
§ 6.9**Depositions***Out-of-Court Testimony*

A POWERFUL DISCOVERY TOOL

Depositions are oral questions posed to a witness (sometimes a party) under oath. In most cases, depositions are conducted in an attorney's office, with both attorneys in attendance. A court reporter transcribes the testimony verbatim. The testimony is just as valid and binding as though it had been delivered in court. Since deposition testimony is given under oath, to lie in a deposition is to commit perjury.

DISCOVERY POINT

Depositions are the most powerful method of discovery. One of the primary purposes of other forms of discovery is to lay the groundwork for depositions, which lays the groundwork for examination at trial.

A paralegal may attend a deposition, make suggestions to the attorney, and even help prepare questions to ask of the witness. The paralegal may not conduct the deposition. The attorney must ask the questions. For the paralegal to ask questions of a person under oath would constitute the unauthorized practice of law.

Duties of a paralegal related to a deposition include *deposition preparation* and *deposition follow-up*.

PREPARING FOR THE DEPOSITION

1. *Setting the deposition*
2. *Creating the deposition notice and subpoenas*
3. *Preparing questions for the deposition*

Setting the time and place for a deposition is generally done by agreement between the parties. The paralegal may need to coordinate the schedules of both attorneys and the individual to be deposed. Be polite when consulting with the secretary, paralegal, or attorney for the other side. After a date is agreed upon, it may be the responsibility of the paralegal to update the attorney's calendar as to the scheduled date of the deposition.

Either the paralegal or the secretary should send a follow-up letter to the opposing counsel confirming the date, time, and place of the deposition. If the deponent is a client of your firm, the paralegal will want to send a letter confirming the same details.

The party initiating the deposition is usually responsible for the hiring and compensation of the court reporter. Clarify this issue with the other party. The paralegal should ask the attorney or other paralegals whether there are any specific court reporters used by the firm. If not, use the Internet. If the deposition is not held at the law office, the party initiating the deposition must make arrangements and pay for appropriate accommodations. The room must be of adequate size to accommodate the attorneys, paralegals, witness, and court reporter. Consider providing refreshments such as coffee, ice and water.

DISCOVERY POINT

Paralegals cannot ask questions of the witness at a deposition.

The notice of deposition should be sent well in advance of the deposition and filed with the court. In addition, it is good practice to *subpoena* the witness to be deposed, even if the witness has agreed to appear. The practice of issuing a subpoena even for friendly witnesses should also apply to those called to testify during the trial. The court will usually allow an absent witness to be called at a later date if the attorney can establish that the witness was subpoenaed.

A *subpoena duces tecum* should be issued if the witness is being asked to present documents at the deposition. A paralegal can help the attorney in preparing for the deposition by drafting a set of potential questions to be asked at the deposition.

To draft questions for a deposition, consider using:

1. *Pleadings already filed in the case*

It is imperative that the paralegal be thoroughly familiar with the case if he or she is to be involved in the deposition. Review the client file, noting any information, or lack of information, that could be clarified by the witness to be deposed. Study the pleadings, especially the complaint, answer, and counterclaim, for contributions to the interrogation.

2. *Discovery Documents and Responses*

Some information your attorney needs has already been requested in various discovery documents. Pay particular attention to interrogatories and requests for admissions and their responses.

3. *Previous Depositions and Discovery*

Law firms have a source of information that is often underused. Case files from previous clients often have documents, including deposition questions and discovery documents, which could be researched and developed for current use.

4. *Research Sources*

The law library also contains sources for questions and strategies. *Am. Jur. Pleading and Practice Forms* and *Am. Jur. Proof of Facts* are excellent sources of information when one is developing deposition questions.

DISCOVERY POINT

A paralegal drafting questions for the attorney to use at the deposition should not take it personally if the attorney makes significant changes to the list. By creating the initial set of deposition questions, the paralegal has eliminated the time-consuming step of developing the first draft. The draft document allows the attorney to make revisions and refinements.

Deposition Follow-up

The court reporter will usually provide the deposing party with a copy of the transcript, a flash drive, an email attachment, or a computer disc of the transcript, or both a hard copy and digital file. The original transcript should be sent to the deposed witness who will be required to read the transcript, make any necessary changes or corrections, and sign it. The witness may change any testimony at this point without penalty of perjury. All parties involved should receive copies of the transcript with the witness' changes and corrections.

The deposition index and the deposition summary, also referred to as a deposition digest, are two tools that help organize lengthy depositions.

The deposition index is an alphabetical listing of subjects contained within the transcript. Each index item is followed by the number of the pages on which it appears. This is sometimes referred to as a key word index. The good news for the paralegal is that creating a deposition index has largely become a software task. In fact, in most cases the court reporter will provide the index with the transcript.

DISCOVERY POINT

A deposition index is usually created by software and provided by the transcriber. A deposition summary, or digest, needs to contain the heart of the deposition, and therefore cannot be computer generated.

A deposition summary is a reduced, or digested, version of a deposition transcript. There are three goals when summarizing a transcript:

- 1. Relate relevant material*
- 2. Do not alter the context of the material*
- 3. Avoid editorializing*

1. Relate Relevant Material

Ask yourself whether a piece of information is part of the overall picture of the litigation. Is it likely to affect an attorney's decision on a specific matter? If yes, it is probably relevant, and the paralegal should include the information in the summary.

2. Do not Alter the Context of the Material

A witness' statement: "We killed them," sounds like an admission of murder. But what if the question was "How did your football team do against the Raiders?" Obviously, the answer was taken out of context. While this is an exaggerated example, the paralegal should impart the spirit of the question (as well as the response of the witness) in the summary.

3. Avoid Editorializing

It is difficult not to develop opinions and prejudices regarding a witness. The paralegal needs to maintain a neutral attitude when reading the deposition and summarizing the material. Otherwise, an inaccurate reflection of the transcript may be imparted.

Also, do not restate the question in the summary. Restate only the information obtained from the response to the questions. "The deponent stated he first learned of his wife's death in the newspaper."

There are two ways to summarize a transcript. A *topical summary* or a *page-by-page summary*. A *topical summary* excerpts and summarizes a portion of the transcript that deals with one specific topic. The portion being summarized may be a couple of lines or several pages.

| | |
|--------------------------------------|--|
| Page 6, Line 5-26 | Deponent (Mr. Jones) only remembers shopping, getting in the passenger seat of the car before the accident, and waking up in pain in the hospital after the crash. |
| Page 6, Line 27 to Page 7, Line 8 | Mr. Jones says his wife was not on any medication at the time of the accident, although she had received a prescription that week for back pain |

A page-by-page summary simply digests each page individually. For example:

| | |
|--------|---|
| Page 6 | Mr. and Mrs. Jones went shopping at Yuckie's Supermarket. The deponent (Mr. Jones) had a headache, asked wife to drive. Although the deponent does not remember the accident itself, he does remember shopping, getting in the passenger seat before the accident, and after the crash waking up in great pain in the hospital. Deponent says his wife was not on medication. |
| Page 7 | Mrs. Jones had received a prescription the week of the accident for back pain. To his knowledge, Mrs. Jones was involved in one previous automobile accident. It occurred in 1991 or 1992. Mrs. Jones was driving a friend's car in Washington D.C. and was hit by a bus in a tunnel. She was not ticketed, and the bus driver was found to be at fault. |

DISCOVERY POINT

Accuracy is not an option in summarizing depositions. It is a necessity.

Whichever form of summarizing a deposition a paralegal chooses, the goal is always consistent: to provide the attorney with a more manageable means of accessing the deposition transcript without losing relevant information.

EXAMPLE | DEPOSITION SUMMARY

**Deposition Summary
of
Teri Phillips**

Testimony taken January 7, 2021

Page 1

Deponent provided personal information and was introduced to all those present. She was then administered the oath.

Pages 2–4

Deponent described the hours leading up to her visit to Acme Department Store. She had lunch immediately before going to the store, but had no alcohol, and was not on any medication.

Page 5

When deponent entered the store, she stopped by the information booth to ask directions. She proceeded to the second and third floors, browsing for coats. After approximately twenty-five minutes, she saw a sign for the ladies' room.

Page 6

Deponent claims that when she stepped toward the restroom area, there were no signs or warnings indicating that the floor had been recently mopped or had in any way been affected. There was also no indication that the owner or any employee had been informed of the hazard, although, in her opinion, there is no way she could have ascertained this information.

EXAMPLE | DEPOSITION TRANSCRIPT**DEPOSITION TRANSCRIPT**

The pretrial deposition of HAROLD MANNING, taken at the request of the plaintiff, for the purposes of discovery, pursuant to the rules of civil procedure, by agreement of the parties on the 22nd day of January, 2013, at the law office of Bob Fiore, Litigationville, USA, before Ty Smith, registered court reporter and notary public.

HAROLD MANNING

Called as a witness for the plaintiff, having been first duly sworn, was examined and deposed as follows:

EXAMINATION**BY MR. FIORE:**

Q. Mr. Manning, good morning.

A. Good morning, sir.

Q. My name is Bob Fiore. I'm an attorney, and I represent the Frederick family who have brought suit against you arising out of an accident that happened on March 13, 2013 on Main Avenue in Baltimore County. Do you know what accident I'm talking about?

A. Yes, sir.

Q. Okay. I'm going to ask you some questions about yourself and about that accident. If at any time I ask you a question and you don't hear it or you don't understand it, please tell me that, and I'll repeat the question for you or I'll ask it a different way. You're sworn today with the same oath that you will take at the trial of this case. So, if you answer any question for us today, we all shall take it that you heard the question and that you understood the question and that you

then gave us your sworn answer. Is all that clear?

A. Yes, sir.

Q. Okay. I'll ask that you always answer out loud. That is, please say yes or no or whatever your particular answer may be.

A. Uh-huh.

Q. The Reporter here is going to be taking down our voice sounds, and she can't necessarily record gestures between us or anything else. Fair enough?

A. Fair enough.

Q. Okay. What is your present address, sir?

A. 6126, Apartment 4, Rocky Mount Road, Huntington, Maryland 24789.

Q. You were living at that address back on March 13, 2013; were you not?

A. That's correct.

Q. All right. Were you engaged in any other work besides the social work and counselling since 1985 up until now?

A. I worked for State of Maryland, Division of Parole and Probation.

Q. Okay. What did you do for the State of Maryland?

A. I was a senior agent, community criminal supervision.

Q. Have you ever had your deposition taken 19 before?

A. I've been in --I don't recall having a deposition taken before, no, sir. I've been in conferences, judicial conferences on cases. I've been a witness in both the District and Circuit Courts of the State of Maryland and Federal --U.S. District Court for the Federal District Court on cases over

the years.

Q. How many times would you -

MR. HUNTER: Just answer the question. He asked if you were in a deposition before.

Q. How many times would you say you've testified in any of the courts, State courts or Federal courts over the years? Give me an approximation.

A. About 165 to 190 times.

Q. We were talking about other jobs you've held besides the counselling job. You told us about Parole and Probation. How about anything else between '85 and today?

A. I'm certified as a lead inspector. I have some interest in real estate. And on occasion, I will do an inspection. I had some interest in real estate; so, I took a course to be --for home inspector, and I certified myself. Although I don't actively do inspections, I'm familiar with it.

Q. Any other jobs?

A. Those are the jobs that I did.

Q. Did you do any driver training or driver instruction?

A. No, sir. Not driver training or driver instruction. Go ahead with your -

Q. In your response to a Request for 8 Production, you produced a large number of records pertaining to Glenn Manning, CPS, Driver Improvement Program.

A. Yes, sir.

Q. Also run out of 200 Corsette Road. Tell me about that.

A. I had a contract with the Motor Vehicle Administration, agreement with --I guess you'd call it a contract or agreement with the Motor Vehicle Administration to provide as part of the

counselling services that we did there, an adjunct to that to provide a driver improvement course to persons. And to provide an alcohol education course to persons who had foreign licenses and were applying for their Maryland license. It's a three-hour alcohol and drug education course, and to provide the driver improvement course.

Q. Did you yourself have any counselling a result of the accident on December 23rd, 2011?

A. No, sir.

Q. Did you yourself have any medical attention or medical care as a result of the accident –

A. No, sir.

Q. --of 2011?

A. No, sir.

Q. Are you married, sir?

A. No, sir.

Q. Have you ever been?

A. No, sir.

Q. Do you have any children?

A. No, sir.

Q. Did you ever live outside of the State of Maryland for any appreciable period of time?

A. No, sir.

Q. Were you ever in the military -

A. Yes.

Q. --service?

A. Yes, sir.

Q. What branch?

A. Army.

Q. And where were you stationed?

A. I was in the Army Reserve. I was stationed at Fort Knox, Kentucky. And then Fort Lenwood, Missouri.

Q. What years were these, sir?

A. I was in the Army from 1963 until 1969.

Q. Did you have an honorable discharge?

A. Yes, sir.

Q. What was your rank upon discharge?

A. E-4.

Q. Were you ever outside of the continental United States in your Army service?

A. No, sir.

Q. I want to ask you some questions now 1 about the accident itself on December 23rd. You told us you remember the accident. Were you operating a 1990 Buick LeSabre on the date of that accident?

A. Yes, sir.

Q. Was that your car?

A. Yes, sir.

Q. How long had you had it?

A. I bought that car, I think, in August, on or about August 2010.

Q. Okay. Do you remember what you paid for it?

A. Not exactly, sir.

Q. How would you describe its mechanical condition of your vehicle at the time of the crash?

A. Fine.

Q. When you bought the car in approximately 2010, did you have any work done on it coming forward to December of 2011?

A. Yes, sir.

Q. What type of work did you have done on it?

A. Various routine maintenance. We replaced --I think we replaced an alternator, if I'm not mistaken. I'm --I --I submitted the work orders that were done. I don't recall exactly. We replaced tires on it.

Q. Okay. And when you're saying we, who do you mean?

A. Meaning myself. I'm just using the pleural as --as the singular.

Q. Did you ever replace a head lamp assembly on the vehicle before March 13, 2013?

A. Yes, sir.

Q. Do you remember that?

A. Yes.

Q. I'm look at an invoice that you had provided. It looks like it's March of -
March 16th, 2011, and it looks like it says head lamp assembly. Do you remember the
circumstances under which you replaced the head lamp assembly?

A. The car --I had loaned the car to someone. And they were in a line of traffic waiting for a -- as I understand, for a train to cross. A vehicle in --a truck, I believe it was, at least from what I understand, was in front of them. And the truck driver apparently became impatient and didn't want --wish to wait for the train any longer and backed up in an attempt to make a U-turn to go back the other way. And when he backed up, it's my understanding that that truck damaged the front of the vehicle. And as a result of that, the insurance company for the driver of the truck paid for some repairs, paid for some repairs to the vehicle. And the repairs that needed to be done that were not cosmetic but needed to be done were done.

Q. Did you make the repairs yourself?

A. No, sir.

Q. Who installed the head lamp assembly?

A. I believe that was G&G Radiator.

(Whereupon Manning Deposition Exhibit 1 was 19 marked.)

Q. I'm showing you what's been marked for identification as Exhibit No. 1.

A. There or --either there or a garage that they sent us to on Reisterstown Road. I'm not certain, sir.

Q. Okay. Do you remember what head lamp it was, the driver's side or the passenger side?

A. It was the driver's side.

Q. I'm showing you what's been marked for identification as Exhibit 1. It's the Wal-Mart's tire and lube express itemization from September 19th, 2012.

A. Yeah. A headlight check, a bulb check. They just checked over the vehicle.

Q. Do you remember taking the vehicle in there around that time in September into Wal-Mart?

A. I took the vehicle in, sir, for maintenance, routine maintenance, which is what's indicated on the invoice.

Q. Do you remember specifically why you took the car in that time?

A. Probably needed --probably was appropriate to take it in and have it main --for maintenance.

Q. How many miles were on the car?

A. I don't recall, sir.

Q. Does it show it on Exhibit 1?

A. I see odometer 65,258.

Q. Okay. Do you remember the work you had done on the vehicle that day?

A. I took the car in, sir, to have an oil change and whatever their --their list of things that they do. They did a tire pressure check. They did --it says on here transmission fluid check, checked. Various --various things were checked and were okay.

Q. What did they do with regard to the headlights on the car -

A. They didn't do anything, sir. It looks like here --at least from what I'm reading -

MR. HUNTER: Mr. Manning, let him --let Mr. Fiore finish his question.

A. Go ahead.

Q. What did they do with regard to the headlights on September 19th, 2012 at Wal-Mart*²Mart?

A. It says here they checked them.

Q. Did you ask that they be checked?

A. It's part --apparently it was part of their routine.

Q. But I'm saying, did you ask them -

A. I don't -

Q. --to check the headlights?

A. No, sir. Not to my knowledge --not to my recollection, no, sir. They had a service, and they did their service.

Q. What was the reason you took the vehicle in that day? Was it -

A. Oil change.

Q. --just an oil change?

A. Oil change.

Q. Were you having any problems with the headlights on the 1990 Buick you were driving on March 13, 2013 back in September so that you were having them checked?

A. No, sir. No, sir. Not to my recall, no, sir.

MR. FIORE: All right. Can I see 1 back again, please?

MR. HUNTER: (Complies)

MR. FIORE: Thank you.

MR. HUNTER: Sure.

Q. So, come March 13, 2013, I think you indicated in your Interrogatory Answers you were home that day?

A. Yes, sir.

Q. You did not work in your practice that day?

A. That's correct.

Q. Okay. You had plans to --what were your plans for that evening had the accident not happened?

A. To go Christmas --Christmas shopping for someone.

Q. Okay. For whom were you going Christmas shopping?

A. A close friend that I've helped out over the years.

Q. And who is that?

A. Ms. Ryans. Jennifer Ryans.

Q. Okay. And how did you know Jennifer Ryans?

A. I've known her for a number of years.

Q. Does she have children?

A. Yes, she does.

Q. Were you going to go shopping with Ms. Ryans?

A. As I recall, I was going to meet her at Target. And she --and if she arrived before me, she would start shopping, whatever she wanted to get for the kids. And I'd be there and I'd pay for the bill. I paid --I helped her out.

Q. And was this something you had done before?

A. Yes, sir.

Q. And how long had you known Ms. Ryans?

A. For several years.

Q. Was this a romantic relationship or -

A. No, sir.

Q. --just a platonic relationship?

A. I call her-- I think of her as a goddaughter. Somebody that I know and I've helped out over the years.

Q. How did you make her acquaintance in the first place?

A. I can't discuss that, sir.

MR. HUNTER: You can give him a general description.

THE WITNESS: I can give a general description?

MR. HUNTER: Through your work.

A. Through my work.

Q. All right. How many children did she have?

A. She has one child that's adopted by her cousin. She has two children in foster care, and now she has a child that's with her.

Q. She's still a friend of yours -

A. Yes, sir.

Q. --and you still help her out?

A. Yes, sir, I help her out.

Q. So, on December 23rd, you had set this up with her. You were going to meet her at Target in Glen Burnie?

A. That was my --that was my recollection, yes, sir.

Q. Okay. And that's where you were on your way to when the accident happened?

A. Yes, sir.

Q. Did you ever contact her that evening after the accident happened to let her know you wouldn't be coming?

A. Right after the accident. Right after the accident occurred, I called from my cell phone and told her that I was in --that there was a serious accident, and we'd have to reschedule.

Q. All right.

A. Now, that was a very short conversation.

Q. Did you reach her?

A. Yes, I did.

Q. Okay. Did she ask you what happened at that point?

A. No. No.

Q. Did there ever come a time subsequently when you discussed with Ms. Ryans what happened that evening on December 23rd, 2011 that prevented you from getting over to Target?

A. Yes. I told her a gentleman had been injured and --you know. And then subsequent to that, I believe I told her that the gentleman had passed away.

Q. Did you ever give any other written accounts of what happened on the evening of December 23rd, 2011 other than to the police officer as part of his investigation?

A. Just what I gave to the insurance company, you know, the representatives.

Q. Did you give anything in writing to the insurance company, or was it by phone?

MR. HUNTER: Objection. Can I have a continuing to the insurance company?

MR. FIORE: Yes.

MR. HUNTER: That's fine. Thank you, sir. Go ahead, sir, you can answer.

A. I believe I did.

Q. That you wrote something out for them?

A. I think there was something written out for them.

Q. Did you ever have any discussions with anyone who said they witnessed all or part of the accident?

A. At the accident scene, a lady came over to me. I had --I was sitting, as I recall, or was standing on the grass on the lawn. I think probably that --and near where the gentleman was injured, not too far away. And a lady came over to me. She identified herself as a nurse. And she asked me if I was all right. She made a comment, it was an accident. It was --I know it wasn't your fault. It just occurred. And I told her I was okay. And it was a very short conversation. She gave me her identifying information. She said she saw --saw something. I don't know what she saw, but she said she saw something.

Q. Thank you sir. We will take a break now.

A. Okay. No problem.

END OF DEPOSITION EXAMPLE

ASSIGNMENT | DEPOSITION SUMMARY

Using the above deposition excerpt, summarize the transcript. For this assignment, keep track of your billable hours, and attach your time sheet at the end of the document. Even though this assignment is not related to your client, place the document in the *Work Product* panel of your client file when it is returned to you.