

Are You Ready to Be Deposed?

Tips to get you prepared.

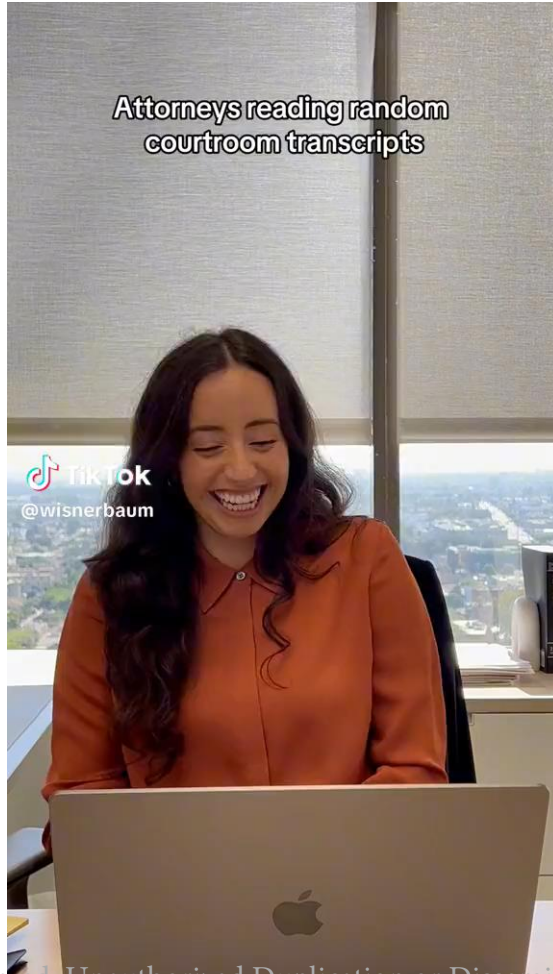
Presented by Julie Jackowski

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Attorneys reading random
courtroom transcripts

TikTok
@wisnerbaum

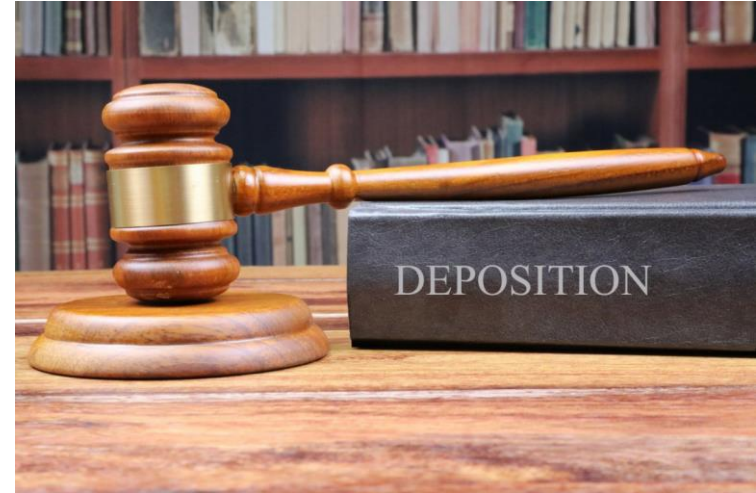


What is a Deposition?

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- An on the record formal oral interview
- Used in the discovery phase of litigation
- Under oath
- Taken of parties and fact witnesses
- May be taken of a Corporate Rep a/k/a a 30(b)(6) witness



- Deponent = Person being interviewed
- Attorneys for both sides
- Court Reporter
- Possibly the opposing party
- Possibly a videographer



- Location- likely an attorney's office or neutral place
- Arrive early and don't have anything you weren't asked to bring.
- If it is a video deposition, you will sit in front of the camera
- It will last as long as needed, unless agreed upon otherwise
- You will be sworn in with an oath to tell the truth
- Breaks are allowed



There are 2 kinds of depositions:

1. Fact Witness = HR Rep involved in the investigation, etc.
2. 30(b)(6) Representative = Corporate Rep
Designated by the Company as a person with knowledge of specific topics, who speaks for the Company, and whose testimony binds the Company potentially into the future.

- The Company's attorney will meet with you in advance to prepare
- Before that meeting, review:
 - Relevant documents and policies
 - Investigative information/files/notes
- Consider doing a mock deposition
- Relay any "bad facts" to your attorney
- Study again before the deposition and think about responses



Tip 2: Tell the Truth!

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- This is sworn testimony under oath
- You must tell the truth as if you were in court
- The deposition can be used against you later
- Preparation is key to thinking about your responses in advance.



Tip 3: Listen and Answer Succinctly

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- Listen to the questions carefully
- Answer only what is asked
- Do not offer additional information
- Be concise and don't provide your opinions unless part of the query
- Do not try to help your attorney argue the case
- Listen to your attorney's objections, as there may be a message



Tip 3: Listen And Answer Succinctly



Tip 4: Don't Guess on the Answer

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- If you don't understand a question, ask them to re-phrase
- Don't speculate or assume XYZ as an answer
- If you are providing a best estimate, say so before you answer.
- You can say that you “don't know” or “can't recall.” *However:*
 - This may be trickier for a designated Corporate Rep
 - Be careful in avoiding an answer by naming someone else without good reason (as they will be called next)



Tip 4: Don't Guess on the Answer



Tip 5: Don't let your nerves take over

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- Stay calm and composed
- You'll be anxious because the path is unknown
- After a question, breath, think, then answer concisely
- If no video, there is no record of pauses before an answer
- Don't let your nerves send you into rambling mode



BLAH...
BLAH...
BLAH...

- Don't argue with the attorneys
- Don't get cute with your answers
- Don't try to interject humor
- Answer verbally, as non-verbal responses can't be recorded
- If on video, think about dress, facial expressions, body language, and speaking clearly



Tip 7: Opposing Counsel Tricks

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- Being overly nice, conversational to put you at ease
- Being adversarial/confrontational to throw you off
- Putting words in your mouth or summarize your testimony to twist your explanation.
- Focusing on your written policies and any failure to follow.



- Asking about the Company's Core Values or Mission Statement.
- Shuffling papers in front of you asking for a quick answer. Read them!
- Getting you to acknowledge Plaintiff's documented achievements.
- Eliciting "It wasn't me!" from HR to get names of others to blame.
- Asking questions that are a catch-22. Ex: What did you do to prevent Mr. X from being discriminated against.

- To Learn the Company's defense
- To Identify other useful witness
- To Identify documentation, policies, and electronically stored information
- Summary Judgment
- At trial
- Subsequent Litigation

So . . .

