

# CHAPTER 9

## CONDUCTING INTERVIEWS

### Chapter Outline

#### VOLUME 1, CHAPTER 9

- § 9.1 Interviewing in the Law Office
- § 9.2 Preparing for the Interview
- § 9.3 Example of a Legal Interview
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#### CHAPTER 9 ASSIGNMENTS

- Assignment § 9.2**  
Prepare Interview Questions

### Chapter Introduction

#### THE ART OF THE INTERVIEW

A retired judge, who had returned to practicing law, once told a paralegal class that when he goes into an interview session with a witness, he only brings in a blank sheet of paper. He found this allowed the interview to flow more naturally. This attorney/judge has every right to his own interviewing technique, but we must disagree. For attorneys, questioning witnesses in court is one of the most important, and even enjoyable, parts of their profession. It is like being on a Broadway stage. However, a good attorney would never “wing it” in a court of law. He or she would prepare questions in great detail as the foundation for the examination.

A paralegal will never ask questions of a witness under oath in a court room, the way attorneys do, and likely not even in an administrative hearing. In fact, the closest a paralegal will ever get to this peak of representation is the witness interview.

Why would a paralegal want to walk into an interview with just a blank sheet of paper? Instead, as this chapter will discuss, paralegals should create detailed questions to ask the witness. *Incredibly* detailed questions. Doing so will dramatically decrease the likelihood that something is missed. There are two other great benefits to this strategy. First, in your first couple of years as a paralegal if you collect the questions you ask witnesses you will end up with a form book reference for the rest of your career. Just take out a relevant old set of questions and modify it for the new matter.

Second, if the witness becomes key to the case, your interview questions could morph into deposition questions, and then those deposition questions could be tweaked for your attorney to use as his or her examination questions at trial. That is more rewarding than you can imagine.

IN THIS CHAPTER . . .

**INTERVIEWING**

**PREPARATION**

**EXAMPLE**

## § 9.1

## Interviewing in the Law Office

### *A Matter of Style*

#### INTERVIEWING SKILLS

There is no single style, technique, or theory of interviewing that fits all situations or all interviewers. With that in mind, there are still foundational techniques that can give you the opportunity to become an excellent interviewer.

#### **Develop your own style.**

Every investigator will find a comfort zone. Don't be afraid early on to use different styles. For example, in your first couple of interviews you may want to be more formal. If you are not sure if the results are what you were expecting, try a more informal setting and style.

Learn from your experiences. Figure out what works and what doesn't. After each interview, take five minutes to consider what parts of the interview were comfortable and what aspects were stressful or awkward. Create an interview notebook where you jot down a few details about:

- *The subject matter of the case*
- *The location of the interview*
- *The setting*
- *Strong points of the interview*
- *Points where there could be improvement*

#### **Attitude of the Interviewer**

Understand the image you present. Not every interview calls for a formal approach. The subject of the interview and the reason for the interview will, to a great degree, determine whether the interview will be formal or informal and how formal or informal your attitude should be.

Always be professional. Act appropriately. Do not ask personal questions unless they relate to the representation. Refrain from presenting an air of superiority.

#### AUDIO AND VIDEO

### Recording

A few points to consider when recording an interview.

#### *Recording an interview*

Any interview may be recorded with the attorney's approval, but never secretly. Recording makes taking notes during the interview less critical and provides an accurate record of the session. Always obtain permission of the witness and make sure the recorder is clearly visible during the interview.

*Confirm you have permission to record-* Once the recording starts, state the following:

- *Your name and position*
- *The date, time, place*
- *The interviewee's name and other pertinent information*
- *The names of anyone else present*
- *Ask the question: "You are aware this interview is being tape recorded, are you not?" and make sure to get a verbal response from the witness*
- *Restate all the above whenever the recorder is stopped and restarted*

#### *Double recorders-*

If the witness is reluctant to be recorded, offer to use two recorders. At the end of the interview, give the witness one tape and you keep the other. This assures the witness that the tape will not be altered.

Dress appropriately for the situation. Interviewing a teenager at a softball game or an auto mechanic in a garage may call for a different style of dress. To wear standard office attire under such circumstances may create a “wall” between the paralegal and the witness or client.

### Legal Considerations and Evidentiary Issues

Identify yourself. Paralegals working for an attorney must not misrepresent their identities. Identify yourself as a paralegal working for an attorney. You do not always have to identify your client, but you must not give the impression to the witness that you are an uninterested party.

#### *Admissibility*

*Admissibility* should not be a consideration during the investigative process. Do not ignore a line of investigation because the information would be privileged or result in hearsay. Collect the information now. Let the attorney worry about admissibility later.

#### *Attorney Work Product*

*Attorney Work Product* is material produced in anticipation of litigation as a part of the representative process. Notes made by the paralegal during the investigative process would be considered work product and, therefore, not discoverable. Once a person is designated by either party as a witness at trial, the notes and statements lose their work product status and are generally discoverable. Be careful what you put in writing. If it could damage your client’s case, think twice before putting it on paper!



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## SETTING THE STAGE

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### Advance Preparation for the Interview

A paralegal can enhance his or her value to a law firm in a number of ways, but one of the most dramatic is by being a strong interviewer. To become a top-of-the-line interviewer, though, requires dedication and a commitment to developing great habits.

#### *Prepare questions in advance*

Preparing questions in advance of an interview decreases the likelihood that areas of inquiry will be missed, and increases the possible success of the interview.

Sometimes the questions prepared for an interview evolve into deposition questions for the attorney, and they, in turn, evolve into trial examination questions. The more work you do in preparing questions for the interview makes that evolution more thorough and efficient.

#### *Prepare the room*

Have cups and water ready. Consider providing pen and paper for everyone.

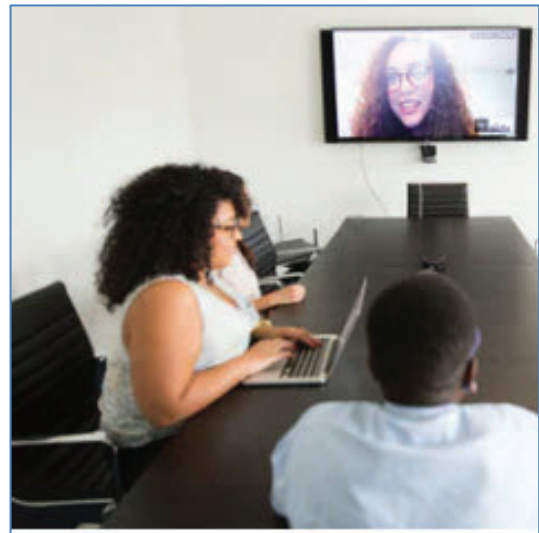
### The Need for Privacy

Be aware of your surroundings. Unless safety is an issue, or other circumstances require it, don't interview a client in an area where others can hear the conversation. Privacy enables the witness to feel the information provided is confidential. When isolation raises safety issues, interview the witness in a room with windows. If this is not possible, leave the door open just a crack so that the sense of privacy is preserved.

Facilitate trust through your choice of setting. Foster a "just between us" atmosphere without misleading the witness about how the information will be used.

### A Suitable Setting for the Interview

One important, and often overlooked, element of the interview is the setting. Think of it as setting the stage for obtaining as much information as possible. Depending on the person being interviewed, and sometimes the subject matter of the interview, the setting can enhance or limit the amount of information obtained.



- *Office interviews*  
An office provides an aura of authority and is appropriate for standard one-on-one interviews.
- *Conference room*  
A conference room is helpful when multiple subjects are being interviewed or when documents will be reviewed.
- *Field interviews*  
Interviewing in the field is sometimes necessary. Try to create a setting that is conducive to the exchange of information, as opposed to a fast-food restaurant or a sporting event.

## FACTORS AFFECTING STRATEGY

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### **Detecting Deception**

Eye movement and body language may be red flags, but do not overreact to body language. It is not your job to psychoanalyze a witness or client. But if the witness seems uncomfortable making eye contact, this may indicate deception or withholding of information.

“Prepared responses” may also be a red flag. A witness pausing dramatically prior to answering critical questions may indicate a prepared response. A prepared response means that the witness may be framing the answer to provide only the minimum amount of information. In such cases, the paralegal should probe for additional information.

### **When interviewing morphs into interrogation**

Interviewing is the process of cooperatively obtaining information from a person. The goal is to keep the session in “interview mode.” If the witness or client is uncooperative, approach the subject matter from different angles, hoping to find an opening. If you are dealing with an uncooperative witness, you may need to take a more aggressive stance, becoming more of an interrogator.

Interrogation involves probing, asking “yes or no” questions (leading questions), and pressing for information the witness may be reluctant to provide. Once an interview turns into an interrogation, it will never go back to being an interview. Interrogate only as a last resort.

One other note: Never assume that just because a witness is hostile, he will not cooperate. In fact, hostile witnesses are often willing to provide information. It is just that the information may be damaging to your client’s case. So, go in with a good attitude. It may rub off.

**Sometimes pressure works and sometimes it doesn't**

When the person being interviewed is not cooperative, the interviewer may be tempted to try to pressure the witness. Appropriate pressure would include informing the witness that a formal deposition may be required.

It may even be appropriate, with the attorney's consent, to make the suggestion that once the interview has been conducted, the witness may not be needed at trial. Pressure will not work, however, if the witness has an interest in being uncooperative.

**§ 9.2****Preparing for the Interview***Never Just "Wing-It"*

Most paralegals do not prepare questions prior to interviewing a witness. Most attorneys do not prepare questions prior to interviewing a witness. So, why should you prepare questions prior to interviewing a witness? The answer is simple: To be a better interviewer than most paralegals and attorneys.

Preparing questions for an interview has added benefits. Those questions are eventually easily morphed into deposition questions, or even discovery documents, such as interrogatories or requests for admissions. When a paralegal drafts questions for an interview, she is laying the foundation for other pretrial documents.

**The Three-Stage Interview Process**

There are three stages in preparing interview questions. For each stage, the interviewer should prepare questions in a chronological manner, possibly minute-by-minute, even second-by-second. Remember, time affects everything: liability, damages, perception. Be meticulous.

A few points:

- *Do not jump into the questioning. Spend a couple of minutes breaking the ice.*
- *Do not be repetitive unless it is part of a strategy to determine inconsistencies or deception.*
- *If a client answers a question you were planning to ask later, try not to ask it again later.*
- *Do not interrupt the witness; allow the witness to complete all answers.*
- *Try to keep the witness on-topic and focused.*
- *Be careful not to give legal advice or set fees.*