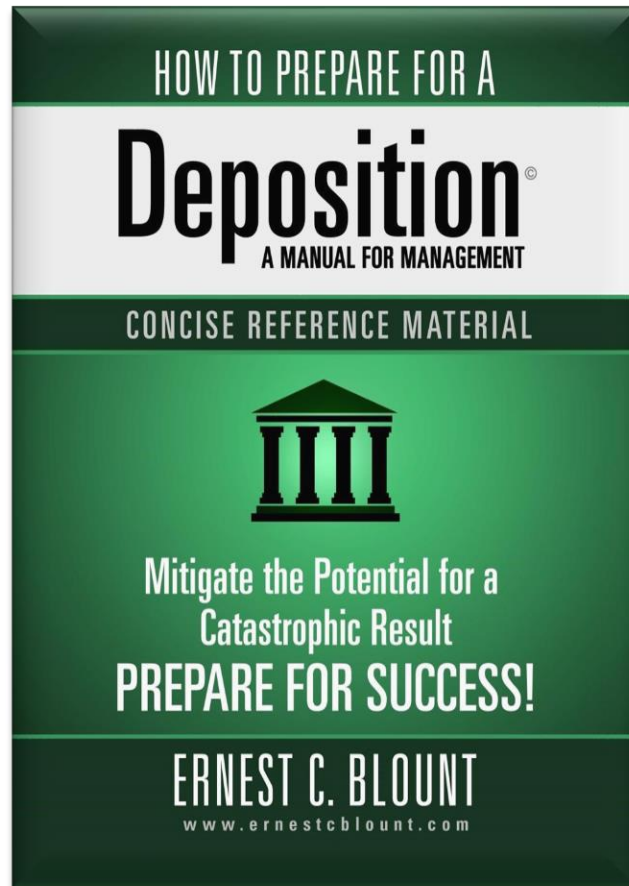


WHITE PAPER



INSURANCE POLICIES HAVE LIMITS...JURIES DON'T!

General Witness Instructions

THINGS TO REMEMBER

Complements Of:
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A Guide.



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1.0 Overview:

Lawsuits are a fact of life. The legal process that follows the commencement of a lawsuit is called discovery. Discovery is a formal inquiry to find out more about a case and is conducted pre-trial.

Discovery consists of many legal components such as interrogatories, motions to produce, and the deposition. Only one of those components is referenced herein; that component is the deposition.

The deposition is an integral part of the discovery process; perhaps the most important component. Depositions are conducted *outside* a courtroom usually in the conference room at a lawyer's office.

Depositions may last a few minutes or a week or longer depending on the complexity of the case. All parties to the lawsuit may attend.

2.0 Plaintiffs and Defense Attorneys:

At a deposition, two types of lawyers will be present. The plaintiffs and the defense.

2.1 Plaintiff's Attorneys:

Represent the party bringing the lawsuit. Depending on the complexity of the case there may be multiple plaintiff's attorneys present. Only the plaintiff's attorneys may ask questions. Plaintiffs' attorneys are essentially looking for four basic things:

- ✓ What the witness factually knows about the negligence alleged and what story the witness will tell related thereto if the matter goes to trial.
- ✓ Pin the witness to a specific account and explanation of what they know and their knowledge of facts. They want to know what the witness will testify to at trial.
- ✓ What kind of witness the witness makes: intelligent, well-spoken, knowledgeable, sincere, straightforward, honest, etc.
- ✓ Here's the biggie: catch the witness lying, obfuscating, etc., thus letting the jury and judge know that the witness can't be believed.

2.2 The Defense Attorney:

Represents the party sued and is usually hired by the insurance carrier. A defense attorney may not ask questions in a deposition and may only object to a question

asked by a plaintiff's attorney and then only for the record. A judge will decide if the question is sustained or not. That ruling determines if the question and answer may be used at trial.

3.0 Witnesses:

A witness is anyone that is known to have and or is believed to have information related to the matter pending.

- ✓ Witnesses are placed under oath, sworn to tell the truth by a court reporter, and questioned by the plaintiffs' attorney about their knowledge of the matter pending.
- ✓ The witness can't ask questions—only answer them.
- ✓ Each witness is on their own in a deposition and at trial. Therefore, they must be prepared to testify. Such preparation is often neglected.

No matter what you are told—the deposition is not simply a question and answer session.

- ✓ A deposition is a serious legal action; tensions may arise. Tension may be the result of a lawyer's attitude and questioning tactics or the attitude and gamesmanship of the witness or both.
- ✓ For the unprepared or underprepared witness, the experience may become an unnerving, nasty, aggressive exchange between the questioning lawyer and themselves.

4.0 The Court Reporter:

Court reporters are authorized to administer oaths and certify deposition transcripts.

- ✓ All witnesses are sworn to tell the truth before testifying.
- ✓ All questions and witness answers are recorded by the court reporter and the session may be videotaped.

5.0 Caution:

Giving sworn testimony at a deposition is not simple nor is it fun.

- ✓ This is a serious legal exercise with the potential for catastrophic financial losses for the lawsuit respondent.

- ✓ The witness must be prepared to testify if the potential for a catastrophic financial loss is to be mitigated.
- ✓ The deposition is an important occurrence in a case and in many instances more important than testimony given at trial.

6.0 How To Dress For A Deposition:

If the witness works in an office wear normal business attire.

- ✓ If the witness wears a uniform wear it. Prefably the uniform is clean and neat.
- ✓ In either of the noted situations do not overdress.
- ✓ It is essential that a witness feels comfortable as dressed.

7.0 How To Act At A Deposition

An appearance as a witness, at a deposition or a trial, is a serious matter and should be treated as such.

- ✓ Witnesses must conduct themselves, at all times, in a manner that respects the process.
- ✓ Be polite, quiet, courteous, and respectful at all times in or out of a conference room, a courthouse, or a courtroom.
- ✓ No smoking, gum chewing, joking, loud talking, and laughing in or out of a conference room, courthouse, or courtroom.
- ✓ Confidently sit or stand erect when being deposed or at trial.
- ✓ Don't discuss your testimony with anyone other than a defense attorney or the company representative. Any discussion with either one or both of these parties should be out of earshot of others.

8.0 What a Witness Can Expect:

At a deposition, each witness is the center of attention.

- ✓ But, don't be surprised if you are not introduced to the people in attendance.
- ✓ The plaintiff's attorney may do the introductions but don't expect it.

- ✓ The defense attorney accompanying the witness may not offer the courtesy of introductions and how each person fits in the case.
- ✓ You'll just be the target dummy sitting at the table.
- ✓ If this is your first deposition you are at a distinct disadvantage.
- ✓ You won't know who the players are, or the psychological advantage to the plaintiff.
- ✓ You will be vulnerable.

If you just met your defense attorney in the hallway and he gave you his one-minute speech on how to comport yourself during the deposition you are further disadvantaged.

- ✓ You are now a high-level risk that could do irreparable damage to the case.

8.1 Plaintiff's Attorney's Opening Statement:

Generally, the plaintiffs' attorney will take the lead and kick off the session and inform the witness of the following facts and then ask some common questions.

- ✓ Inform the witness that they are under oath.
- ✓ That the court reporter will record every question and answer. Instruct you to clearly verbalize your answers and not use head nods for positive or negative answers.
- ✓ You will be advised that you will have the opportunity to read the transcript of your testimony and make corrections.
- ✓ Be careful with your answers. It's important to be as accurate as possible when you answer.
- ✓ You are not going to remember everything. But any changes you make to the transcript can be commented on by the plaintiffs' attorney should the case go to trial.
- ✓ Depending on the jurisdiction, and rules related thereto, there could be additional information and direction provided.

8.2 Common Questions

- ✓ What is your full name, date of birth, social security number, current address, places you've lived, home and mobile phone

numbers, email addresses, all social media accounts and passwords, and the domain names of all websites?

- ✓ Any arrests, and or convictions for a felony or misdemeanor, the specific charges, dates, jurisdiction, and sentence?
- ✓ Tell me all claims or lawsuits you've been a party to.
- ✓ Did you prepare for this deposition, and if so how, where, and by whom? What were your instructions?
- ✓ Have you discussed this lawsuit with anyone other than your attorney? If so, who, when, where, and what was discussed?
- ✓ Have you signed any statements or affidavits or given any recorded interviews related to this lawsuit? If yes, to whom, when, and where.
- ✓ Have you sent or received any emails related to this lawsuit? If so, identify the person who sent you an email or to whom you sent an email and identify the sender or recipient, what was discussed, the date, and details? Do you have copies?
- ✓ Have you posted any information about this lawsuit on any social media sites? If so, name the sites Including descriptions, comments, yours or others, and photographs taken by you or others
- ✓ Was another person present when you discussed this case with your attorney? If so, who, when, where, and what was discussed?
- ✓ Have you ever been deposed before or testified in a court proceeding? If so, was the subject civil or criminal? What was your status: plaintiff, defendant, or witness? What was the nature of the case?

These questions are but a small sample of questions that could be asked. The type and depth of questions will be influenced by the nature of the case and the witness.

9.0 Examples Of Questioning Techniques

9.1 Open-End Questions

- ✓ Stimulate longer answers to find more detail.
- ✓ Usually starts with what, why, how, tell me, and describe.
- ✓ Asks for knowledge.

Examples:

- ✓ Tell me what you were doing at the time of the accident.
- ✓ Describe how you reacted in more detail.
- ✓ Tell me what happened next.
- ✓ Why did you...?

9.2 Probing Questions:

- ✓ Used to acquire greater detail or clarify an answer
- ✓ Getting information when a person is avoiding the answer to a question.

Examples:

- ✓ What exactly do you mean by...?
- ✓ What exactly did the other driver do...?
- ✓ What exactly did you do...?
- ✓ Explain what you mean by that...?

9.3 Leading Questions:

Used to elicit a specific answer like “yes” or “no”.

Examples:

- ✓ Isn't it true...?
- ✓ Isn't it a fact...?
- ✓ Won't you admit...?
- ✓ Won't you concede...?
- ✓ Wouldn't you agree...?
- ✓ You were driving at a speed that was too great for conditions right?
- ✓ You were distracted when texting correct?
- ✓ Isn't it true that you have not been truthful in answering my questions?

10.0 Guidance On How To Answer Questions:

- ✓ Come prepared knowing records and facts inside out.
- ✓ Tell the truth.
- ✓ Make no assumptions about anything.
- ✓ Smile and look the questioning attorney in the eye when answering a question. Speak slowly, calmly, and confidently.
- ✓ Never joke in a deposition with anyone.
- ✓ Never chat with a plaintiff's attorney before or after the deposition. He is not your friend.
- ✓ If the defense attorney begins to speak stop speaking until he has completed his remarks. If he is making an objection he may instruct you not to answer a question.
- ✓ Some lawyers play psychological games with a witness via their attitudes, types of questions, and tactics. Don't fall into any traps. Refresh your memory on questioning techniques and remain alert
- ✓ If asked, admit that you were prepared for the deposition.
- ✓ Never let the plaintiffs' attorney get you angry.
- ✓ Always maintain your composure. Never show anger or hostility it shows weakness.
- ✓ That weakness may be exploited in the course of the deposition.
- ✓ Remain calm and courteous.
- ✓ Don't let the plaintiffs' attorney put words in your mouth. Sometimes, if several questions are asked in quick succession, the plaintiffs' attorney may summarize your testimony and in the process include both facts that are correct and incorrect and ask if it is substantially correct. This is a trap. Don't fall for it. Don't agree and point out how you have been misquoted.
- ✓ Always listen carefully when the plaintiff's attorney is talking.
- ✓ The defense attorney may offer his summary of your testimony.
- ✓ Wait for the lawyer to complete his question. Do not interrupt or anticipate the question or its intent.
- ✓ Listen carefully to each question asked. Be sure you understand the question before answering.
- ✓ Take your time, answer the question, and stop talking. For example: if asked, "Do you know what time it is?" Don't answer "Yes, is it 2:30." The correct answer is "Yes". You weren't asked, "What time is it?"

- ✓ The purpose is to truthfully answer a question but to say as little as possible in so doing. For example: if “yes” “no” or “I don’t recall” will answer the question then that is your answer.
- ✓ Do not clarify, ad-lib, quantify, qualify, or define.
- ✓ If you don’t know the answer to a question say so. Best to say “I cannot recall” vs “I don’t know.”
- ✓ If you don’t understand a question say that you don’t and ask for clarification.
- ✓ Don’t guess what you think the meaning of a question is. Just answer the question if you know the answer.
- ✓ Keep your answers as short as possible. Don’t volunteer information.
- ✓ Don’t give an opinion unless the defense attorney instructs you to do so.
- ✓ Don’t answer compound questions. For example: “Where were you when the fire spread severely burning your neighbor and why were you not present?” This type of question should trigger an objection from the defense attorney. If the attorney does not object the witness should ask that the question be broken into two parts and asked one at a time.
- ✓ Don’t speculate or guess on facts unless your attorney instructs you to do so. Simply state that you will not speculate or guess about facts.
- ✓ Never answer a question about “Why” someone did or did not do something. Calls for speculation and your attorney should object and instruct you not to answer. Answer only if instructed to do so by your attorney.
- ✓ Never answer questions about records of any type unless you have seen them.
- ✓ If a question is confusing to you never ask the plaintiff’s attorney to clarify by asking if he means “X” or “Y. You may provide information not thought of. Just ask for clarification if you don’t understand. Don’t assist the other side.
- ✓ Do not answer statements. Only answer questions. Example: “Everyone in the shop knew that an accident like this one was going to happen“. This is not a question it is a statement and is designed to get your emotional response.
- ✓ Don’t take the bait. Do not nod your head in agreement with questions or statements and don’t fill in the blanks if the attorney can’t seem to find the words.
- ✓ Never lie or obfuscate.

- ✓ Never attempt to explain or justify an answer.
- ✓ Never promise to get the information you do not have at hand unless instructed to do by the defense attorney.
- ✓ If, during the course and scope of the deposition, you realize that you gave an incorrect answer to a previous question immediately interrupt the deposition and ask to correct the mistaken answer. It's ok to ask to have the record read back
- ✓ Ask for a break if you need one.

11.0 Summary:

This *Guide* is provided as a free supplement to the book: *How to Prepare for a Deposition—A Manual for Management*. This book should be in the library of every private sector business owner and senior executive. It contains concise reference material on *how to* mitigate the potential for a catastrophic financial loss when embroiled in a civil lawsuit. Easily learn how to prepare an employee witness before testifying in a deposition. Included in the book is a complete *Employee Pre-Deposition Preparation Program*; an easy-to-use step-by-step guide. Prepare for success.

Learn How To:

- ✓ Recognize defense attorney weaknesses in witness pre-deposition preparation, the cost, and risks.
- ✓ Properly prepare a witness to testify.
- ✓ Survive a deposition.
- ✓ Prepare a backup plan if defense attorney deficiencies exist.
- ✓ Mitigate witness fears and insecurities.
- ✓ Develop witness self-confidence, organizational respect, and trust.
- ✓ Mitigate the potential for a catastrophic financial loss.
- ✓ And much, much, more...



ABOUT THE AUTHOR

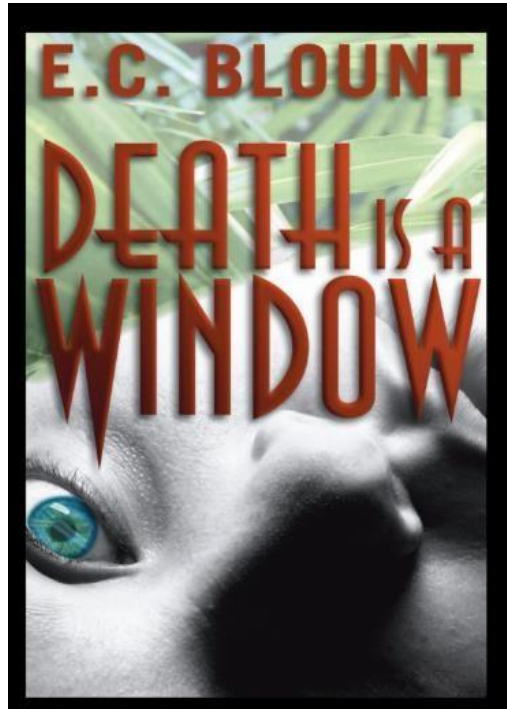
Ernest C. Blount has served at policy-making levels in both public and private sector positions: In the public sector as a municipal chief of police and in the private sector as a chief security officer for a large Florida corporation and as a vice president with a multinational provider of professional armed, uniformed security officers, police, fire-fighters, emergency medical services and armed helicopter operations to the Federal government. His experience encompasses comprehensive senior-executive management, the conduct of sophisticated criminal and civil investigations, and litigation support as a consulting and testifying expert.

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Mr. Blount is also a novelist. *Death Is A Window* is a gripping, you are their crime story. Check it out on his website: ernestblount.com or Amazon.com.



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IT WAS SIZZLING and mucky in Palm Beach that July, tropical humid, Piña-Colada sweet and laid-back hot. For the locals it was hang time.

Then things got intense — savagely intense.

Paradise — shattered by the brutal murders of three student nurses, in succession, one killing a week — their nude bodies dumped on the grounds of a prestigious teaching hospital.

Betsy, the girl with auburn hair, and a secret life was the last.

Detective Lieutenant Jake Cade of the Palm Beach County Sheriff's Office wanted answers; asking questions was easy. Finding answers threatened his life and career. Jake's search for a cunning, sexually perverted homicidal maniac, unravels in a convoluted web of brutally raw twists, dark secrets, evil intimacies — graphic you-are-there forensic detail — and a dramatic sledge-hammer to the chest conclusion.



E. C. Blount is a former Chief of Police and Detective Sergeant with the Palm Beach County Sheriff's Department. He is a native Floridian, graduate of Florida Atlantic University and the author of two previous books, *Model Guidelines for Effective Police-Public School Relationships*, and *Occupational Crime: Deterrence, Investigation and Reporting in Compliance with Federal Guidelines*. *Death is A Window* is his first novel.



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