

What was that? Practical tips for interpreted depositions



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Because most lawyers don't work with a roomful of polyglots, it is sometimes necessary to take a deposition in a language you do not speak. Though common, such depositions are inherently more complex than a standard deposition. Careful preparation is required to ensure that the deposing attorney gets necessary information with a minimum of confusion, and the defending attorney protects their witness and the accuracy of the record.

Here are five things to consider when scheduling and preparing for a deposition that will be taken through an interpreter:

Consider if you need additional time for the deposition. Interpreted depositions can last much longer than a standard deposition. The time it takes to ask a question, wait for the translation, hear any objections, get a response from the witness, and have that response translated back, can easily eat up the time allotted under the Minnesota and Federal Rules of Civil Procedure. If you know in advance that you will have a significant number

of documents, or many topics to cover, consider agreeing with opposing counsel to extend the deposition by a few hours or an additional day. Because cases often involve interpreted depositions on both sides, it may be an area where you can reach common ground and ensure you get all the discovery you need.

Get translations of key documents well in advance. You may want to use a document written in another language, or use a document written in the language you speak, but the witness does not. In those circumstances it is useful to get certified translations of the documents you plan to use well before the deposition and have the documents organized before marking them. A best practice is to mark the original document, the translated document, and the certification of translation, to ensure the record contains everything you need to introduce it at a later proceeding.

Determine exactly what language the deponent speaks. Regional differences in language can be significant, so ensure that the interpreter you hire can communicate effectively and accurately with the deponent. It is often not enough to know that a person speaks "Spanish," if, for example, they speak a regional dialect that varies significantly from the dialect the interpreter is familiar with. To avoid the perfect becoming the enemy of the good, however, a clear dialogue among counsel about the specific language the deponent speaks and the limitations of the interpreters' abilities can make it possible to overcome broad objections regarding the interpreters' services.

During the deposition use short sentences, and instruct everyone to allow extra time before answering questions. Once the deposition starts,

it will serve everyone, in particular the court reporter, if the questions are short or broken up into phrases so that the interpreter can translate accurately. A useful initial instruction is to remind the witness to wait until the question is complete and the interpreter has finished speaking before answering. It is usually best to wait to object to a question until the interpreter has finished translating the question.

Use the errata process to ensure the transcript accurately reflects the witness's testimony. Perhaps more so than with a standard deposition, the processes afforded under Minn. R. Civ. P. 30.05 and Fed. R. Civ. P. 30(e) are tools that you should use to ensure the final deposition transcript is an accurate record of the witness's testimony. A common problem during interpreted depositions is the trap of the "almost," where the interpreter summarizes or paraphrases something the deponent said. Reviewing the transcript with the witness, often with the help of your own interpreter, can help identify places where the witness disagrees with the translation or wants to correct something that the interpreter missed.

Taking or defending the deposition of a witness testifying in a language you do not speak can be daunting. But with careful preparation, a thoughtful attorney can ensure that the deposition proceeds smoothly and results in a clean record.

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