

Tips for a Video Deposition Witness

By Brian Clune, CLVS

Often I am asked to give advice to attorneys about the witness in a videotaped deposition. It's one thing to take a deposition and see the other side's witness on camera trying to answer tough questions, but when the attorney is expected to prepare and defend a witness in a deposition with video, there are a few tips a CLVS can provide them to help with their success. What follows are a few tips I have given out to attorneys in the past.

To prepare the witness for a video deposition, there are some additional considerations. First, have your witness dress for the deposition in comfortable but professional clothing. Avoid clothing that is checkered or consists of bold stripes and ask them to leave home loud ties or lavish jewelry. Black or white clothing can make the correct exposure of the witness difficult for the camera equipment. The best advice is to wear a dress shirt or blouse in pastel colors. A light blue shirt or blouse will often produce the best color balance and exposure of your witness.

All deposition attendees, especially your witness, should be reminded to turn off their cell phones or other wireless communication devices while in the deposition. Even devices set to "silent" can cause interference with the audio signal in the video deposition.

At the deposition location you should make sure that your witness is sitting in front of a blank wall or neutral backdrop. Do not allow opposing counsel to place your witness in front of a window, large piece of art, windows into an office corridor or other distracting background that will detract from your witness' professional appearance. Lighting in the location should be even in distribution and adequate to produce a good picture without excessive or dramatic shadows on the witness.

Explain to your witness that while it may seem natural to look into the camera during the deposition, they should be looking at the questioning attorney at all times. Caution your witness about looking up at the ceiling or down at the table while answering. If they are reading a document, the witness should look down at the document while reading and then back up at the questioning attorney before answering.

It may be difficult but caution your witness to try to avoid long pauses between the question and their answer to the question. They should sit up in the chair comfortably with both feet on the floor and lean slightly forward with both hands resting naturally on the table. Avoid leaning back in the chair, crossing the arms or playing with any objects. A nervous deponent will often fidget unconsciously with objects on the table. This will be visible on camera for the jury to see even though it is not recorded in the official transcript. The video record can communicate much more than the transcript alone.

Be sure to request a professional -- a Certified Legal Video Specialist trained in how to properly record a deposition without the introduction of bias. Professional equipment, cameras, and microphones will eliminate unwanted distractions from poor video or audio. Do not allow a party to the deposition or their representative to create the video record; this may inadvertently introduce bias.

As in all depositions, it is important to prepare your witness with the facts. Have the witness relax and be unhesitant, succinct, and candid in answering questions. Remember, although the transcript is the official record, often the jury only sees the video record. This means attorneys have additional responsibility when preparing a witness for videotaped presentation at a later date.

Brian Clune, CLVS, is a legal videographer in San Francisco, CA. He is a member of the CLVS Council and serves as faculty at the CLVS Seminar & Forum.