

THE SUPREME COURT *of* OHIO
COMMISSION ON PROFESSIONALISM

PROFESSIONALISM DOs AND DON'Ts

DEPOSITIONS

If there is one area of the practice of law that consistently gives rise to an inordinate number of complaints about lack of professionalism, it is the area of depositions. Depositions, of course, are an extremely important and valuable component of our adversary system, but, if abused and mishandled, they can engender unnecessary and costly strife that impedes and undercuts the entire process. To help correct this situation, the Commission on Professionalism is publishing the following guidelines, a set of deposition "DOs and DON'Ts." The commission believes that if lawyers follow these guidelines — which are consistent with, and to some extent provide specific amplification of, the Supreme Court's Statements on Professionalism — lawyers will be able to use depositions to advance the legitimate interests of their clients, while, at the same time, treating all participants in the process, including deponents and opposing counsel, with courtesy, civility, and respect. It is not the commission's intention to regulate or to suggest additional bases for discipline, but rather to facilitate the promotion of professionalism among Ohio's lawyers. In short, by adhering to these guidelines, lawyers will be acting as professionals and in the manner that the courts expect.

Therefore, as a lawyer who is scheduling, conducting or attending a deposition follow the do's and don'ts on the following pages.

DEPOSITIONS

DO

- DO review the local rules of the jurisdiction where you are practicing before you begin.
- DO cooperate on scheduling. Rather than unilaterally sending out a notice of deposition, call opposing counsel first and cooperate on the selection of the date, time, and place. Then send out a notice reflecting the agreed upon date.
- If, after a deposition has been scheduled, a postponement is requested by the other side, do cooperate in the rescheduling unless the requested postponement would be one of those rare instances that would adversely affect your client's rights.
- DO arrive on time.
- DO be prepared, including having multiple copies of all pertinent documents available in the deposition room, so that the deposition can proceed efficiently and expeditiously.
- DO turn off all electronic devices for receiving calls and messages while the deposition is in progress.
- DO attempt to agree, either before or during the deposition, to a reasonable time limit for the deposition.
- DO treat other counsel and the deponent with courtesy and civility.
- DO go "off record" and confer with opposing counsel, privately and outside the deposition room, if you are having problems with respect to objections, the tone of the questions being asked or the form of the questions.
- DO recess the deposition and call the court for guidance if your off-the-record conversations with opposing counsel are not successful in resolving the "problem."
- If a witness is shown a document, do make sure that you have ample copies to distribute simultaneously to all counsel who are present.
- If a deponent asks to see a document upon which questions are being asked, do provide a copy to the deponent.
- DO inform your client in advance of the deposition (if the client plans to attend) that you will be conducting yourself at the deposition in accordance with these "dos and don'ts."

DEPOSITIONS

DON'T

- DON'T attempt to "beat your opponent to the punch" by scheduling a deposition for a date earlier than the date requested by your opponent for deposition(s) that he or she wants to take.
- DON'T coach the deponent during the deposition when he or she is being questioned by the other side.
- DON'T make speaking objections to questions or make statements that are intended to coach the deponent. Simply say "object" or "objection."
- DON'T make rude and degrading comments to, or ad hominen attacks on, deponent or opposing counsel, either when asking questions or objecting to questions.
- DON'T instruct a witness to refuse to answer a question unless the testimony sought is deemed by you to be privileged, work product, or self-incriminating, or if you believe the examination is being conducted in a manner as to unreasonably annoy or embarrass the deponent.
- DON'T take depositions for the purpose of harassing a witness or in order to burden an opponent with increased litigation expenses.
- DON'T overtly or covertly provide answers to questions asked of the witness.
- DON'T demand conferences or breaks while a question is pending, unless the purpose is to determine whether a privilege should be asserted.
- DON'T engage in conduct that would be inappropriate in the presence of a judge.

