In most types of civil litigation, depositions play a key role. You new associates reading this supplement, particularly those working at small or mid-sized law firms, may find yourselves in charge of taking the deposition of an adverse party during your first year.

If you are like me, your blood will be swimming with adrenaline when you take your first deposition. In the heat of battle, simple tips are easier to apply than general principals. With that in mind, the following tips consist of simple strategies and maxims to help you prepare for and carry out your first deposition. The seventh tip pertains to your second deposition, and is only for those stalwart souls serious about improving their skills.

A common misconception among young attorneys is that they will make a mistake at the deposition that will seriously harm their client's case. The reality is that in the practice of law there is a short list of "mistakes" that cannot be unwound. In depositions, that list is even shorter.

Remembering this during the deposition will help you stay relaxed and light on your feet. Moreover, thinking in terms of "success" or "mistakes" during the deposition will distract you from what is truly important to you as the examining attorney (which, in most situations, is developing the factual record).

**DON'T WRITE OUT QUESTIONS**

This strategy may be controversial; indeed, I’ve seen some experienced partners from vaunted Philadelphia firms break this rule. From the perspective of a young attorney, however, the practice of writing out questions is dangerous. To understand exactly why it is dangerous, let's play armchair psychologist.

Nobody wants to sound inarticulate or unprepared, particularly the young attorney mindful that his or her supervising partner will ultimately review the deposition transcript. Given the choice, any attorney would prefer the court reporter to transcribe a perfectly phrased, razor-sharp question rather than a halting, stammering question.
However, the danger in writing out depositions and reacting to the witness' answers, the young attorney may find his or her eyes (and, even worse, mind) moving to the next written-out question while the witness is still answering. Instead of listening and reacting to the witness's answer with an appropriate follow up question, the young attorney will be more concerned with the phrasing of the next question.

What is the alternative? A thin outline. Rather than having a perfectly formed, written-out question (for example, "When you approached the Main Street intersection, was the light green or red?") a few words to evoke a question are all that is necessary (for example, "Light at intersection: Main Street."). With the first example, the tendency for a young attorney is to read the question word-for-word, wait for the witness to begin his or her answer, and then start preparing for the next question while the witness is still answering. With the second example, the tendency will be for the young attorney to read the notes, look up from his or her notes, form a question, listen to the question, analyze whether the witness has really answered the question, form a follow-up question, and so on.

While you might sacrifice an aesthetically pleasing deposition transcript, you'll gain the freedom of not being tied down by your written-out questions.

**KNOW THE FACTS**
Preparation is obviously important. Why include it in the list? Two reasons: First, it may not be obvious to the young attorney that he or she may need to spend, in certain circumstances, two hours preparing for an examination that may take 20 minutes.

Second, preparation is the great equalizer: While a young attorney cannot hope to match a veteran attorney's intuition and facility that have been honed over hundreds of depositions, a young attorney can prepare harder and better than the veteran, and thus help level the playing field.

Extensive preparation may not be warranted for every deposition. For example, if no prior depositions have taken place and no documents have been exchanged, there's only so much that can be gained from reviewing the initial pleadings. However, if documents have been produced and prior depositions are in play, it is likely in your client's interest that you know the facts cold.

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Not only will knowing the facts of your case help you intelligently form your questions, but it will also help you digest and react to the witness's narrative during the deposition.

How much time should you spend? That's a question only you and your supervising attorney can answer. However, you can bet that a young attorney will spend significantly more time than a veteran attorney preparing for the same deposition. Don't let that dissuade you from putting in
that extra hour! While you, as the young attorney, might worry that you're spending too much
time preparing, it's likely that your supervising attorney understands and expects that extra
time will be warranted, especially for your first deposition.

**KNOW THE RULES**
Is there a time limit on your examination of the witness? Is the witness allowed to confer with his
attorney before answering your questions (a la Roger Clemens)? What are the "usual
stipulations?" These are all questions you should be able to answer before you take your first
deposition.

First, read - and then re-read - the applicable court rules on depositions. I know, it sounds
obvious, but you would be surprised at how many attorneys (many of them with low bar
identification numbers) haven't carefully read the rules in years. For example, a savvy attorney
defending a deposition in a federal case will keep an eye on the clock during the deposition. If
the examination is going badly for his client entering the seventh hour of the deposition, you can
bet that that defending attorney will invoke the "seven-hour rule" in Federal Rule 30. A young
examining attorney who did not know the rules would be caught flat-footed in such a situation.

Second, avail yourself of some quality secondary sources prior to taking your first deposition.
One of the best is "The Deposition Handbook," written by two veteran Philadelphia litigators.
While this publication is not specific to Pennsylvania law, it is an invaluable primer to the young
attorney.

**OWN THE DEPOSITION**
Integral to the right state of mind for your first deposition is thinking you own the deposition.
This is your deposition, and you should treat it that way from the start. As you are the noticing
attorney, the deposition is probably occurring; in your office. Arrange the conference room
several hours before the deposition. Tell the receptionist to notify you as people arrive. Control
the room from the beginning: Escort the court reporter into the room and tell him where to set
up; set yourself up in the area of the conference room where you feel most comfortable; only
allow in the witness and his counsel when you are ready.

"Owning" the deposition goes beyond controlling the environment. You should decide when it
commences, you should decide when breaks are taken (note, however, that there is probably
never a basis to refuse a witness's request for a break), and - most importantly - you should
decide when it ends.

Your first few depositions may last longer than the opposing attorneys or the witnesses think
they should, and you may receive some groans or even on-the-record protests as you probe the
witness' knowledge. Don't let them rattle you. For your first deposition you will not have the
efficiency of a veteran, but you should not allow any rolled eyes to compromise your duty to
your client to fully examine the witness.

**DEAL WITH OBJECTIONS**
For most of us young lawyers, our paradigm of a "litigator" is the product of dramatic portrayals
of lawyers in movies or television: That is, a young lawyer may preconceive of a need to
verbally spar with her opponent, reduce the witness to a blubbering mass, and bang on the conference table in the representation of her client. Leave these preconceptions at home. Specifically, you should not overreact to opposing counsel's objections.

Never debate your opponent on the record. If, for instance, you ask a question that your opponent thinks is out-of-bounds and he objects, you should do one of three things: ask your opponent to clarify his objection (if, for instance, you don't understand the basis of the objection); modify your question to the witness (if you believe that your opponent may have raised a valid objection); or ignore the objection and press the question (if you believe that the objection is not valid).

You should note that nowhere in this list is "respond to the opposing attorney by explaining why the objection is invalid." Debates such as this do nothing to advance your goals as the examining attorney.

To illustrate the above points, allow me to tell you the story of a young associate named John Smith. (The name in this story has been changed to protect the innocent.) John had been entrusted with taking the deposition in a sizeable case; while this wasn't a multi-million dollar matter, it was larger than the other cases he had handled in his first year at the firm.

John noticed the deposition of the plaintiff. During the deposition, the attorney for the plaintiff objected to some of John's questions. John thought the objections were out of line, but ignored them. John asked more questions. The plaintiff's attorney continued to object, the objections became more frequent, and more and more frequently the plaintiff's attorney would make improper "speaking" objections - that is, objections that go beyond merely stating the basis for the objection.

After a particularly egregious speaking objection, John thought it was time to make his thoughts on the record, and did so. After the deposition ended, John complimented himself at showing such restraint and cool-headedness in making his few simple points on the record. Much to John's horror, however, when he received the deposition transcript a few weeks later, the transcript read as if John were the crazy one. None of opposing counsel's tone or sneers came across on the transcript. And John's soliloquy on the record – what John had, at the time, considered calmly phrased and cogent points seemed like the ramblings of a madman.

John's story is common for young attorneys. In John's situation, plaintiff's counsel was the one being unreasonable at the deposition, but John's inexperience and self-righteousness combined to paint John as the uncivil attorney in the deposition transcript. This illustrates an important point: Debates on the record should be avoided, especially for the young attorney.

**READ THE TRANSCRIPT**
This is the most difficult tip on which to follow through for the young attorney: Once the deposition is over, read the transcript and, if applicable, watch the video of the deposition. There's no denying it: This is a completely painful experience. Unless you're a natural orator, you're going to see a lot of "um's," "a's," and "you know's." (I'll admit that I had to break myself of the unfortunate habit of saying, "Ok," after every response from the witness.)
However, if you can get past your bruised ego, this is the best way to learn and improve your skills. By reading the transcript, your deposition skills will develop much faster than if you take the easier road and merely move to the next assignment and forget that the deposition ever happened.

I hope these simple tips serve you well. Now get out there, prepare diligently, swallow your pride and fear, and file that notice of deposition!