



# Interpreting for Workers' Compensation Depositions

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# Definitions

- ▶ Deposition – extrajudicial testimony given under oath in response to questions posed by opposing counsel, for purposes of discovery, or for preserving testimony prior to trial. Testimony is recorded by a court reporter and a transcript is prepared.
- ▶ Discovery – exchange of evidence among the parties (usually in civil litigation) so that they can prepare for trial. Consists primarily of testimony and reports.
- ▶ Real-time court reporting – transcribed testimony (draft) can be viewed immediately
- ▶ Video deposition – a videographer records the deposition instead of a court reporter. More likely to be used for preservation of testimony.

# Most Common Interpreted Cases

- ▶ Workers compensation
- ▶ Personal injury
  - ▶ traffic accident
  - ▶ slip and fall
- ▶ Real estate
- ▶ Medical malpractice
- ▶ Paternity

# Workers' Compensation

- ▶ No-fault insurance, replaces civil litigation
- ▶ Employers required by law to have WC insurance
- ▶ Immigration status is irrelevant
- ▶ Parties:
  - ▶ Injured worker
  - ▶ Employer
  - ▶ Employer's insurance carrier
- ▶ Present at deposition:
  - ▶ Injured worker and counsel
  - ▶ Insurance carrier's counsel (not necessarily an attorney)
  - ▶ Employer (optional)

# Procedure

- ▶ Attorney-client preparation
  - ▶ review of case
  - ▶ pointers on testifying, protecting case (answer this way, not that way)
  - ▶ advance questions to prepare answers (e.g. legal status)
  - ▶ interpreter briefing (before or after, if necessary)
- ▶ Parties assemble, seating positions agreed upon, interpreter provides contact information, mode of interpreting agreed upon (sometimes third parties present, e.g. spouse)
- ▶ Reporter swears in interpreter
- ▶ Reporter swears in deponent
- ▶ Opposing counsel reviews ground rules

# Ground Rules

- ▶ oath, penalty of perjury
- ▶ same force and effect as in a court of law
- ▶ transcript will be prepared
- ▶ only one person can speak at a time
- ▶ may review testimony in transcript, make changes
- ▶ answer with words, not gestures
- ▶ if you don't know or don't remember, say so
- ▶ if you don't understand question, say so (presumption of comprehension)

# Ground Rules, cont.

- ▶ wait for interpretation before answering
- ▶ even if you know some English, answer in [language]
- ▶ difference between estimate and guess
- ▶ you may ask for a break at any time
- ▶ you may consult with counsel at any time
- ▶ any reason why you can't give best testimony now (drugs, alcohol)?
- ▶ any questions?

# Deposition Procedure

- ▶ Deponent states name for record
- ▶ Questions begin
- ▶ General questions (date and place of birth, address, history, etc.)
- ▶ Establishment of facts (how the injury occurred)
- ▶ Questions about medical treatment, consequences of incident, then and now
- ▶ Deponent's counsel may object to questions
- ▶ Deponent's counsel may have additional questions at the conclusion of the deposition



# Interpreting process

- ▶ May be consecutive or simultaneous, depending on parties' preferences
- ▶ Protocol the same as in court
  - ▶ Refer to yourself in the third person
  - ▶ Address deposing counsel
  - ▶ Be prepared to spell names and words in foreign language
- ▶ Sight translation occasionally necessary
- ▶ Depositions usually last 2-3 hours, team interpreting rare
- ▶ Insurance carrier may hire “check interpreter” or use employer representative as monitor

# Sample instructions

Good morning, Mr. Díaz. My name is Dudley Tiburon and I represent the Glutco Insurance Company, which is the workers' compensation carrier for your employer, Sweatshop International. I'm here to take your deposition today. I'm sure your lawyer has explained to you what a deposition is, but I'm going to review some basic points with you before we begin. Incidentally, you probably met with your attorney earlier this morning to prepare for this deposition, and I'll need to know how much time you spent with him.

# Sample instructions

A deposition is an opportunity for one side to gather information from the other side in a process known as discovery. Today I'm going to ask you some questions about the workers' compensation claim you filed through your attorney. You just took an oath to tell the truth, and I want to remind you that you swore to tell the truth on pain and penalty of perjury. That means that it is against the law to be untruthful in your testimony today, and you could face criminal charges if you deliberately misstate the facts for the purpose of obtaining workers' compensation benefits. Your testimony has the same force and effect as if you gave it before a judge in a court of law. Because it is so important for you to tell the truth and to give me your best testimony today, I want to review some ground rules with you before we begin so that this deposition will go as smoothly as possible.

# Sample instructions

Now, you'll notice this lady sitting here to my right, typing on a machine. She's the court reporter, and she's making a verbatim record of everything that is said here today. After this deposition is over, she'll type up your testimony in a booklet called a transcript. When her office, or your lawyer's office, tells you that the transcript is ready for you to review, you'll be able to go over it with your attorney and make any changes you feel are necessary. However, I must tell you that if you do make any substantive changes in your testimony, I'll be entitled to bring that fact to the judge's attention if we should go to trial in this matter.

# Sample instructions

Because the court reporter is typing everything everyone says here, there are a few rules we all need to follow. Only one of us can speak at a time, because she can't make a record when two people are talking at once. It's important for you to wait until the question has been fully asked before you begin your answer. In addition, the court reporter can't write down motions or gestures, so all of your answers need to be audible and in words. Please don't point to a part of your body, for example, or use your hands to indicate the size of something. You have to use words to describe them. Also, don't say "uh-huh" or "unh-unh," because she can't write those down. You need to say "yes" or "no," in words. It's easy for people to forget when they get involved in their testimony, but we'll remind you from time to time.

# Sample instructions

And another thing: We have an interpreter here to translate our questions into Spanish and your answers into English for us. Even if you know some English and think you understand the question in English, you must wait until the entire question is interpreted into Spanish, and you must give your answer in Spanish. If there's anything you don't understand in one of my questions, just say you don't understand and I'll do my best to rephrase it so that you do understand it. If you answer a question, I will assume you understood it. If you don't know the answer or don't remember, just say you don't know or don't remember.

# Sample instructions

I don't want you to guess about any answers, but I am entitled to your best estimate. To explain the difference between guessing and estimating, I like to use this example. If I asked you how long this table here is, you could probably give me a rough approximation of its length, without taking an exact measurement. But if I were to ask you how long the kitchen table in my house is, you would have no idea, since you've never seen it. You'd have to guess. So I don't want you to guess at anything, but you can give me your best estimate of a date, for example, by giving me the month or the year even if you don't know the exact date.

# Sample instructions

I want you to understand, too, Mr. Díaz, that you can take a break at any time during this deposition; this isn't an endurance contest. If you feel you need to get up and stretch, get a drink of water or get some fresh air, just say so. Also, if you need to talk to your attorney at any time, just tell me and I'll be happy to take a break so that you can confer with him in private.

Have you taken any medication or alcohol in the last 24 hours? Do you feel capable of giving testimony today, that is, are there any impediments to your ability to understand and respond to questions? All right, we'll begin now.





Questions?