

**APPENDIX H**  
**YOUR DEPOSITION**

**This is an outline that I will review with you before your deposition is taken. Note that the principles that apply to your deposition testimony will also apply to your trial testimony.**

- 1. Tell the truth.**
- 2. Reasons for taking depositions.**
  - a. Get information that leads to other evidence.**
  - b. Get admissions to hurt us and help them.**
  - c. Limit testimony in the future.**
  - d. Establish contradictions.**
  - e. Evaluate you as a witness.**
- 3. What we can gain from this deposition.**
  - a. Establish your honesty and candor.**
  - b. Convince the other side that they do not want to litigate a case where you will testify.**
  - c. Practice and experience in testifying under oath and answering questions by your spouse's lawyer.**
- 4. Appearance at deposition.**
  - a. What to bring. Nothing, unless I instruct you otherwise. You cannot testify from notes.**
  - b. Neat and clean.**
    - i. Bathed and deodorized. You may perspire but do not let the other side know.**
    - ii. Shaved. If you have a beard or mustache, make sure that it is neatly trimmed.**

- iii. **Hair.** Neat haircut. Avoid wild hairstyles that might shock an old fogy.
  - iv. **Dress.** Conservative is best.
  - v. **Jewelry.** Avoid jewelry other than a watch (no Rolex), earrings, engagement ring, and wedding band and avoid these if they will attract attention. The engagement ring and wedding band can be effective if you are the wronged spouse but have a negative effect if you caused the separation.
- c. **Demeanor**
- i. **Calm and relaxed.** If you and I have done a good job preparing for this deposition, then you should be calm and relaxed.
  - ii. **Pleasant.** Be cordial and pleasant to other parties and the adverse lawyer but do not be chatty and do not discuss the case. Good manners are always appropriate.

## 5. Procedure

- a. **People present.** The minimum number of people present will include you, the court reporter, the other lawyer, and me. Your spouse, other witnesses, other lawyers, or even a spectator may be present. No one's presence should cause you any concern.
- b. **Court reporter.** The court reporter is a professional who will take down every word said. Later the court reporter will transcribe your testimony so that the court and each party will have a copy of the deposition.
- c. **Other lawyer.** The other lawyer may be friendly but he or she is not your friend, at least not in a deposition. This should not concern you because you will be prepared and he or she will be at least marginally civil. The worst threat is a lawyer who appears friendly because an obviously hostile lawyer will least keep you on your guard.
- d. **Right to read and sign testimony.** You have a right to read and sign your testimony. Most lawyers advise their clients to waive this right. I generally advise witnesses to avail themselves of this right although it will require you to get a copy of the transcript from me, read it, make notes of any errors, sign it, and return it to me.
- e. **Oath.** The court reporter will place you under oath or swear you to tell the truth. You may affirm rather than swear if you prefer; however, the legal consequences are the same.

- f. **Questions. The other lawyer will ask you questions about your background and your knowledge of this case.**
  - i. **Background questions may include your family history, your employment history, your medical history, your criminal record, and anything else that may shed some light on the case. Most of the questions will be legitimate even if they appear nosy.**
  - ii. **Knowledge of the case. These questions will include all of the facts that led to this case, the background on those facts, damages caused by the facts, and future damages caused by the case.**
  - iii. **A review of the questionnaires in the Appendices A, page 93; B, page 103; C, page 112; and D, page 121, will prepare you for some of the questions you may be asked.**
- 6. **Questions by me. I have a right to question you; however, I most probably will not ask you any questions unless a mistake or misunderstanding needs to be corrected.**
- 7. **Answering questions**
  - a. **Be honest.**
    - i. **Do not worry about whether the answer is good or bad, helps or hurts. If it is honest, it is sufficient.**
    - ii. **Remember that even small errors in your testimony will create doubt as to your credibility as to all of your testimony.**
    - iii. **If you make a mistake, correct it as soon as possible. If you are caught in a mistake, promptly admit it and apologize.**
  - b. **Be polite.**
    - i. **If you get angry or show irritation, you have helped the other side and have done a disservice to you and our side.**
    - ii. **Use sir and ma'am.**
  - c. **General.**
    - i. **Repeat the question to yourself. If you do not understand the question, you cannot give the correct answer.**
    - ii. **If you do not understand the question, ask that it be repeated.**

- iii. **Do not look to me or anyone else for help.**
- iv. **Give yourself a second to think. Take this second to think even on the simple questions so that it will not be apparent on the more difficult questions.**
- v. **Objections. If either lawyer say "objection" or "I object," stop. Wait until some decision has been reached on the objection before you answer the question.**
- vi. **Do not volunteer. Answer only the question you are asked. Do not assume what the questioner intended.**
- vii. **If it is a yes or no question, answer yes or no. If it is a question that truly requires an explanation, answer yes or no first and then give the explanation.**
- viii. **If you truly do not know the answer, then the only honest answer is "I do not know." Saying "I do not know" is not an honest way to avoid a question you would rather not answer.**

**8. After the deposition**

- i. **Continue to conduct yourself as lady or gentleman.**
- ii. **Do not discuss your testimony in the presence of the other lawyer or the other party.**