**Ten Tips on Taking Depositions**

**by Gerald R. Toner for Kentucky Defense Counsel**

**1. Observe every lawyer with whom you come in contact when they take a deposition, but emulate no one: be yourself and develop a “method” and “style” that fits you best.**

**2. Prepare a basic, over-arching outline with a few “starter” questions, but vary from your “script” early and often. Avoid a litany of “wouldn’t you agree” questions.**

**3. The exception to this “general” outline, is when addressing technical material – such as medical records, specific employment history, engineering data, etc. - in which case you incorporate facts in your question, but still encourage “conversation with the deponent.”**

**4. Listen to your deponent. They will give you unexpected “clues” to further questions if you simply listen and follow their lead – even while you are “leading” or “controlling” the deposition. Go with the flow.**

**5. Make the deponent commit to giving you complete and truthful answers that you may rely upon should the matter come to trial.**

**6. Try very hard to retain your composure and rational, steady questioning – even in the face of evasive, inconsistent answers or senseless objections by opposing counsel.**

**7. Don’t hesitate to rephrase or repeat a question even when you feel the deponent is playing games with you. Generally, you will have promised to do so at the beginning of the deposition.**

**8. Always remember that you are creating a “script” which is likely to have portions read back in court and analyzed by a jury. A deposition isn’t just for “today” it’s even more for “tomorrow”. That which seems evasive, curt, impolite, etc to you is likely to seem that way to a jury. Conversely, if your decorum is wanting, the jury will sense that the nice person you are projecting at trial, might not be that nice.**

**9. Gauge your approach by the nature of your deponent: lay witnesses should be treated like neighbors, parishioners, co-workers, etc.; experts should be treated with “professional respect” even when you know they are hired guns. If they are egotistical and obnoxious, be still more polite.**

**10. Don’t hesitate to ask common sense questions: Why didn’t you call your doctor before suing them? Do you expect to work in construction until you’re 80 years old? When you saw the car out of the corner of your eye, why didn’t you slow down? When your obstetrician’s office didn’t call back, why didn’t you call them again? Don’t be afraid of their answers; if you don’t ask them, their counsel probably will – with a witness far better prepared.**