

LITIGATION SERVICES

About Examinations for Discovery (E. for D.)

E. for D. is a procedure whereby each party is examined under oath before a Court Reporter by the opposing counsel. The Court Reporter transcribes the testimony. Usually present are the Court Reporter, the examining counsel, the person being examined and his/her counsel.

The Purpose of an E. for D. is, generally speaking, two fold:

1. To obtain helpful admissions; and
2. To find out what the other party's story is.

When being examined for discovery, remember the following principles:

1. Answer each question as accurately and truthfully as you can but to the point;
2. Listen carefully to the question you are asked;
3. Do not give the examiner information which they do not ask for;
4. You are entitled to explain an answer if the explanation will correct a misapprehension;
5. If you need to look at a document to answer a question accurately, ask for that document;
6. Answer the question in your own time;
7. Answer the question in your own words. Do not be pressed into answering a question yes or no if such an answer is inappropriate or misleading;

8. Do not guess;
9. Make sure you understand the question. Answer one question at a time;
10. Be warned about the problem of being asked to give your recollection of conversations or what you told people. It is not usually possible for anybody to remember a conversation precisely. Do not say "I don't remember" when in fact you remember the gist but not the exact words of a conversation. You should explain that you cannot remember precisely what was said but then give the gist of the conversation;
11. If your counsel considers the question inappropriate your counsel will say "I object to that question". If your counsel says to you "I advise you not to answer that question", answer the question by saying "I refuse to answer that question on the advice of my counsel";
12. You should not worry about whether or not your answers are helping or hurting your case. Just answer the question accurately, truthfully and to the point;
13. It is wise to review the pleadings and to go through the pleadings with your counsel before hand;
14. Go through all the documents likely to be asked about on E. for D. with your counsel and discuss any troublesome matters arising in the documents; and
15. It is important that beforehand you go over the opponent's documents as well as your own.

PRESENTED BY:

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