Deposition Tips for Earning Respect as a Young Attorney

By Brad E. Haas, Esq.

The Legal Intelligencer
March 12, 2015

As a young associate, taking a deposition can be both an exciting and intimidating process. Aside from trial, this may be the only time you are face-to-face with your adversaries, questioning and investigating their story. The confrontational aspect of depositions creates the potential for uncomfortable situations. This can be further compounded when dealing with difficult deponents and attorneys.

If you are like me, you have encountered situations where youth can be misconstrued as incompetence. This stereotype can be reinforced during the course of a deposition if it becomes apparent that you have not thoroughly prepared. As a young attorney, preparation is key to maintaining control of a deposition and to earning the respect of your peers. This article provides some advice based on situations many of us have encountered.

Deposition Preparation

At the outset of a deposition, it is easy to determine the extent of an attorney's preparation. As a young associate, thorough planning is key to taking control of a deposition from its beginning. The path of successful preparation begins in the weeks and days leading up to the deposition. An outline of your questions is often the best way to begin. Not only will this give you a solid framework on which to base your questions, but it will also force you to review all the relevant facts of the case. Your outline should not be a verbatim list of questions, as this can lead to missing opportunities to ask important follow-up questions. Instead, the outline should be a succinct reference guide to help you stay on point and navigate throughout the deponent's testimony.

Throughout your outline, it is important to keep your end goal in mind. This can be difficult for young associates, as we are often required to handle piecemeal assignments. The inability to see a case develop from the outset can make it easy to lose sight of the overall objective, which will likely vary based on the facts and circumstances of each case. The objective may be to set the deponent up for testimony that will bolster a future motion for summary judgment. It may be to simply gain a better understanding of a key witness' version of an incident. Regardless of the objective, it is important that you clearly identify what you are hoping to get out of the deposition and frame your preparation and questions around this goal.

Handling Adversity

Most young associates have experienced the discomfort of an overly hostile deposition. One of my early experiences with a hostile deponent came during a deposition I was observing. During the deposition, the deponent became very unhappy with some personal, yet completely relevant, questions. The witness threw a notepad and began raising his voice while cursing at the questioning attorney. Despite the quite obvious tension in the room,

the attorney did not reply in kind. Instead, he politely asked the man to lower his voice, and informed the witness that the question was reasonable and a refusal to answer would be grounds for requiring the witness to reappear for the deposition on a later date. After considering his options, the witness calmed down and agreed to answer the questions.

Whether you are dealing with a difficult witness or opposing attorney, it is important to remain calm and in control. While this can be difficult during a heated exchange, there is no quicker way to lose control of a deposition than to engage in a verbal sparring session with an opponent. Furthermore, while you may believe an opposing attorney or party was out of line, a deposition transcript is void of tone and nonverbal cues. Words can easily be misconstrued, and a transcript may, in fact, make you appear to have been the unreasonable party.

Understanding Deposition Objections

Deposition objections are an area where both seasoned lawyers and new graduates make mistakes. Because depositions are far less formal than cross-examinations at trial, it is not uncommon to come across an attorney who will object on improper grounds. This is sometimes done as a tactic to interrupt the flow of a deposition; however, it is just as common for attorneys to be unfamiliar with the rules of proper deposition objections. Understanding proper objections will increase your credibility as a litigator and help you to maintain control of the deposition. The list below is certainly not exclusive, but highlights some of the more common objections.

Proper Deposition Objections

• Privilege.

The objection of privilege must be made or it can be waived. Privilege should be raised, even when it is borderline, in order to preserve the objection. You should instruct your client not to answer questions requesting privileged information, or, in the most egregious of cases, terminate the deposition.

• Form objections.

The following objections fall under the category of form objections, which are usually asserted by an attorney simply stating "form," and are used to ensure a clear record. These objections are waived if not made during the deposition. A compound objection is proper when multiple questions are asked in the same sentence. It is necessary to clarify which question a witness is answering. A confusion objection is proper only if a question is asked in such a way that could mislead the witness. A speculation objection is proper when a question calls for a witness to hypothesize or theorize as to the appropriate answer.

• Asked and answered.

This objection is proper when a witness is asked a question he or she previously answered. This may be an attempt from the questioning attorney to trick a witness into giving contradictory testimony.

• Calls for a legal conclusion.

Deponents are there to testify about facts, not legal conclusions. If the deponent is a lawyer, it may be a proper question, depending on the circumstances. However, in most cases, questions asking a legal conclusion are improper.

• Harassment.

If a witness is being harassed or attacked, counsel may, at his or her discretion, object on this basis. It is important to let the record reflect whatever activity is occurring. If this type of conduct continues, it may be necessary to terminate the deposition and seek court action.

Improper Deposition Objections

• Hearsay.

This objection is often a clear indicator of inexperience. It is important to differentiate

between a hearsay objection at a deposition and at trial. The rationale for a hearsay objection at trial is the inability to cross-examine the declarant. However, at the deposition stage, the statement of a declarant has the potential to lead to admissible evidence. An attorney could take a deposition of the declarant or call the declarant as a witness at trial. This information would not become available if hearsay objections at depositions were proper.

• Irrelevant.

This objection is only proper if the question is clearly too far off base. However, if the question may lead to admissible evidence, it is proper. This can sometimes be a gray area. Experience and comfort will aid in making judgment calls based on this objection.

• Speaking and coaching objections.

It is improper for an attorney to give testimony regarding the lawsuit. It is also improper for a lawyer to coach a deponent with objections. This is another example of gray areas in depositions. For example, it would be improper for an attorney to state that his deponent cannot remember the answer to a question. It is also improper for an attorney to do or say anything to suggest an answer to the deponent.

As a young attorney, it is important to not allow yourself to be bullied by opposing counsel into making improper objections. It is also important to firmly stand by your properly made objections. Demonstrating confidence and firmness with your questions and objections will help achieve the above goals. When disagreements do occur, it is always wise to take the high road rather than engaging an opposing counsel or party.

Brad E. Haas *is an associate in the casualty department of Marshall Dennehey Warner Coleman & Goggin, based in the firm's Pittsburgh office. He concentrates his practice in the areas of products liability, retail liability, property litigation, and general liability matters.*