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TRIAL LAWYERS

# TEN TIPS TO PREPARE FOR YOUR DISCOVERY:

## What is a discovery?

A discovery is part of the litigation process. You are asked questions under oath and a Court Reporter records your answers and later on may prepare a written transcript. The purpose of a discovery, as the name suggests, is to learn (or discover) all there is to know about the other side's case. Your discovery can have a significant affect on the outcome of your case.

For example, sometimes the Defendant's lawyer will pick out key questions from your discovery and ask you those questions at trial. If you answer is significantly different at trial, the lawyer will use your discovery transcript to attack your credibility.

The discovery process also gives the Defendant's lawyer a chance to see how you will perform as a witness. Do you look nervous? Do you appear truthful? Are you clear and convincing in your answers? Or are your answers confusing and difficult to understand? All of these things will be considered by the Defendant's lawyer in deciding whether to take the case to trial.

## Just one goal:

Our goal at discovery is **NOT**:

1. To win your case;
2. To show emotion; or
3. To convince the other lawyer that you have a great claim.

Our goal is simple: to complete the discovery without providing the Defendant's lawyer with information that can hurt your case.

## It's not a conversation!

Remember, your discovery is not a conversation. It is a chance for the Defendant's lawyer to interrogate you about your claim. Keep in mind, the kind of interrogation I am talking about is not the kind we see on T.V. or in the movies. Most experienced lawyers realize that they get more information when they are polite and courteous to a witness. Capable lawyers try to get the witness to relax and open up. When a witness is relaxed they tend to be less careful about what they say.

So the Defendant's lawyer will encourage you to relax and lower your guard so that you provide as much information as possible that they can use against you.

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**Tip Number 1: Preparation wins cases**

For many years Roger Maris held the record for most home runs in a single season. When he was asked how he was able to hit so many game winning home runs, he said: *"You win not by chance, but by preparation."* The same can be said for law suits.

Proper preparation is very important in order to be able to fairly respond and answer the questions that you will be asked during your discovery.

You should thoroughly read and review any medical records or legal documents that we have provided to you well in advance of your discovery.

Many of my clients say to me: *"I don't need to read my medical records. I know what happened to me and I know what my injuries are…"*

The problem is that none of us have perfect memories. At trial, the Defendant's lawyer will try to make a big deal out of any inconsistencies between your medical records and your evidence at your discovery. If you haven't reviewed your medical records you are simply making it easier for the insurance company lawyer to defend your claim.

**Tip Number 2: Always Tell The Truth**

It may be so obvious that we shouldn't have to say it. But the one thing that can hurt a case more than anything else is if you **do not tell the truth** during your discovery.

A lawyer can win a case with bad facts. A lawyer can win a case with bad medical evidence. But it is almost impossible to win a case when a judge or jury thinks you are a liar.

Telling the truth is not only the right thing to do; it is in your best interest to win your case.

**Tip Number 3: Listen to the Question**

Next to telling the truth, this is the most important rule to remember during your discovery.

It is also the hardest rule to follow. When you have been living with the effects of an injury for some time you assume that the other lawyer will ask you about the issues or facts that you think are important.

If you assume that the other lawyer is going to ask you about the things you think are important, you may not listen to the question that is actually being asked. This can lead to you providing more information than necessary.

**Tip Number 4: Answer the Question**

Only answer the question that you have been asked. Again, this seems obvious, but it is human nature to want to be helpful. In an effort to appear cooperative many witnesses answer questions that they think the lawyer is going to ask. Do not do the other lawyers work. Resist the temptation to fill in the gaps or volunteer information.

For example if you are asked: *"Do you know what time the car accident happened?"* The only possible answers are "Yes" or "No". You either know the time, or you do not.

But most witnesses want to be helpful so they answer something like: *"I think it was around 5:30 because I was on my way home when the accident happened"*.

Do not suggest the next question from your last answer. For example, if you are asked: *"Did you talk to any witnesses?"* Again there are only two possible answers, "Yes" or "No".

But in an effort to appear cooperative, you may say: *"No I didn't talk to any witnesses. But my wife talked to two people who saw the whole thing!"* Of course, this will lead the Defence lawyer to ask about who the witnesses are, what they saw.

**Tip Number 5: Only Answer the Question Asked**

There are many things about your case that you think are important and you want the other side to hear because you think it will help your case. It is almost always a bad idea to volunteer this information because it allows the Defendant's lawyer the opportunity to prepare to refute the information at trial.

**Tip Number 6: Speculation**

Do not explain things unless you are asked to. Do not give examples unless you are asked to. Do not speculate. Do not guess. Answering a question with a guess or speculation cannot help your claim.

**Tip Number 7: Do Not Rush To Answer the Question**

After the Defendant's lawyer asks you a question, take a deep breath and pause before answering. Pausing gives you time to think about your answer.

**Tip Number 8: Don't Volunteer**

Volunteering information is almost always a bad idea. Do not volunteer to provide information. Do not volunteer to provide documents.

Telling the truth **does not mean** volunteering information that is not necessary to answer the question asked.

For example in a discovery the Defence lawyer asked one of my clients: *"Do you have any financial statements for the business you used to operate?"* She said: *"No."* But then she went on to say: *"But my accountant has copies of all my company's financial statements for the last 15 years!"* Of course this resulted in the Defence lawyer asking who her accountant was and for a request that my client ask her accountant to produce all her business's old financial statements.

In general, do not volunteer information. Answer the question directly, than stop.

If the Defendant's lawyer asks if you are willing to provide documents or other information it is reasonable to answer that you are willing to provide anything that your lawyer recommends that you provide.

**Tip Number 9: Objections**

If the Defence lawyer asks a question that is inappropriate we will object. In Nova Scotia, unless the objection is based on privilege, you will usually be allowed to answer the question.

A good rule of thumb to remember is: *If your lawyer starts talking, you should stop talking.*

**Tip Number 10: Understand the Question**

If you do not understand the question, you should always ask the Defence lawyer to restate the question. You are entitled to have it in a form that you understand.

The answer to a question that you do not understand is almost always wrong.

The answer to a question that you do not understand can hurt your claim.

If you do not understand the question, or a term in the question, say so. Do not make assumptions about what the question means. Force the Defence lawyer to define the terms.

**One Final Thing:**

Many clients are nervous before their discovery. You don't have to be. If you take time to prepare, and listen to the questions and answer the question truthfully, you will do fine.