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CHRISTIAN D. SCHWEMM
President

STEWARD ALERT WITNESS PREPARATION

Dear Sister/Brother:

April 23, 1998

As an APWU Advocate, I have found that witnesses are often intimidated by the Arbitration process and need considerable preparation before giving their testimony. Over the years, I have developed, as I am sure other Advocates have, a Pre-Arbitration Process for witness preparation. Recently, I came across an excellent set of instructions and a checklist developed by Attorney Henry H. Wallace for preparing clients for deposition. Since I believe this is a helpful tool for Stewards and Advocates, the instructions are detailed below:

Sincerely and fraternally,

Christian D. Schwemm, President

THE TEN COMMANDMENTS OF BEING DEPOSED By Henry H. Wallace

PREPARING FOR DEPOSITION

As a personal injury attorney, I have found that clients are often intimidated by the deposition process and need considerable preparation before giving their testimony. Some are even unaware that an attorney will be present when they are interrogated. Consequently, at my law offices we have developed instructions and a checklist for clients to take home after their pre-deposition meeting and to review carefully on the day of the deposition before meeting with us.

The instructions are detailed below. We think they help clients, particularly those in medical negligence cases, arrive at deposition confident - and prepared. Your deposition is very important to your case. It is part of what the law calls "discovery", which affords the defendant the chance to learn about your case. You must answer allowable questions, but remember that revealing too much too easily will only help the defendant's case - and hurt yours.

All those who have been injured or who are related to a family member who has been injured because of negligence have a natural urge to tell their story. Resist this urge. The time to tell your story will be at trial when a judge and a jury are there to hear you.

The most important people listening to you at your deposition are the attorneys for the other side. They are there to learn everything they can about your case and then figure out a way to beat you. You must tell as little as possible while still being truthful.

Your deposition will be taken in a lawyer's office, probably at a conference table. The attorneys for the other side will have an opportunity to ask you questions. A lawyer from our office will also be there to protect you from unfair questions and to make necessary objections. A court reporter who will take down stenographically everything you say will also be there. Your comments will then be transcribed into a book. Before trial it will be your obligation to read and virtually memorize this book of your testimony so that you do not accidentally contradict yourself when you testify at trial. Obviously, the shorter the book, the less difficult your cross-examination at trial will be.

Contradicting yourself will cast doubt on all your testimony and could lead the defendant's attorney to accuse you of perjury.

The following are 10 points to remember when testifying at a deposition:

1. **DEPOSITIONS ARE NOT CONVERSATIONS.** Depositions are formal, legal proceedings. You are not there to make the other side understand your story. Be polite, but don't make small talk. If there is no question pending, don't say anything.
2. **YOU CANNOT WIN YOUR CASE AT A DEPOSITION.** Do not help the defense attorney understand your case. Give him as little information as possible while still telling the truth.
3. **THINK BEFORE YOU ANSWER.** Take your time. Make sure you understand the question. Do not tell the attorney asking the question what you think he wants to know. Just answer the question he asks you.
4. **KEEP YOUR ANSWERS SHORT.** When you give lengthy answers, you're revealing more information - and giving the defendant's attorney ideas for more questions.
5. **NEVER GUESS.** You might be wrong. If you do not know the answer, say you do not know. If you do not understand the question, say so. You may say, "What do you mean by that?"
6. **DO NOT VOLUNTEER ANY INFORMATION.** If there is a silence, do not fill it with talk.
7. **DO NOT GET ANGRY.** Becoming angry sometimes will make you reveal too much information, and will send the message that you are ill-prepared to be a witness and cannot control yourself. The attorneys for the other side will try to take advantage of that weakness in trial. Also, do not make jokes. Your deposition is a serious matter.
8. **MAKE EYE CONTACT.** Look at the attorney asking you questions. Stay calm.
9. **STOP TALKING WHEN YOUR ATTORNEY OBJECTS.** There are two types of objections. Neither can be made if you are talking. When we say, "I object", stop talking. We may merely be making an objection to mark a place in the transcript where an improper question and answer can be deleted by the court. If that happens during the deposition, after we have made the objection, we will permit you to answer the question. On the other hand, some questions are completely improper and should never get an answer. In such a situation, we will tell you not to answer the question. Follow the instructions. The other side must then obtain a court order to get an answer.
10. **DO NOT DISCLOSE ANYTHING YOUR ATTORNEY HAS TOLD YOU.** It is proper for us to prepare you to give your deposition, but everything we tell you is privileged. These instructions are privileged; what other attorneys, paralegals, and consultants in this office have said verbally or in writing is subject to the attorney-client privilege, and the other side should not inquire about it. Never volunteer such information. If a question calling for such information is asked, we will object and instruct you not to answer the question.

If you follow these 10 rules, your deposition will go well and not be excessively long. If you have questions, please ask them at the conference before your deposition. Be sure you understand what is expected of you. We are here to help you, and we'd like to make a necessary legal process as manageable as possible.