposition. Second, if you tackle several of the "tough" questions in preparation, the witness will feel more confident when answering those questions during the actual deposition. The flow of a deposition is different than everyday conversation (and as defense attorneys, it is important that our clients know that), so getting them to understand the rhythm before the day of the deposition is key. Make sure they understand how the opposing attorney is likely to ask questions, and more specifically, some of the common "trick" questions that may be asked. Discuss the most effective way to answer the tough questions, and have your client answer the questions just as he or she would when sitting in the real deposition.

*Pamela R. Kaplan is an associate in Porzio, Bromberg and Newman, P.C.'s litigation group. Ms. Kaplan's practice concentrates on product liability, toxic tort, and mass tort litigation. She is a member of the DRI Young Lawyers Steering Committee and serves as co-editor of The Whisper. She can be reached at [prkaplan@pbnlaw.com](mailto:prkaplan@pbnlaw.com).*

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