

WHAT TO EXPECT: THE DIVORCE DEPOSITION

A “deposition” is part of the larger process known as discovery, which requires parties to disclose all the information they have concerning the issues related to the divorce to encourage settlement. This information includes financial documents like tax returns, pay stubs, and bank records, and your answers to written questions – known as “interrogatories”. The deposition typically occurs when most if not all of this information has been disclosed.

WHAT IS A DEPOSITION?

The deposition is a sworn statement, taken in the office of one of the lawyers, before a court reporter who takes a transcript of everything that is said. Your spouse’s lawyer will ask you questions and you will be required to answer those questions. While your attorney may object to questions asked during the deposition, very few questions can be objected to.

It is important to note that depositions are not taken in every case as they may not be necessary for a favorable resolution and/or can be costly. You and your lawyer will discuss whether it is necessary for your lawyer to take the deposition of your spouse, as the value of the deposition might not outweigh its cost given the facts of your case.

If custody is not contested, and the basic issue is not the identification and characterization of you and your spouse’s assets and debt, but rather the nature of their distribution and allocation between you and your spouse, then depositions may be unnecessary.

WHY DOES A LAWYER NEED TO TAKE A DEPOSITION?

Lawyers – including yours—take depositions to help them root out information that can encourage settlement and to develop a strategy for your case. Further, depositions help your attorneys or your spouse’s attorneys—if you are being deposed—test how you or your spouse function under pressure from questioning; probe the truth and accuracy of statements; and assess whether an individual will make a good witness.

Taking the deposition of your spouse also functions to help your attorney develop and prepare his or her cross-examination of your spouse, and gives your attorney the opportunity to lock in your spouse’s testimony so your spouse may be impeached if his or her testimony changes during questioning.

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WHAT WILL YOU DO TO PREPARE FOR A DEPOSITION?

Before your deposition, your lawyer will meet with you to go over the rules of the deposition, explain what you should expect in a typical deposition, and discuss the questions you can anticipate in your particular case. Don't be surprised if your lawyer also asks you questions that may be raised by your spouse's lawyer, just to see how you react to the questions and how you perform under stress.

WHAT CAN YOU EXPECT FROM YOUR SPOUSE'S LAWYER DURING YOUR DEPOSITION?

Because the object of the deposition is to get information from you, your spouse's lawyer will likely begin by using a friendly, conversational tone to get you to relax and let your guard down. Remember, however, that a deposition is not a conversation and your spouse's lawyer is not your friend. He or she is looking for information to help your spouse's case. It is advisable, then, to guard your emotions and answer the attorney's questions as straightforwardly as possible, even if the lawyer gets more aggressive and raises his or her voice, or asks difficult questions.

WHAT QUESTIONS WILL YOUR SPOUSE'S LAWYER ASK DURING YOUR DEPOSITION?

BASIC INFORMATION

At the start of the deposition, your spouse's lawyer will likely ask questions regarding your personal information, your health history, and basic information on your children, if any. Possible questions include:

- What is your date of birth?
- What is your Social Security number?
- What is your current address?
- Are you currently being treated by a physician?
- When was the last time you were treated by a physician?
- Are you currently taking any prescribed medication?
- Are you currently taking any non-prescribed medication?
- How many children do you have?
- What are your children's names and birth dates?
- What year are your children in school?
- What school do your children go to?
- What time does your children wake up in the morning?
- Who makes your children's breakfasts/lunches?
- What are names of your children's teachers?
- How are your children doing in school?

RELATIONSHIP WITH CHILDREN, ROMANTIC PARTNERS

If custody is an issue, your spouse's attorney will likely ask questions to determine what you know about your children and what you do in connection with them. This includes looking into your routines with your children and your lifestyle,

including romantic relationships. In some states, conjugal cohabitation—having a sexual relationship with another individual you are living with—can terminate a spouse’s rights to spousal support/alimony.

Even if you are in a state where conjugal cohabitation is irrelevant to your case, prevailing psychological wisdom – whether wrongly or rightly – holds that introducing paramours, or new “friends”, to children (particularly young children) can be very confusing and upsetting to the children. It is generally frowned upon.

The amount of care and supervision you give your children will also be under scrutiny. It is not unusual for the parent who has not been the primary caretaker to become considerably more involved in the children’s lives once a divorce has been filed, so expect questions regarding your level of involvement before and after the divorce filing. Possible questions include:

- What current address do you live at?
- Who lives there with you?
- How long has he or she lived there?
- Do you have a sexual relationship with him or her? Do you share the same bed/bedroom?
- Was your spouse present at the children’s births?
- Who has been the primary caretaker of your children?
- Who makes the meals for your children?
- Who takes the children to the doctor?
- Who volunteers at the children’s schools?
- How do you discipline the children?

STATE SPECIFIC: DISSIPATION OF ASSETS

In states where the concept of dissipation of the marital estate exists, your spouse’s attorney may ask about the cycle of your marital relationship. Dissipation generally is defined as the selfish use of marital assets at a time when the marriage is undergoing an irretrievable breakdown. A finding of dissipation usually results in the dissipating spouse being charged with and awarded the sums dissipated, thereby enhancing the non-dissipating spouse’s share of the remaining marital estate. Possible questions include:

- When did your marriage start its irretrievable breakdown?
- When, in your opinion, was the marriage irretrievably broken down?

EDUCATION, EMPLOYMENT AND INCOME HISTORY

In cases where spousal support/alimony is involved, you should be prepared to answer questions about your educational background, employment history, salary history, and job benefits. Your spouse’s attorney may also ask questions regarding your job in relation to how it affects your relationship with your children, if you have them. Possible questions include:

- Did you graduate from high school?
- Do you have any post-high school education or professional training?
- Where are you currently employed?
- How are you compensated?
- Do you have any additional sources of compensation?

- How often are you paid?
- What time do you leave in the morning for work?
- What time do you come home from work?
- Do you travel for business?
- How often do you travel for business?
- Have you ever missed any of your children's events because of business- or work-related events?
- Do you have health insurance?
- Do you have any stock options?

PROPERTY AND DEBTS

Because the family home is often the largest asset and may hold some sentimental value, it may also be the most contested asset during a divorce. You will likely be asked extensive questions about when the marital residence was purchased, what the source of the down payment was, and how much each spouse contributed to the down payment. Your bank account will also be under scrutiny to determine your liabilities to creditors. Possible questions include:

- When did you acquire the marital residence?
- What was the source of the down payment for your marital residence?
- Was the down payment a "loan" from a parent?
- Was the down payment a gift from a parent?
- From what account were the mortgage and expenses paid?
- Have you remodeled or improved the marital residence since you bought it?
- From what account were these remodels or improvements paid?
- Do you have any joint accounts?
- Who controlled the joint account?
- Who had access to the account?
- Who was responsible for paying the bills/managing money?

DIFFICULT SUBJECTS

Theoretically, a question of domestic violence eliminates any questions of custody; in practice, however, that is not necessarily the case. Your spouse's attorney may ask questions regarding past incidents in this area as a spouse's behavior may have an impact on his or her relationship to the children and other aspects of the case. Your spouse's attorney may also inquire about drinking, drug use, abuse, addictions, and even criminal history, although the latter may bring up some issues for your attorney to discuss with your spouse's attorney before your deposition.

Your spouse's attorney can ask you questions on a variety of subjects—including some very difficult ones—during your deposition. Added to the uncertainty and anxiety that comes with a divorce, the deposition can be emotionally and even physically exhausting. Your attorney, however, is there before and during the process to lend support if necessary, and to prepare you for your case's next steps.