So…You're going to be deposed.

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While a deposition could occur as a result of any number of events, from an auto accident to a shoplifting arrest, we will presume that it somehow resulted from your employment. It probably started with a notification that you or your organization is being sued, and you were identified as being a party to the case.

Examine the File

The first thing that needs to be done is to examine the relevant files for the case.

What reports were prepared?

What was the disposition of any evidence?

Are there others who might be witnesses to the incident?

Sometimes it is the examination of the file that the first problems with the case are discovered. An incomplete report, missing evidence, or other problems may cause difficulties in the upcoming depositions, settlement conferences, or at trial. The shortcuts taken at the conclusion of the case, such as failure to produce a comprehensive report or to preserve evidence, can create problems for the case and the individual during her deposition. Expect that everything that was done, not done, said, or written about the incident will be examined under the microscope of a deposition.

Discovery

After receiving the complaint and usually fairly early on in the proceedings, the plaintiff's attorney will send a series of interrogatories, or requests for information. This begins the process of discovery. *Discovery* allows the opposing sides to disclose witnesses likely to have discoverable information, the locations of tangible things that might be used to support its claim or defense, insurance agreements, and even experts who may testify. There are a number of jurisdictional rules, both federal and local, which control the discovery process during a case.

The plaintiff's interrogatories help establish what information the defendant may possess relevant to the case. Upon receipt, the company's attorney will request the information from appropriate sources within the organization so he is able to craft answers to the interrogatories. He then may edit his responses to provide the least amount of information necessary to answer the interrogatory.

For example, Interrogatory #15: *"Describe how the injuries occurred?"*

Answer: *The defendant fell down.*

One can imagine the follow-up questions that would be used in a deposition to expand such a restrictive answer. Unfortunately, an evasive response to an interrogatory often does not provide for the opportunity to ask additional follow-up questions, as additional interrogatories might draw objections from the opposing counsel. At the very least, if agreed to, the additional interrogatories might not be answered for weeks.

Many interrogatories are used to identify factual information that can be used to help a witness answer a question. For example, requesting documents that list all the suppliers used during a particular period might help a witness recall or discuss this topic during her deposition.

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There may be some additional motions filed to limit discovery when one of the parties believes that the information requested is privileged or can be protected as a product of trial preparation. But barring that, the information generally must be provided to opposing counsel.

The attorneys will then meet to discuss the nature of the claim and defense, obtain a quick settlement in the dispute, or to plan the discovery process. It is here that objections to discovery are signed by counsel to be later ruled on by the court whether the information must be provided. If the court refuses a protective order, the information must be turned over to the opposing counsel.

Your Deposition

Unless the court has ordered otherwise, a deposition may be taken from anyone believed to have relevant information about the case. This might even include former employees of the organization. In some situations a single member of the company may be designated to testify to infor mation the company may possess aboutgeneral

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matters pertaining to the lawsuit.

Usually, the parties will agree to a "reasonable" time and place that is mutually convenient, unless there is a need for the court to intercede in the scheduling. The attorney intending to take the deposition will then provide written notice to all the parties to the action. This notice will also include how the deposition is to be recorded. Baring local rules to the contrary, a deposition may be audio taped, videotaped, or recorded by a stenographer.

A subpoena may also be served on the witness, which will list any items that must be produced at the time of the deposition. In general, the deposition will be taken in the geographic area where you, the witness, reside or work and will be taken during business hours.

Opposing Counsel. There are several motives the opposing counsel may have for taking a deposition, not the least of which is evaluating you as a witness and competency of your attorney. The deposition allows an attorney to lock in testimony, gather information about what is known while learning what is not known. It is also a proving ground where theories are tested and discarded before trial.

Clearly, the attorney is learning the answers to questions he may later ask at trial. During a cross examination at trial, the prudent attorney will not ask a question that he does not know the answer to because he wants no surprises. This is clearly not the case during a deposition where he has much more freedom to explore. On a positive note he is also giving you, the witness, practice at answering his questions. Finally, a deposition also affords both sides an opportunity to open the lines of communication toward a possible settlement.

Your Attorney. Prior to the deposition, you will have an opportunity to meet with your attorney to discuss the case. It is prudent for you to ask whether this conversation is covered under attorney-client privilege or is open to discovery during the deposition. Knowing this will relieve any concerns you might have during the deposition.

There are several motives the opposing counsel may have for taking a deposition, not the least of which is evaluating you as a witness and competency of your attorney.

Expect that your attorney will brief you about the upcoming event, analyzing his theory of the case and the position that your testimony will play. Undoubtedly, you will be asked sample "test" questions to help prepare you for the actual deposition. Anticipating questions that might be asked during the deposition will help most witnesses give the best relevant answer without leaving out pertinent information.

Finally, most attorneys will accompany you to the deposition to reduce some of the nervousness we all would feel in a situation like that.

The Big Day. Most of the time you can expect that the opposing counsel will attempt to establish rapport with you before beginning the deposition, but remember that anything said may become fair game later while you are under oath.

In the room, you can expect that there will be someone, usually a court reporter, who will administer the oath that you will give only truthful testimony. Of course, your attorney will be there, as will the plaintiff's counsel and perhaps others. On occasion experts are asked to sit in and observe the process, to suggest questions, evaluate answers, and to prepare for their testimony. If the deposition is to be audio or videotaped, there may also be technicians present to run the equipment.

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Some attorneys will follow an outline while others will jump from topic to topic in an attempt to confuse the witness. There is no set standard format for a deposition, but depositions tend to contain some common elements:

- Often at the beginning of the deposition, the attorney will make sure that the witness understands the process, her rights, and obligations. This explanation is not done as a kindness for the inexperienced witness, but to protect the record from attack at some later point.
- The witness may also be asked if he is under medication, using alcohol or drugs, or suffering from any illness that may prevent truthful testimony.
- The witness will be asked about his background, expertise, education, or special classes he has attended.
- Expect that the attorney will use broad open questions requiring a narrative response at first, becoming more focused as the testimony continues.
- When a topic is being concluded or needs to be clarified, the attorney will often use a leading question to restate or summarize your testimony like the following example:

QUESTION: *So then other than what you mentioned, it would be true that there was no other information provided you during your training?*

ANSWER*: Yes, that's correct.*

- The attorney may or may not use contradictory evidence during a deposition. If such evidence exists, it may well prove more useful at trial to challenge the individual's credibility. Plus, the impact of being challenged with unexpected information can have a Perry Mason-style impact that the jury should see.
- Expect that most attorneys will save any confrontational exchanges for the end of the deposition, since the

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building a culture where diversity is valued and newcomers naturally feel welcome. His pulse points for action include hiring the type of people who share common values that are aligned with the company mission, then intentionally model behaviors that reinforce the benefit diversity brings to a team.

"At Hollywood Entertainment, we hire people who have the core values and talents that match our company culture," says Meadows, "versus, hiring someone for a specific skill that we can always train them to do."

Meadows looks for leaders who are open and objective, especially to new and different ideas. Equally important are candidates who believe that diversity is a competitive advantage for business today.

"Businesses that push the envelope are often risk takers, their employees listen and share a lot of different opinions," he explains. "Once you create a platform for different ideas, you're better positioned to spot the next best thing. Diversity moves the needle."

When it comes to helping a new hire fit in, Meadows makes sure he acts with intention that welcomes the newcomer and reinforces his or her value to the team. He uses subtle, but effective, ways to publicly show support.

"I reaffirm what they're saying in a meeting. I solicit feedback and ask their opinion in front of others," he says. And more important, "I take the time to welcome and recognize new team members. I show others I value them as an individual." Such inclusive behaviors teach the team how to promote diversity while reinforcing an attitude that values differences.

Meadows is also willing to take action if someone isn't open minded and diversity friendly. "If someone does not fit a culture that values diversity, you need to deal with them one-on-one," explains Meadows. "If you can't motivate an individual to be more open-minded, you would likely both come to the conclusion they needed to leave."

As a leader Meadows believes in his people and as a result they believe in each other. Meadows knows that the power of such mutual respect naturally creates a work team that embraces diversity without having to be intentional about it. ■

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witness is tired and he has gotten all the cooperation and information he needs. This may especially be true if the attorney's strategy is to encourage a settlement or to dissuade an expert from testifying by using an aggressive cross-examining style.

- While your attorney may object to a question, you will generally be required to answer after the objection has been noted for the record. An exception might relate to attorney-client privilege or when there has been a court order limiting the deposition's inquiry. You should respond to the question after the objection, unless your attorney instructs you not to answer.
- With some exceptions, you can confer with your attorney, but this is often noted in the transcript.
- It is permissible to add to answers you have previously given if there is additional information you remember or you answered incorrectly.
- Under some circumstances, a character witness can be asked about his arrests or convictions.
- If a deposition may be used in place of live testimony at trial, expect that there will be aggressive cross-examination at its conclusion similar to what would occur at trial.
- Once a typed copy of the deposition has been produced, the witness will have an opportunity to review it for accuracy and make any changes necessary before signing it.

Depositions will vary depending on local rules or practices, the attorney's training, preferences, and resources, but expect that there will be a comprehensive examination of your role in the situation. Answer the questions truthfully and as succinctly as possible. But most of all, use the deposition as a learning experience so you and your case are better prepared should there be a next time. ■

Women in LP Caucus

The National Retail Federation (NRF) recently held the inaugural conference call for their newly announced Women in Loss Prevention Caucus. Over twenty retailers from around the country were represented and exchanged information.

The caucus is designed to serve as a support group to advocate and encourage female executives in the retail industry.

The group will hold its first meeting during NRF's Loss Prevention Conference, June 22 – 24, at the Orange County Convention Center in Orlando, Florida.

During the meeting, key issues currently affecting women in the workforce will be discussed, including:

- Mentoring needs for mid-level LP managers,
- How to capitalize on advancement opportunities in the workplace, and
- Best practices for managing line personnel.

If you are interested in participating, contact the NRF at 800-673-4692.