

Chapter 13

Video Deposition Tips for a Consumer Law Lawyer and Client

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Defending a video deposition of a consumer is most emphatically *not* the same as a non-video deposition. The difference is like reading a movie script and watching the movie unfold before your eyes.

Critical factors are both obvious and subtle. Thorough preparation, for both the attorney and the client, is key.

The credibility, appearance and demeanor of the client will be caught by the camera and can be replayed at will in trial or perhaps by the jury during deliberations. Because of that, the client must be prepared just as though they were going to testify at the trial itself, with many of the same tips and advice and many new ones that are specific to the video aspect.

The View

Most video depositions only show a “head shot” or “head and shoulders” view of the deponent on camera. This is about the same as your typical driver license photo and we all know how bad those can turn out. Because of that, extreme care must be taken that the testimony of the consumer can later be viewed as believable, credible, and trustworthy. A few tips can help. First a few general rules of instruction for the client.



Pay Attention

The witness is on camera every moment. That means they have to constantly look and be attentive. Before a question is asked, while a question is being asked, after the question is asked, while answering the question, at the end of the answer, between every question, during every pause, and during every delay. Constantly. Remember, the witness' face is the only thing the jury will see and they will be paying constant attention to what they watch.

Don't Pause Too Much

The witness must be especially careful of pausing too long or too often. In a non-video deposition, we often tell our clients to never immediately answer any question but to first pause and silently answer the question in their mind and then say the answer out loud. That instruction would be devastating for a video deposition.

A pause can look and seem much longer on video. It can make the jury

think that either the witness does not know the answer or they are making it up. Either way, credibility goes down the drain. The witness should answer each question promptly but also naturally.



Don't Make Faces

Realize that every facial movement is over emphasized and any distracting facial or body movement might be interpreted as nervousness. Like it or not, many people interpret nervousness as trying to hide something. Unintended non-verbal communication can undermine the credibility of the verbal testimony being given.

Keep Your Hands Empty

The witness must sit calmly and sit still. The witness must not fiddle with eyeglasses, a pen, hair, lean forward, or anything else. Remember that this tape recorded testimony may be played in front of the jury, so this is the time to be focused and “all business.”

Document Handling

Handling documents can be cumbersome on video. Imagine watching someone on your tv set reading a long document. The pauses and delays are boring and irritating to the viewer. The same thing happens with the jury.

Because of that, if the witness is asked to read any document of any length at all, the camera should be shut off to give time for it to be read off camera, and turned back on when the witness is ready to resume. If you don't, then the jury may think the witness is studying the document, trying to figure out what question is coming and how to get around having to answer it truthfully.

And when the question about the document is over with, the witness should put it aside and ignore the document. Do not let the witness fiddle with the paper, because it will cause distraction to the viewing jury.

Now for the deposition setting itself.

Sit Still

The witness must not sit in a swivel or tilting chair. Use a comfortable but solid straight back chair, not a cushy one.

Use a Plain Background

The chair should be set in a room with a plain background, either a solid wall or a plain drape. Never in front of a window (because of glare and because of distracting outside movements like passing cars or people). A “busy” background can be very distracting from the testimony being given.



Wear “Trial” Clothing

The witness should wear conservative clothing, appropriate to the witness and their role in the case. Conservative style and color is better than flashy and daring.

Looking at the Camera

Finally, it is important to remember that the jury’s “eye” will be the camera. There are different thoughts on how to deal with that fact and you have to find what works for you and your client.

One view is that the witness should not look at the camera lens at all but instead focus on the examiner. Here the resulting view is much like an observer sitting in the room while the questioning occurs, but only being allowed to see the person who is answering the questions. The result is awkward at best but the result can be acceptable.

The other view is that the witness should look directly into the camera lens at all times. Here the resulting view is much like the jury is looking directly at the consumer and the consumer is giving their answers directly to the jury. Historically, scientific studies have demonstrated that if the witness does not look into the eyes of the jury while giving testimony, then the testimony is very often not believed. Attorneys often tell a witness that when they take the stand in trial they must turn and look at the jury and give their answers, literally, to the jury. The same thing can be true when it is on videotape because the camera is the jury’s eye.

We take a regular sheet of paper and put a very large arrow on it, pointing upward, with the word “Jury” printed at the bottom of the paper. Then, before the deposition starts, we literally tape this sign directly below and pointing up to the camera.

Dealing With Where the Examiner Sits

The ideal position for the examiner in a video deposition is directly below or at the side of the camera itself. Then it appears the client is looking into the camera and directly at the viewer, i.e., the jury. For that very reason, defense attorneys may deliberately sit at right angle and several feet away from the camera. That positioning creates the impression that the consumer is avoiding eye contact with the viewer, creating a sense of distrust or lack of frankness and candor, which may undercut the believability of the deponent consumer.



In that event, the consumer should be told to imagine being in a tunnel, staring at the video camera at the other end. Any voices he hears must be treated as though the person isn’t there at all and the voice is just coming out of a speaker

near the camera itself. Admittedly, it will be hard for the consumer to ignore the people in the room during the deposition, but the jury must be able to “look into the eyes” of the consumer if they are to accept the consumer’s version of the truth as the real truth in the case.

The Video Depo Brochure

In addition to these tips that are discussed during the client’s deposition preparation conference, it may be useful to give the client an “About Your Video Deposition” brochure with written guidelines for them to read over later. Here are a few thoughts on what to include.

What is a Video Deposition?

A video deposition is where the attorneys who represent the “other side” will have a chance to ask you questions about the facts involved in your case. It is the first chance they will have to see and hear you explain what your side of the case is all about.

In some ways, it is relatively easy. Just remember: all you have to do is tell them the truth. But, because it is so important, you need to be on your guard that they do not try to twist the truth around or put words in your mouth.

A “court reporter” will be there to take down everything that is said, using a stenotype machine. Later, this is typed up into a transcript of the deposition and you may have the right to read it and obtain a copy of it (a copy will probably cost about \$80 for each hour that the deposition lasted.) In Court, this transcript can be used against you. The court reporter is not someone from the Court. That is the name of the job they perform.



A videographer will also be there to video tape the whole process, too.

Why Do They Want to Videotape It?

Most people evaluate whether someone is being honest by watching their body language and eye contact. Some attorneys think that by video taping your answers, you may be extra nervous and that will show on your face. If you give a different answer in Court later, then the Jury will get to look at the video tape and the other side’s attorney may be hoping you will be so nervous that it will look like you are not telling the truth. Try to relax and don’t let it upset you.

Should I “Dress Up”?

Since you will be photographed, yes. You should wear clothing that is comfortable, but like what you will actually wear in Court. You should probably wear clothing similar to what you would wear to church. Your clothing should be more business like than casual. No shorts or blue jeans. Also, do not wear clothing

that has loud stripes or plaids or checks in it because it can look shiny or vibrating on camera. Also do not wear any loud or bright colors because they can look smeared on some video cameras. Wear a solid, neutral color like a light blue or beige for instance.

Women should use makeup but apply a light touch. Men who shave in the early morning should shave again shortly before a deposition starts later in the day. On camera, “5 o’clock shadow” starts about 11 a.m.



Is It Important?

Yes, extremely so. Your video deposition will probably be the most important thing you will ever do in your case, except for the actual trial itself. Because of that, it is extremely important that you understand what is happening and how you should handle yourself. Also, the people who will decide whether or not to settle with you will probably watch the video before they make that decision. So it is important that you have a good appearance, look comfortable and are confident in what you have to say. This brochure is designed to help give you some guidelines.

Am I All Alone?

No, we will be there with you. However, the questions that are asked will be a little different from those that will be asked at the trial. At the trial, we would be allowed to object to some questions and stop them from even being asked or answered. Generally, that does not happen at a deposition.

Most questions asked in a deposition must be answered by you, but not all (for instance, attorney-client privilege and confidential business information). Listen carefully to the questions and do not answer any question that we tell you not to answer. If you want to talk with us privately at any time, just ask to take a break; do *not* say you want to talk to your lawyer.

How Do I Act?

Be sure to sit up straight and don’t cross your arms, because it can look bad on camera. Also, keep your hands on the table and away from your face so they stay out of camera view.

In spite of all this, you should also try to just act natural too. Control your movements. Try not to blink or smile a lot. Never frown and, above all, don’t roll your eyes (no matter how silly or stupid a question might sound). Control your body language.

Do not argue with anyone, either. Be respectful, polite and business-like. Try to appear helpful and not evasive.

What Do I Do When a Question is Asked?

First, pause for just a *fraction* of a second. This give us time to object to the

question if necessary. If we do object, listen to what we say about the reasons for the objection. If we don't object to the question right away, then you need to try to answer the question promptly. If you pause too long before answering, it might seem as if you are uncertain of the answer or reluctant to give the answer or hiding something.

Before you start to give any answer to any question, be sure you understand the question. If you aren't sure, then just say that you don't understand. Quite often the other attorney will ask a question which uses legal or technical words which can mean one thing to most people and something entirely different in a legal sense. Be very careful that you are not tricked into answering such a question. Just be careful that your answers are truthful and correct.

Don't say "uh" too many times in your answer either, because it can sound like you are hesitating or making up an answer.

Should I Tell Them Everything I Know?

Generally, no, but you should always directly and fully answer every question that is asked. You can answer questions with a simple yes or no but sometimes a simple yes or no doesn't really tell the whole story. You can always add a little extra information in your answer in order to make the truth clear.

Last, do not exaggerate. The simple truth is enough to do the job.

I Don't Understand the Question, But I think I know The Answer . . .

Try to understand every question that is asked but if you do not understand a question, you should say so. Do not guess about anything, not about the meaning of a question and certainly not in your answer.

As soon as you hear the question, if you are not sure you understand it, just say so. Do not guess about what the other attorney means in a question. Make them ask it plainly and clearly. But don't be coy either. The idea is to be frank and honest at all times.

Never answer a question that you do not really understand, just because you think you know the answer. When you do that, you are sticking your neck out. Remember: turtles stick their necks out too, and that is why we have turtle soup.



Will There Be Trick Questions?

Probably. Some attorneys take pride in their ability to confuse and trick you. Be careful. Watch out for questions that use the word "probably" or "possible", "may" or "likely", "never" or "always".

Also, many attorneys will ask you a series of questions and then try to summarize your answers into their own words and then ask you "would that be a fair statement?" Shakespeare said, "Nothing a lawyer says is 'fair', they are trained

that way.” Do not fall for this trick. Your best answer is just to say something like “It depends on your point of view I suppose.” They are not allowed to argue with you and you should not argue with them.

Always correct an erroneous statement by the other attorney when it is made. Many attorneys will try to trick you by stating that a certain thing happened or something was said and then ask you what you did next. An example: “After the service department fixed your car, when did you experience your next problem?” Unless your car really was fixed that time, don’t let the other attorney imply that it was actually fixed that time. Instead, point out that it wasn’t really fixed that time and explain why you know it wasn’t and then go on to explain what your next problem was.

Don’t let down your guard. Lawyers have a thousand ways of being tricky. Just be careful.

Didn’t They Ask that Question Before?

Probably. Beware of attempts to ask for the same information through different questions. Some attorneys do this to try to confuse you, or to try to get you to give different answers to the same question. Give the same answer as you did before. If they seem to be repeating a lot of the questions two or three times, however, it is fair to say “I think maybe you asked me that before” but be sure to sound like you are only trying to be helpful and courteous because the lawyer forgot that the question had been asked before.

Can I Volunteer Information?

Yes, but be careful. About the only time to volunteer something is when you need to explain something so that the truth is clear. Remember: the attorney asking you questions does not work for you. While the task at hand is to determine the facts, the simple reality is that they are looking for ways to embarrass you now and beat you in Court later. They are not trying to help you one bit; there is no reason for you to trust them, either.

But remember that a Jury might look at this video tape later so you want them to realize that you were being as honest as you could and you were not trying to hide anything.

Should I Look at the Video Camera?

Yes. Constantly. Don’t look anyplace else.

The attorneys will probably be seated to your left or right and the camera will usually be straight ahead of you. Look straight into the camera. Anyone who watches the video will be looking at you on a tv screen and all they will see is your head and shoulders, which fill up the entire screen.

It is very distracting if you are constantly looking side



to side and never really looking the viewer “in the eye” so to speak. It may not be natural, but it is *critical* that you look *at* the camera lens and you talk *into* the camera itself, and ignore the people in the room with you. Listen to what people say, but try to keep your eyes aimed at the camera. Try to imagine the camera lens as if it were your spouse or a close friend and that you are talking to them, straight in front of you.

“Tell me Exactly What Was Said?”

Look out! If you are not sure that you remember the exact words spoken by yourself or someone else, then say so. You can say something like “I don’t remember exactly, but it was something like ...” You can give the substance of the conversation as you can recall it, but be sure to say that those are not the exact words used.

What If I Don’t Recall Something?

No big deal, just say so, but do not guess. If you don’t remember something, then you should try to give a truthful, common sense explanation for why you don’t recall it (such as, “that was more than five years ago and I just don’t remember all the details now”).

What if They Ask About Documents?



The first thing you should do is ask the attorney what is it that they want you to look for in the document. Otherwise it could take you several minutes to read the entire document carefully and that would look like you are stalling. Remember, the idea is to keep the questions and answers going back and forth without hesitation or pauses.

If any document is shown to you, then lift it up slightly in front of you. Otherwise, anyone watching the video tape later will only see you staring downwards in front of you and they might not understand why. But, do not lift the document up so high that it looks like you are hiding behind the piece of paper!

Also, if you need to look at documents in order to answer a question fairly, then just say so. Don’t guess about something when you know there is a piece of paper that will either give the answer or help you recall the answer. Ask if you can look at the document.

Will They Interrupt My Answers?

Maybe, but just let them say what they want, and then immediately (but with respect and courtesy) ask if it is okay for you to finish your first answer before trying to answer another question.

You have the right to give a complete and correct answer to every question. Do not let an incomplete answer leave a false impression.

What If They Make Me Mad?

Do **not** lose your temper. Some attorneys will try to see if they can make you get mad or upset. They may do this by repeating questions, boring you with useless questions, or asking you insulting questions.

One way to handle this is to turn the tables on them. When someone is trying to make you mad, what usually makes them even madder is failing to get you angry, failing to get you upset. So, don't let it get to you.

Remember, a camera is recording everything you say and do. You must try your very best to remain cool and calm. If the attorney is being a jerk with their questions, the camera is recording that fact too.

Won't I Sound Dumb If I Say "I Don't Know?"

No, not as long as you give some reasonable and common sense explanation for why you don't recall something. Do not allow the other attorney to intimidate you into believing that your answer is not acceptable or not believable. The simple fact is that people sometimes forget. And people sometimes later remember things.

Is It That Big A Deal?

You better believe it. If it wasn't, the other attorney wouldn't do it. To take your video deposition will probably cost the other side between \$3,000 and \$7,500. They spend that money for only three reasons: (1) they want to know what you will say in Court, (2) they want to see if they can make you look bad on video so they can use it against you later, and (3) they want to figure out how to beat you in Court.

What Can I do to Prepare?

You should meet with us (in the office or by phone) a day or two before the deposition so we can review everything with you. Make an appointment and plan on spending about an hour with us to go over it. You should also look over any documents or papers that you have which involve your case, and bring them in to us when you have your conference with us before the deposition.

Think carefully about all the important events related to your situation too. Ask yourself, "if I was their attorney, what is it that I would want to know about? What would I try to get me to say that can hurt my case?"

A deposition is nothing to be afraid of; you only have to tell the truth. Remember the 3 C's: Be Careful, Be Correct, Be Calm.