



Involved in a lawsuit? Here are 10 commandments of deposition preparation

Wednesday, June 22, 2011

When faced with corporate litigation stemming from a criminal event occurring on your property, members of the security community are often first in the line of command – fielding questions from members of the executive team, quelling employee speculation and dealing with myriad legal details.

In order to protect themselves and their companies from liability, security professionals should recognize that getting sued is not the biggest problem, losing the suit is. As the old adage goes, the best defense is a good offense, and in the case of corporate litigation, preparation is key.

What follows is a set of best practices aimed at preparing company witnesses for deposition, the “10 Commandments of Deposition Preparation.”

Commandment #1: Thou Shalt Be a Good Listener

The first and foremost “commandment” of preparing a company witness for deposition is “Thou Shalt Be a Good Listener.” During the course of a deposition, a witness must always listen carefully to the questions being asked. He or she should routinely stop and think before answering any given question, as well as listen to the objections being brought about by his/her counsel. Finally, a witness should never accept a fact merely because the plaintiff says it is so. These types of questions will sometimes be prefaced with the phrase “isn’t it true that ...” In other instances, this is implicit in the phrasing of the question.

Commandment #2: Thou Shalt Keep Your Cool

One of the most important things for a company witness to remember during the deposition process is to always remain calm, cool and collected. Never argue with counsel, and if you feel yourself getting upset, take a break, remove yourself from the situation and come back after you have had some time to cool down. It is a common tactic for counsel to try and get under the witness’ skin in the hopes that the witness will lose focus and begin to give testimony that undermines the witness’ defenses. In expressing opposing points of view, it is always better to be polite, but firm.

Commandment #3: Thou Shalt Not Guess or Volunteer

In the world of depositions, guessing or speculation equals death. It is imperative for all company witnesses to refrain from volunteering information and/or naming others who may have information about the case. Guessing at an answer almost always has an adverse effect on your case. Therefore, it is best to candidly admit that you do not know the answer to the question. Further, if you are not certain who may have better information than you in response to a question, your best course of action is to say you are not sure and allow your counsel to confirm this information later.

Commandment #4: Thou Shalt Review All Documents Carefully Before Answering

During a deposition, when presented with any documents, it is best for company witnesses to avoid comment if they have never before seen the documents. Similarly, witnesses should know their company's individual policies and procedures. Make sure that any documents shown correspond to the relevant time period, and always remember to read the fine print.

Commandment #5: Thou Shalt Know What the Case is About and What Your Defenses Are

When meeting with counsel to prepare for deposition, ask him/her to give the witness a synopsis of what is being alleged by the plaintiff and what the claimed injuries are. The pitfall here is that if you do not, you will be unprepared for the inevitable deposition question on this which will give the plaintiff's counsel the opportunity to paint you and your company as aloof and uncaring in front of the jury.

It is equally important to review your company's responses to written discovery requests. This way, you can ensure that your deposition testimony is as consistent as possible with those responses. More importantly, if it is determined that something needs to be corrected, the deposition gives us a good opportunity to do so.

Commandment #6: Thou Shalt Not Waive Privilege

In most jurisdictions, both the contents of the company's incident reports, as well as discussions with counsel during the investigation and defense of the case, are privileged and must not be revealed to opposing counsel in deposition. Thus, we cannot stress enough to our employees that even a small breach of this important commandment could give opposing counsel license to argue that privilege has been waived.

Commandment #7: Thou Shalt Not Say That You/Your Company Acted Negligently or Recklessly or That You Violated Company Policy

One of the most vital tips in preparing employees for deposition is to remind them that – under no circumstances – should they ever admit to acting recklessly or negligently. Even more importantly is never admitting to violating company policy. While it might seem obvious, sometimes deposed employees are inadvertently led to making such statements, which puts the entire company at risk.

Commandment #8: Thou Shalt Not Talk About Money

Opposing counsel will frequently attempt to paint our business decisions involving security as

having been motivated exclusively for profitability. It is important that our employees be prepared to discuss all of the factors that went into our decisions on the level of security to provide. Although costs are certainly a factor in our company's decision making process, it will be critical that the witness be prepared to explain how and why safety was the paramount consideration.

Commandment #9: Thou Shalt Correct Your Answer if Necessary

When being deposed, employees should know that their first answer to a given question does not necessarily have to be their final answer. If they find themselves "breaking" any of the previous commandments, such as admitting negligence or incorrectly stating monetary facts, they do have the right to change their answers.

Commandment #10: Thou Shalt Insist That Your Lawyer Get Together with You 7-10 Days Before Deposition and, If Necessary, Undergo a Mock Deposition

In the case of employee witnesses being deposed, it is essential to undergo a "mock" or trial deposition with company attorneys. By doing this, employees can familiarize themselves with legal jargon and, more importantly, learn what to expect during the deposition process. Attorneys can review specific questions and answers, as well as run through any negative scenarios and how to correct them before they become insurmountable obstacles.

Conclusion

Obeying these Ten Commandments is a good first step to protecting the company's assets, its brand and its reputation. To be sure, there are many components to defending a suit and the deposition is simply one step in the process. As with any business decision, careful analysis and preparation is of critical importance to management of the litigation, achieving the desired outcome and ultimately a successful defense.

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