Instructions:

1. ANSWER COMPLAINT –Keep it simple and don't make admissions. Most defendants blow it at this stage and ruin any chances of forcing the plaintiff to prove his case. Don't make it easy for them by allowing them to use you to prove their case.

2. Make sure you have your answer notarized.

3. Sign your affirmative defenses

4. Sign your proof of service - stating that you mailed the lawyer representing the Plaintiff/creditor a copy of your answer and affirmative defenses

5. Make three copies

6. File the original (wet signature) answer, affirmative defenses, proof of service with the court and ask for jury trial and pay the jury trial fee.

7. Request the remaining three copies be marked "true"

8. Serve a true copy of your filings on the Plaintiff's lawyer

9. You / Defendant should write plaintiff/creditor's attorney a letter requesting all documents showing that plaintiff purchased and owns the debt including complete bill of sale

10. PULL ALL YOUR CREDIT REPORTS AND DETERMINE IF THE PLAINTFIF IS REPORTING YOU AS DELINQUENT

11. If you doubt that you owe the debt or the amount reported, then immediately dispute the reported debt with all three credit reporting agencies in writing and by certified mail. Pull your credit reports thirty days later and bring the new credit reports which show your dispute to court to show the judge. This will help you prevail on any "account stated' counts alleged by the plaintiff.

12. SHOW UP FOR COURT HEARINGS

13. Don’t talk unless you have to. Let judge and Plaintiff lawyer know you don’t remember this debt or the account number and you don’t have records of this debt.

14. ASK JUDGE FOR DISCOVERY

15. If granted, purchase my discovery requests then serve Plaintiff with requests to produce documents and interrogatories

16. FILE YOUR MOTION TO DISMISS

17. File motion for Summary disposition and to Dismiss if your trial date is more than 30 days away (best to file this motion early in in your case)

18. if your trial is less than 30 days away then File motion for Directed Verdict with court 3 days before trial. (this is good for strategic purposes as Plaintiff will have little time to respond.)

    a. Make sure you attach all exhibits

19. MOTION HEARING DATE

    a. What to do and say?

    b. Tell THE JUDGE that you rely on your brief and will answers any questions he has.
    c. You don’t remember this debt or the account number and you don’t have records of this debt.
    d. IF CASE IS NOT DISMISSED AND PROCEEDS TO TRIAL – then follow my instructions on how to proceed at trial.

20. TRIAL DATE -

    a. Tell THE JUDGE that you rely on your brief and will answer any questions he has.
    IF TRUE … THAN TELL THE JUDGE:
    b. You don’t remember this debt or the account number and you don’t have records of this debt.
    c. that you do not remember or recognize purchases on billing statements the which Plaintiff lawyer asks you questions about..

d. **That you never received a copy of the contract/card holder agreement …. EVER!**
e. **You never seen that card holder agreement before Plaintiff's lawyer showed it to you.**
f. You don't remember the specific account numbers.
g. If creditor lawyer attempts to use consumer to authenticate the statements then the consumer testifies:
    i. **I do not know how these documents were created.**
    ii. **I do not recognize the statements, or the charges.**
    iii. **I do not have copies of the statements**
    iv. **I do not recall receiving any billing statements but even if I did I would have no idea whether they were the same as these documents the Plaintiff is now attempting to admit into evidence.**

HOW TO BE AN EFFECTIVE WITNESS AT DEPOSITION OR TRIAL

For a party or witness to testify effectively in a deposition or trial, considerable thought and preparation are necessary. Appropriate answers to questions on direct examination and cross-examination do not just happen. Satisfactory answers are the result of careful review and analysis of the facts and issues in the case. This information is offered to familiarize parties and witnesses with the principles of and approaches to testimony at a deposition or trial so they will have the confidence and ability to handle any question asked, no matter how they are asked, in an intelligent and straight-forward manner.

Remember that when you testify as a party or a witness, you are involved in an adversarial proceeding. All the principles of communication come into play. Your voice, enunciation, speaking ability, and body language all affect your credibility and the impact you have on the judge who will try the case.

General Information About Depositions

A deposition is a court proceeding that takes place out of court. No judge is present. A deposition may be scheduled at a lawyer's office. A lawyer will ask you certain questions that you are duty-bound to answer. You are under oath, and your answers are recorded word for word by a

court reporter. The questions and answers are usually transcribed and become part of a deposition transcript.

If your lawyer considers any question asked at a deposition objectionable, he or she will give you instructions on how to respond. The lawyer will object to the questions and instruct you either to answer the question over the objection or not to answer the question.

The purposes of a deposition are fourfold:

1. The opposing lawyer wants an opportunity to observe you as a witness and to find out what kind of a witness you will be and how you will relate to the judge at the trial. The lawyer will evaluate you as a witness.
2. The opposing lawyer wants to determine what you personally know about the case.
3. The opposing lawyer wants to obtain admissions to reduce the proofs at the trial.
4. The opposing lawyer will attempt to get you to commit to a set of facts. If your testimony at the trial varies from these facts, the lawyer will attempt to impeach your credibility, that is, make you seem to be a person who cannot be trusted.

Please remember that the lawyer representing the opposing party is trying to do his or her best for that person. He or she is your opposition. Do not develop a false sense of confidence. If he or she appears to be nice to you, fair-minded, or aboveboard, be careful.

At your deposition, your lawyer will probably maintain a low profile. A deposition is not a trial. The lawyer cannot testify for you. Your deposition testimony is your responsibility, and only you can fulfill this duty.

The Importance of Your Deposition

Under the Michigan Court Rules and Michigan Rules of Evidence, deposition testimony may be used:

1. For impeachment—to attack your credibility.
2. As an admission against interest by a party.
3. In place of your testimony at trial if you are unavailable as a witness.

Preparation for Your Deposition

To be fully prepared and knowledgeable, parties should read, study, and remember certain basic information:

1. Facts and claims made in the legal pleadings filed in the case—the plaintiff's complaint, the answer to the complaint, the defendant's counterclaim, the interrogatories, the answers to the interrogatories, and any depositions taken.

Questions That Will Probably Be Asked at a Deposition or Trial

You will first be asked to give some background information, including

1. your name;
2. your present and past addresses;
3. your marital status;
4. your educational background and academic achievements;
5. your work and professional experience;
6. whether you have ever been convicted of a felony or crime involving theft, dishonesty, or moral turpitude;

7. documents or materials reviewed before the deposition or trial; and

8. conversations you had with anyone other than your lawyer before the deposition or trial.

How to Present Yourself at a Deposition or Trial

Witnesses and parties are judged by what they wear. Women should dress neatly and modestly, avoiding extreme or controversial fashions such as big hats, too much jewelry, or revealing necklines. Men should dress neatly, wearing a coat and tie with conservative colors. Your hair should be trimmed in an acceptable fashion.

Witnesses and parties are also judged by how they speak. You should speak clearly and distinctly with words that a layperson can understand, using a normal tone of voice. Speak with conviction. Keep your hands away from your mouth. When a question is asked, look at the questioner. When answering questions at the trial, direct your responses alternately to the questioner and the judge. In a deposition, look directly at the questioner as you answer.

When you are sworn in by the court reporter or court clerk to tell the truth, it makes a good impression to state clearly and emphatically, "I do." Always tell the truth, and do not exaggerate. Do not avoid a question if you know the answer. Do not hesitate to correct any mistakes in your testimony.

Avoid expressions like "I imagine," "I guess," "it might have happened," "in my opinion," or "to the best of my recollection." In other words, avoid using powerless "weasel" words. Also avoid phrases like "truthfully," "well, to tell the truth," "honestly," or "well, to be honest with you."

Do not look to your lawyer or the judge for guidance in answering a question. Neither your lawyer nor the judge can testify for you. You cast suspicion on your answers if you look to someone else for help in answering a question. If you do not know the answer to a question, there is nothing wrong in saying that you do not know. Likewise, if you do not remember, do not guess or speculate. If you do not understand a question, do not answer it. Answering a question that you do not understand might give erroneous information or damage your case. State that you do not understand the question. Do not let the opposing lawyer put words in your mouth; make sure you understand the question before you answer.

If a witness's statement is interrupted by opposing counsel, make sure the witness lets the attorney go ahead and finish speaking. Then, the witness should say **"I'm sorry, but I haven't completed my answer to the previous question."** The record will contain this interchange.

If you know the answer, answer the question fully and completely and then stop talking. Do not ramble or think out loud when answering. Do not volunteer information. Do not make any commitments to help opposing counsel. Just answer the question asked.

If the attorney insists on a yes-or-no answer but it is impossible to answer that way, do not do it. Politely tell the attorney that the question cannot be answered yes or no. The court will usually help you.

If an objection is made to a question, do not answer the question until advised to do so by your lawyer (at a deposition) or by the judge (at the trial). Do not answer before the controversy on the question is resolved.

Do not put on false airs. Most judges and lawyers, like other people, are attracted to people who speak plainly, directly, and with sincerity. Do not be self-righteous. Do not speak in a condescending manner.

Do not be argumentative. Do not be abrasive or hostile to the opposing lawyer. Answer his or her questions politely and courteously, the same way you would answer your lawyer's questions. Do not lose your temper; remain calm and composed.

Do not belittle or make fun of your spouse or any other witness. Do not joke or wisecrack.

Do not exaggerate your problems, difficulties in your life, or expenses.

Never chew gum. Never smoke in the hallways at an intermission.

“never say never” - Words like **“never”** and **“always”** should not be used answering questions. These words can be used against them, and are not necessary to fully answer questions.

Use the word **“approximately”** when they are not absolutely sure of a time or date.

When witnesses finish responding to an open-ended question, they should say these magic words **“that’s all I can recall at this time.”**

Keeping these principles in mind, you will do a good job in testifying at the deposition or trial.

Good luck and if you would like to set up a consultation to meet with me to discuss these matters further, feel free to call me.

Rex Anderson - Attorney at law

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