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LITIGATION CORNER: 3 THINGS TO REMEMBER IF YOU ARE BEING DEPOSED

If you are a high level school administrator or school board member, it is very likely that you will eventually be required to give a deposition. A deposition is a question and answer session, under oath, wherein opposing counsel asks questions regarding the underlying lawsuit or claim at issue. Depositions are common in almost every litigated case as they are a necessary discovery tool used to gather facts, admissions, and other information. We recommend that you remember the following three things if you are ever asked to give a deposition:

1. Be Prepared

You will often be asked questions regarding events which took place years prior to the actual deposition. As time passes and memories fade, it is important to review any relevant documents that may exist to better help you refresh your recollection of events that occurred before the deposition. Relevant documents should include the plaintiff's complaint, contemporaneous personal notes, relevant correspondence, evaluations, and any other documents relevant to the issue at hand. It is important that the testimony you offer at your deposition is consistent with the testimony you may give months later at a trial. Inconsistencies between the two can lead to credibility issues with the jury. Also, spending an hour or so reacquainting yourself with the facts of the case will not only help with the accuracy of your testimony, but will also likely make you less anxious when testifying.

2. Don't Guess

The biggest mistake witnesses make at a deposition is offering an answer they really are not sure is correct – or in other words, guessing. You should never offer testimony you are not sure is correct. It is perfectly acceptable to say, “I don't recall” or “I don't remember” in response to a particular question. It is much easier to explain to a jury after your deposition that you were able to subsequently refresh your memory on a particular issue than explaining why you affirmatively testified under oath to a completely different version of events at your deposition. If you offer an answer to a question, it is assumed that your answer is your best recollection of events. Therefore, avoid the urge to offer responses that are not based on your specific personal recollection.

3. Answer the Question Presented

Another common mistake witnesses make at a deposition is that they offer more information than is requested by the questioner. Most questions at a deposition can be answered in a sentence or two. For whatever reason, however, many witnesses feel compelled to offer long, narrative responses to questions. Such responses only serve to make the deposition longer, often result in more questioning, and provide the other side with information to which they otherwise should not have been privy. Therefore, it is important to listen to the question and offer a direct, succinct response.

In sum, having to testify in the process of litigation can be uncomfortable. However if you are prepared and ready to give knowledgeable, concise answers it will help the process go more smoothly.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.