

Section 11: Preparing and Participating in Depositions

Many agents have never participated in a deposition. A deposition is part of the pre-trial discovery (or fact finding) and is set up by one of the attorneys involved to gather sworn testimony. A court reporter transcribes the testimony. The transcript can be used in trial to either contradict or refresh the memory of the witness. The deposition can be the foundation to a successful defense of the agency. As one panel attorney from Swiss Re Corporate Solutions said, “The best deposition results are the product of the best deposition preparation.” Here is some advice from the panel counsel for Swiss Re Corporate Solutions for preparing and participating in a deposition:

- ✓ Tell the truth – the truth is what you know for a fact, not speculation and guessing
- ✓ There is no substitute for preparation, devote adequate time for counsel to prepare agency staff for the deposition – BE PREPARED
- ✓ Follow the advice and recommendations of counsel
- ✓ Understand your legal standard of care and duty to advise
- ✓ Know every detail of the customer file and your interactions with the customer and carrier like the palm of your hand
- ✓ Where possible be familiar with the depositions of other agency personnel or the insured
- ✓ Listen carefully to what is asked and answer accordingly
- ✓ Don’t be afraid to ask for clarification of a question
- ✓ Concisely answer only the question asked and do not volunteer information in an effort to get your version of the facts out there
- 🔊 Do not rush in reviewing the documents presented to you, thoroughly review them prior to responding
- 🔊 Do not bring the customer file with you to the deposition unless specifically asked to do so by your attorney
- ✓ Depositions can be adversarial and you don’t have to agree with what is asked simply because it is asked
- ✓ Try not get emotional, stay very factual
- ✓ Consider holding a mock deposition to be better prepared for the real thing
- ✓ Formulate responses to questions in your head and don’t “think out loud”
- ✓ Don’t let the opposing attorney put words in your mouth. They will try!
- ✓ Don’t take anything personally , either in the process of preparing for, or in the deposition itself
- ✓ Look professional (be dressed neatly and clean cut) and be polite
- ✓ Don’t be afraid to ask for breaks during the deposition to keep you fresh or to speak in private with your attorney
- ✓ Remember that there is nothing wrong with answering “I don’t know” or “I don’t recall” because taking an oath to tell the truth doesn’t suddenly make you all knowing