would otherwise not be able to afford."

- "Pro bono has made me a better person and has also enabled me to show my children that helping others and being a good citizen is very important, and that when we use our talents to make a positive impact, we are a success in life."
- "Pro bono feeds the soul. It will make you a better lawyer."

The ISBA's *Pro Bono Partner* initiative offers our members the opportunity to meet the ever-growing need for pro bono service and to "do good by doing pro bono." By becoming a pro bono partner, you will commit to:

1. Seek out the local pro bono services being supplied to individuals or charitable, religious, or civic organizations in your community;
2. Attend or support a recognition ceremony for those who participate in pro bono services in your community;
3. Consider attending trainings provided to lawyers who provide pro bono services;
4. Commit to joining the efforts to increase access to the legal justice system.

The ISBA can provide you with a variety of ways to participate in, promote, and highlight pro bono work in your local communities when you visit https://www.isba.org/probono.

Make your pro bono commitment today. Take the pledge here: https://www.isba.org/probono/partner. Answer the call.■

Discovery Depositions: Preparation & Execution

BY THOMAS M. CONNELLY

Discovery depositions are often the most useful discovery tool in pretrial litigation. They allow both parties to obtain detailed, fact-intensive information about their case. A few minutes of a discovery deposition may reveal more information than a whole set of interrogatories or other written discovery. Discovery depositions also allow the parties to develop their case by showing both sides what the evidence will look like at trial. When discovery depositions go well, they can be used as leverage in settlement negotiations. In fact, because most cases settle short of trial, discovery depositions are in many respects the most important stage of the case, as they may be the final opportunity to present your client's evidence. Due to the importance of this discovery tool, it is crucial that lawyers are properly prepared for depositions so that they can execute their line of questioning and develop their case in a favorable manner.

Preparation

Preparing for the deposition begins with written discovery. It is important to make sure that you have requested all of the pertinent information with interrogatories and requests to produce prior to moving forward with any depositions. During the written discovery stage, you should begin collecting and reviewing the documents that will guide your questioning on the day of the deposition. In a personal injury case, for example, this includes documents such as the crash report, witness statements, statements of any parties, and the plaintiff's medical records. Being familiar with these documents will help you decide what additional information you need from a witness at a discovery deposition.

You should also study the Illinois Pattern Jury Instructions (IPI) or other available law concerning your case. The IPI, case law, and statutes will help you determine what facts you need to prove at a deposition in order to legally prove your case (or disprove opposing counsel's case).

Once you have reviewed the relevant documents and law, it is time to begin drafting your outline. Ultimately, whether you choose to use a detailed, thorough outline in your deposition is a choice of personal preference; however, no matter how much information you choose to include in your outline, it is always necessary to make sure you cover all of the facts and questions needed for each particular witness, as it is likely your first and last opportunity to ask this person questions under oath.

Generally, the topics of a deposition outline will include the introduction, background information, and the specific facts regarding the matter. Again, using a personal injury case as an example, a typical outline of the plaintiff's treating physician would cover the following topics:

- Introduction
  - Introduce yourself
  - Go over ground rules
- Background
  - Education
  - Certifications
  - Professional Experience
- Facts of the Incident
  - What event caused the injury
  - Are the facts of the injury-causing event consistent with the plaintiff's symptoms?

- Medical Records and Treatment
  - Plaintiff's symptoms and subjective complaints
  - Doctor's objective findings and diagnosis
- Damages
  - Pain
  - Loss of Normal Life
  - Lost Wages
  - Medical Bills
- Opinions
  - To a reasonable degree of certainty, the injury was caused by the event
  - All treatment was reasonable and necessary
  - Medical bills are reasonable and customary

This example is a very truncated version of a more detailed outline that I would typically use in a deposition. It is up to you to determine how much information you cram into your outline, but I often find that you want as much information as possible without getting to the point where you have every question written out. Too many fully written out questions will likely cause you to follow a script rather than let the deposition flow naturally.

Execution

Once you have prepared for the deposition, you now have to execute your questioning properly so that you can find out as much information as possible from the witness. Generally, it is useful to begin with open-ended questions to find out what the witness knows. After actively listening to the witness's answers, you can use more specific follow-up questions to dig in deeper to the facts most relevant to your case.

Additionally, one of the main goals of any deposition is to lock the witness in to their testimony. You want to make sure that you have exhausted all of the potential information regarding a certain topic before moving on so that it becomes difficult for the witness to change his or her testimony at trial. This is especially useful when the witness answers questions with "I don't know" or "I don't remember." If you properly exhaust the memory of the witness, you can use the witness' lack of memory to your benefit.

Another tactic includes the use of rules or standards of conduct in your questioning. Turning back to a personal injury case as an example, you can use certain rules of the road in your deposition of the defendant driver to help them to admit that they were negligent. Here is a simplified example of using the rules of the road with a defendant driver:

Q: Mr. Smith, do you agree that the rules of the road require drivers to come to a complete stop at a stop sign?
A: Yes
Q: Do you agree that rule is in place to prevent crashes from occurring?
A: Yes
Q: Do you agree that requiring drivers to come to a complete stop at a stop sign is an important rule of the road?
A: Yes
Q: Mr. Smith, is it true that you did not come to a complete stop at the stop sign?
A: Yes.
Q: And by not coming to a complete stop at the stop sign, you broke that important rule of the road, correct?
A: Yes.

In an actual deposition the questions and the defendant's answers will likely not come out as clean as in that example, but it helps highlight the usefulness of using rules in depositions. You either get the defendant driver to admit that the rule or standard of conduct is in place and that he violated it, or he will disagree that such rule exists and will later look insincere in front of a jury.

Questioning with rules or standards of conduct may also bring out many objections from opposing counsel. In any deposition, it is important to not get distracted or frustrated by objections from opposing counsel. If you know you have asked a good question, ignore the objection and continue forward with your questioning. If you believe the objection is proper, re-ask the question in a different way to overcome the objection.

Conclusion

Nothing can beat preparation. I still remember my trial advocacy professor saying that you do not need to be the smartest lawyer or the lawyer with the most resources, but you need to be the hardest working lawyer. Hard work and preparation will allow you to take successful depositions that can be used as leverage in settlement discussions or to better prepare you for trial.■

Thomas M. Connelly ("Tom") is a trial attorney with Meyers & Flowers, LLC, with offices in Chicago, Saint Charles, and Peru. His practice includes wrongful death, personal injury, medical malpractice, and products liability.