

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.*

The Intake Form (Background Information)

Intake forms vary from firm to firm, but they all gather background and general information: where the person works; where the person lives (if appropriate); how to get in touch with him or her; and other relevant information. If the person is a new client instead of a witness, this may be replaced by a document called a *New Matter Sheet*.

Pre-Event Questions

Take a natural point prior to the event as a starting place. This starting moment could occur an hour, a day, a week, or a month before the incident in question. There is no universal point. (It should be noted that it is often easier to identify the event stage first, then the pre-event stage.) For instance, in a car accident interview of the driver, the pre-event stage might be when the witness got up on the morning of the accident. The pre-event stage ends with the event.

Event Questions

The event begins at the point of no return. There should be a direct relationship between the beginning of the event and the point at which damages occurred. In the car accident case, the event might be when the driver got behind the wheel of the car prior to the accident.

The event ends at the point at which the eventual defendant is no longer in a position of liability for his conduct. The event ends because the defendant's conduct after the accident is usually irrelevant to the question of liability.

Consider having the witness relate the entire event in his or her own words first. Never interrupt during this recounting. When the witness is finished, wait a few seconds (sometimes referred to as a pregnant pause), then explain that you are going to go back over the event. This time, use your prepared questions to make sure everything was covered.

Post-Event Questions

The post-event stage begins from the moment the potential defendant is in no legal jeopardy for his actions. It lasts up to the moment of the interview and should include:

- *What happened immediately after the event?*
- *Questions relating to damages*
- *Questions relating to the mitigation of damages*
- *With whom has the witness spoken?*
- *Has anyone else related to the matter attempted to contact the witness?*
- *Were other areas covered by other interviewers?*

EXERCISE: IDENTIFYING STAGES FOR A WITNESS INTERVIEW

Identifying where *Pre-Event*, *Event*, and *Post Event* stages occur within a fact pattern is more art than science. Identifying those stages will help the paralegal create questions in chronological manner. Let's assume you are going to interview potential clients for each of the following matters. Assume the firm has a *New Matter Sheet* for background information. To develop interview questions, determine what point the *pre-event*, *event* and *post-event* stages would begin. Remember that it is often easier to identify the event stage first.

1. *A spousal abuse incident.*

Pre-Event:

Event:

Post-Event:

2. *A drunk-driving accident.*

Pre-Event:

Event:

Post-Event:

3. *A landlord/tenant dispute where the tenant refuses to pay rent until the plumbing is repaired.*

Pre-Event:

Event:

Post-Event:

ASSIGNMENT § 9.2 | PREPARE A FULL SET OF INTERVIEW QUESTIONS

Prepare *Pre-Event*, *Event* and *Post-Event* interview questions for either your client or a witness in the case you were assigned. Use the example on the following pages as a guide. When your assignment is returned to you, make any recommended corrections necessary and file it in the *Work Product* panel of your client's file. *Keep track of your billable hours* and turn a copy of your time sheet in with the questions.

§ 9.3**Example of a Legal Interview***An Actual Set of Questions*

Following is an example of prepared questions for an interview. In this case, the interview began with little known about the beginning of the event. All that was known was that the client had been charged with assault on his wife, and that the alleged assault occurred at the couple's home around 11:00 p.m. after they returned from a party.

INTRODUCTION

"Hello! My name is Pamela Legalskills. I'm a paralegal. Joe Lawyer asked me to meet with you to get some information about your situation. Why don't you come into my office?"

"Would you like something to drink before we start?"

"Okay. I want to explain a couple of things. I'm going to be asking a set of prepared questions. You may not understand the purpose of some of the questions, but please be patient. They are being asked for a reason. Feel free to ask me the reason for any question if you need to. I'd like to tape record this interview. Is this all right with you?"

"No one except the attorney, you, and I will ever hear the tape or see the transcript. In fact, I will provide you with a copy of the transcript so you can change any of your answers if you want. When I start the tape, I will ask you to identify yourself and acknowledge that you know this interview is being recorded. In fact, anytime the tape is stopped and started, I will ask you the same introductory questions. Do you have any questions before we begin? Okay. Let's get started."