**Preparing for your Deposition**

Note: This document is privileged and confidential. Do not show it to anyone. Read it several times before giving your deposition.

**General Notes**

Your deposition is extremely important and will affect your case in many ways. A deposition is a device commonly used in the “discovery” phase of a lawsuit, before trial. All parties in a lawsuit, through their attorneys, have a period of time after a suit is filed in which to discover facts about a case in order to prepare for trial. Depositions and interrogatories (questions to be answered in writing under oath) are two of the most commonly used.

In a deposition, the witness (you in this case) is called the deponent and is sworn to tell the trust (by the court reporter, who is neutral) before any questions are asked. Attorneys will attend for both sides and the attorney for the opposing party will ask you questions, while the court reporter takes everything down to provide everyone with a copy. Portions of the transcript will probably be used in the trial.

The opposing attorney also wants to get your testimony committed to writing. Everything you say will be used against you, and it is the opposing attorney’s purpose to get you to say something that will hurt your case. Your deposition is not for your benefit; it is for the benefit of the other side. You must resist the urge to tell your story or vindicate yourself or justify your actions. You must answer the questions as briefly as possible and never volunteer information. You will have your chance at trial, when your attorney is asking the questions. So listen carefully to each question, think before answering, and answer concisely with a “yes” or “no” if possible.

Depositions are not the trial, even though they may be used at trial. Depositions are informal proceedings, usually taken in an attorney’s office, and the judge is not present. They usually last two to six hours sometimes less. The scope of questions is unlimited, and attorneys have the right to ask broad questions on topics that may seem irrelevant. Many topics are covered in depositions that will never be admissible in trial. You must answer all questions unless your attorney instructs you not to answer (another reason for listening to the complete question and taking time before answering).

The opposing party may act like Mr. Nice Guy, and you should be polite, but always remember: his duty is to try to help his client by weakening your case. Do not trust him and always remain mentally sharp. Some opposing attorneys will be short and snappy with you, and at times may seem hard-lined and relentless in questioning you. Despite the tactics by opposing counsel, you must remember that he/she is not your friend. Your only friend in the deposition is your attorney.

Your attorney will not ask you any questions. He is there to protect you from improper questioning. Remember: this is not the place to tell your story, but only to give facts as you know them. If your attorney begins to speak, you must stop talking. If the attorneys enter into discussions, you are not to say a word, but listen carefully to what is being said. If your attorney makes an objection, remain silent until he/she tells you to answer. If your attorney instructs you not to answer, do not answer no matter how angry the other attorney becomes or how harmless the question may seem to you.

**Getting Ready for Your Deposition**

First read this document several times and make sure you understand all of it. If not, ask your attorney about anything you do not understand. The review any interrogatories you have answered, because the other attorney will probably use them at your deposition. Read the pleadings and motions that have been filed and go over them with your attorney if you have questions about them.

The other side has the right to ask you to bring documents to your deposition, If you have not been asked to bring anything, do not bring anything. If you have been asked to do so, do your best to gather the documents requested, even if it means getting them from a lockbox or storeroom. Review all documents with your attorney before your deposition. If you have not been asked to bring any documents, but you have documents you think you should bring, discuss it with your attorney.

Important: Letters between you and your attorney and his/her staff, and any documents prepared in connection with the lawsuit are privileged and confidential and never should be produced. These documents may be privileged under the attorney-client privilege or under the work-product privilege. If you produce even one of them, you may forfeit the privilege for all of them. If any documents requested by the other side are privileged and confidential, let your attorney know immediately.

Your attorney will meet with you before your deposition to prepare you further. Do not hide anything from your attorney. You must be totally truthful with your attorney. If you aren’t then your attorney can’t protect you from what he or she doesn’t know. Be candid in all respects and rest assured that everything you say to your attorney or her staff is privileged and confidential. Think of any bad things the other side could possibly know and be sure to let your attorney know about them.

**The Deposition Itself**

Dress neatly. The best outfit is comfortable business attire, with nothing flashy, nothing offbeat, nothing dirty, nothing sloppy. Remember, the other attorneys are evaluating you as a witness. If you will be making a good impression on the judge, your testimony is more valuable.

Produce requested documents and answer truthfully. Your duty is to answer each question as truthfully as you can, but also with as short an answer as possible. Before answering any question, remember to look straight at the attorney asking the question, listen carefully, pause at least two or three seconds to think, and then give your short, concise answer politely and calmly. For most questions, a "yes sir" or "no sir" or "I don't know" is sufficient. If you say more than three sentences, you have probably said too much. Remember to do this with each question, so that every answer is formal and controlled and you are controlling the tempo of your deposition. Also remember that you need to pause before answering each question to give your attorney time to object if he or she doesn’t want you to answer the question.

Always be polite. Your conduct and demeanor may be more important than the answers you give. Try to make a good impression. Relax and remain calm, trying not to show nervousness. (You will be nervous, but try not to show it.) Always respond courteously. Always refer to the attorneys as "Mr." or "Ms." Speak up positively with assurance.

You may consult with your attorney. If you have questions or concerns about your potential answer, you may ask the opposing attorney, "May I consult with my attorney?" You may then either talk privately at the table or go outside to discuss it with your attorney. Do not be afraid to ask your attorney questions if you feel it important, but keep these consultations to an absolute minimum. Your attorney cannot tell you how to answer but can help clarify the question. Never answer a question with a question or rhetoric.

Your testimony must be truthful. Tell the truth, the whole truth, and nothing but the truth, but only in response to questions, and with short answers. If you do not tell the truth, you could be subject to criminal prosecution for perjury. If you are caught not telling the truth, it will hurt your credibility and therefore, your case. You must answer every question truthfully.

Answer only from your personal knowledge. Never volunteer an opinion unless specifically asked to do so. Never guess or speculate. Guessing or speculating is not truthful. Do not do it. Don't let the opposing attorney fool you into making statements outside of your personal knowledge or about something you do not remember. If you don’t know the answer to a question simply so you don’t know. If you don’t remember then say you don’t remember.

Testify in your own words. Don't let opposing counsel put words in your mouth. Stay with your version of the facts as you know them. One tactic some attorneys use is to say "Well, is it fair to say that . . . ?" If he/she uses this tactic and attempts to summarize parts of your testimony, listen carefully and do not agree unless it is exactly true in all respects; if not, state that you do not agree with his/her summary.

Do not be intimidated. The opposing attorney may make an insinuation or express an opinion that you are not telling the truth. This is an old trick and you should not fall for it. He/she may say something like, "Do you mean to tell me that you're willing to sit here under oath and swear to that?" Remain calm, look him/her in the eyes, and say, "I have just testified to that fact under oath." The opposing attorney may speak with a raised voice and seem hateful, but your attorney will not let you be badgered or let things get out of hand.

If you feel like things are getting out of hand or you are extremely uncomfortable you can always ask for a restroom break. It is always okay to ask for a restroom break so that you can gather your thoughts and talk to your attorney.

Be careful of questions dependent on your memory. If you are asked about something that happened long ago and you do not remember the date or time, just say so, and do not guess. Nobody expects you to remember every fact of your life. If pressed for dates, you can say, "To the best of my knowledge, it was around that time." If you don't remember, say so. Often, the truthful answer to a question begins with "To the best of my knowledge at this time."

If you don't know, say so. Again, do not speculate and do not guess. If you do not know the answer to a question, just say, "I do not know." Do not assume anything. Another old trick is for the opposing attorney to pull out a piece of paper and read it to himself, then ask you if you remember writing a letter to [name] that said [facts]. Don't be fooled into admitting something of which you are not sure. Don't say, "I guess so" when the truthful answer is "I do not remember writing such a letter."

Don't give long, rambling answers. The opposing attorney will always gain an advantage if you talk too much. Never ask to explain your answer before giving it. And don't explain your proper "yes sir" or "no sir" answer, either. You must not volunteer information that is unsolicited ever. An example: You are asked to "State the highest degree of education you have earned." Many witnesses respond: "Well I graduated high school and then went to college for two years." This is volunteering information. The correct answer is "a high school diploma." You will only hurt your case and help the other side's case if you volunteer information, no matter how harmless it may seem.

Don't give an opinion unless asked. Just answer with facts and never give your opinion or belief unless asked for it. Again, this is volunteering information and can only hurt your case.

Finish your answers. If you do have a long answer, and the other attorney interrupts you when giving your answer, you should politely insist on finishing your entire answer. Just state that you were not through with your answer and insist on being allowed to finish it.

Use care with documents. If you are asked about a certain document, you should ask to see the document before answering. But never refer to a document to refresh your memory without first discussing it with your attorney. In some states, if a deponent is asked a question and stops to look at a document to refresh his/her memory, the document must be disclosed even if it is a privileged document.

Always keep your guard up. Everyone is nervous about giving a deposition. It is only natural. Sometimes a deponent will begin to relax as the deposition progresses and they may even actually begin to enjoy being the center of attention. Avoid this feeling. It is dangerous and leads to your forgetting the rules outlined in this article. Remain alert, be on guard, sit up straight, and remember to:

**a. Look and listen
b. Pause and think
c. Answer briefly**
Remain polite and courteous, keep your guard up, and don't let the opposing attorney talk you into hurting your case. Never let yourself be provoked into anger, arguing, or being upset.

Nothing is "off the record." The court reporter is taking down every word. An attorney may ask you for an answer "off the record," but do not fall for it. The only thing off the record will be discussions among attorneys when the reporter has been instructed to stop recording.

**After Your Deposition**

Provide information if agreed. During the deposition, you and your attorney may agree to produce something to the other side. Locate it immediately after the deposition and deliver it to your attorney as soon as possible.

Correct errors in the transcript. You will have a limited time to make any corrections after the court reporter has typed the transcript. Read it carefully and make all corrections. If you don't do so within the time period, which may be as few as 20 days, you will not be able to correct it later and you will be stuck with it at trial. Follow your attorney's advice regarding making the corrections.

Answers may need to be supplemented. In some states you are required to supplement any answers you gave at a deposition. If you are asked a question in a deposition, and your answer later changes, you must let your attorney know. For example, you may be asked for names of witnesses, and after your deposition you learn of another witness. You must give that new information to your attorney immediately.

Review your deposition before trial. Make sure you re-read your deposition testimony before you get to trial. Most cases settle and never reach trial, but not all cases settle. If you are going to trial, it is critical that you know everything you have said under oath, whether in a deposition or interrogatories.

**Common traps in family law cases:**

1. Asking if the other person is a good parent, good mother or good father. You need to answer that aside from the differences you have with respect to parenting—yes, he or she is a good father.
2. If the other side asks you to produce current pay stubs, tax returns, or bank statements, always say yes.
3. Do you understand the definition and penalties for perjury in the State of Missouri? Probably not unless you looked this up before your deposition. The answer is no.
4. If you have remarried or have a new girlfriend/boyfriend you do have to answer questions about him or her so answer but keep it brief.
5. You do have to answer questions about the places you have lived and worked. This is standard. Answer the questions and just keep it short.
6. Think about what complaints you have about the other person’s parenting so you can answer this question carefully and concisely.
7. In what ways have you tried to encourage a relationship between your children and the other parent? The law is required to consider which parent is more likely to encourage a relationship between the children and the other parent. You better think of ways you have tried to encourage a relationship between the children and the other parent.
8. If you are asked how much you have incurred in attorney fees to date—if you aren’t sure say you aren’t sure.
9. Asking questions about what you would settle for in a deposition are common in a family law case. It is okay to say your proposed Parenting Plan and/or to answer this question.