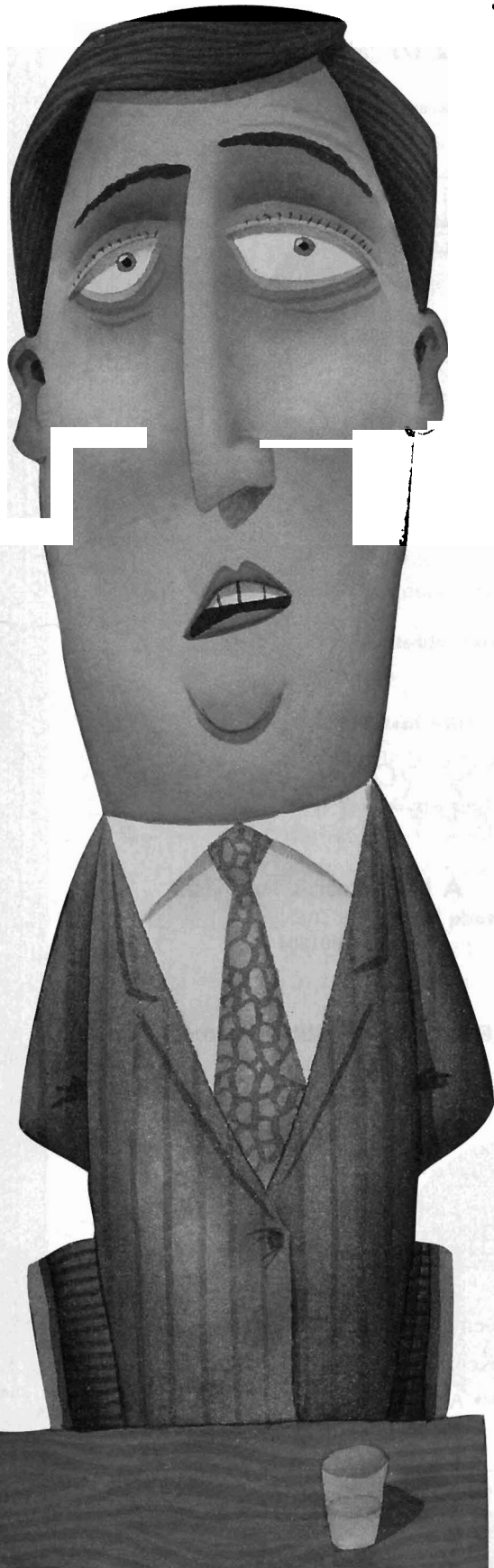


Preparing for

What is it, where is it, and how to proceed



Vour deposition may be taken during the divorce action. A deposition is an important procedure for which you and your lawyer will prepare. The following instructions will help you understand what a deposition is, why it is being taken, how you should act, and common pitfalls to avoid.

1. What is a deposition? A deposition is the testimony of a party or witness under oath. Often a deposition is taken in an attorney's office. During your deposition, your attorney will be with you along with your spouse and his or her attorney. A court reporter will administer the oath and record the questions and answers. A judge will not be present but may read or hear your answers later. During your deposition, the opposing attorney will ask the questions. Your lawyer has the right to ask questions, but may elect not to.

2. The Purpose of a deposition. Opposing counsel may take your deposition for three reasons:

- a. To find out your personal knowledge of the facts and issues in the case. In other words, to understand what your story is now and what you are likely to say in court.
- b. To pin you down to a specific story and set of facts so that you will have to tell the same story at the final hearing.
- c. To catch you in a lie, either at the deposition or by comparing your deposition testimony with your in-court testimony or other statements. If you lie, the other side will argue at the final hearing that you are not a truthful witness and, therefore, the judge should not believe your testimony.

These are legitimate purposes for taking a deposition. Your lawyer has the same right to depose the opposing party and any witnesses the opposing lawyer intends to call at trial.

3. Preparing for your deposition. Before the deposition, refresh your recollection by reading any notes you have made about the case and all the pleadings and correspondence provided by your lawyer. Do not bring any of these items or other documents to the deposition unless your lawyer tells you to. Don't try to memorize any statements you have given or answers to any question. Focus on telling the truth and providing information you have readily available. You are not required to remember everything; if you do not remember, just say so.

4. General suggestions.

- For the court reporter to record your answer, he or she must hear your answer. Speak audibly and clearly. Do not respond by gesturing or nodding your head.
- Tell the truth. You've heard the expression, "The truth will never hurt you." That holds true for your deposition as well as in-court testimony. Before your deposition, be candid with your lawyer, sharing all facts, whether favorable

Your Deposition

or not. An attorney may explain away the truth, but he or she cannot explain away lies, exaggerations, or concealment. Do not stop to figure out whether your answer will help or hurt your side. Just answer the questions to the best of your memory and never guess.

- Listen carefully to each question and be sure that you understand it before answering. If you do not understand, ask the attorney to repeat it or to rephrase it so that you understand it. If you do not know the answer, say so. If you do not recall, say you do not recall.
- Take your time. The deposition transcript does not show how long you considered your answer, so take your time.
- Answer only the question asked; do not volunteer additional information.
- If you are asked a question that requires a yes or no answer, answer yes or no and then, if necessary, explain your answer. Never apologize or justify your answer. Doing so may suggest that you doubt the accuracy of your testimony.
- Never attempt to state facts you do not know. Do not guess or estimate. If you are wrong, opposing counsel may use it to discredit you or imply that you are being deliberately untruthful. If the question is about distances or time and your answer is only an estimate, be sure you say so. If you are not good about remembering dates or times, simply state that.
- If you realize that your answer was wrong, correct it immediately. If a previous answer was unclear, clarify it.
- Do not get angry or excited or argue with opposing counsel. This destroys the effect of your testimony and may be used to discredit you later.
- Your lawyer may object to certain types of questions. If your lawyer interrupts your answer, stop talking immediately. If your lawyer objects to a question, do not answer the question until advised to do so or until opposing counsel asks another question.
- Do not look to your lawyer for answers; he or she is not allowed to coach you during the deposition. Likewise, do not look to your spouse or other witnesses for answers.
- If you are asked to sign authorizations, research information, or undertake other activities after the deposition, state that you must first consult with your lawyer.
- Do not reach into a pocket, purse, or briefcase for any document or information unless your lawyer tells you to do so. Similarly, do not ask your lawyer for anything from your file.
- After the deposition, do not chat with your spouse or opposing counsel. Remember, they oppose you in this matter, and no conversation is entirely off the record. Do not let friendly manners cause you to drop your guard. ■

