Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104
Seacoast Office: One New Hampshire Ave., Suite 125
Portsmouth, NH 03801

"Tip of the Month"

Depositions

Depositions are often a part of discovery in litigation and arbitration cases. Discovery is the process by which each side learns about the other side's evidence before trial, so there will be no surprises. Nowadays, discovery is very wide open because the court does not want to allow trial by ambush. Everyone is supposed to find out as much as possible in advance, which can also help the parties achieve settlement before trial.

A deposition is an in-person interview of a witness by a lawyer, usually in a conference room in a law office. The witness is under oath and on the record, which means a court reporter (a stenographer) is taking down all the testimony to be typed up later in a transcript. Sometimes the deposition is also videotaped. The witness must be careful to testify accurately in a deposition because the transcript can be used later in trial if the witness changes testimony.

Exhibits are commonly presented to the witness in a deposition. Each exhibit will be marked for identification in the record. The lawyer will usually ask the witness to explain things about the exhibits, which the stenographer will later attach to the deposition transcript. Together, the exhibits and the testimony comprise the evidence on each side of the case. There is no judge at a deposition to rule on the admissibility of evidence.

Evidence does not have to be admissible at trial to be discussed in a deposition. Objections raised to a lawyer's deposition questions or proposed exhibits are noted in the transcript. Usually, the deposition witness is expected to answer the question anyway, and the exhibit will usually be discussed unless there is a good reason to stop talking about it such as attorney-client privilege. Later, a trial judge or arbitrator can rule on whether the evidence is admissible at trial.

The witness should be prepared ahead of the deposition. This includes reviewing documents, refreshing memory, understanding the issues and the theory of the case, and understanding the meaning and purpose of depositions and discovery. The witness is reminded that only one person at a time can talk during the deposition. Interrupting and talking over will confuse the stenographer and impair the transcript.

The witness also wants to stick to the facts without speculating or guessing. Memory need not be perfect and the witness does not need to know everything. It is perfectly fine to say so when the witness is not sure or does not know. The witness should focus on the question and keep the answers brief, polite and evenly paced. No need to rush. A thoughtful answer is better than a hasty one.

If you need help with a court case or arbitration, please give us a call at 603-668-1971 or send an email to mailbox@biz-patlaw.com.

Frank B. Mesmer, Jr.
Robert R. Deleault
Steven H. Slovenski
Ross K. Krutsinger
0812

(603) 668-1971
Fax (603) 622-1445
E-mail: mailbox@biz-patlaw.com
Website: www.biz-patlaw.com