

Chapter 9: Conducting Interviews

Chapter Outline:

- ✓ § 9.1 Interviewing: A Matter of Styles
- ✓ § 9.2 Preparing for the Interview
- ✓ § 9.3 Example of a Legal Interview

§ 9.1 INTERVIEWING: A MATTER OF STYLES

There is no single style, technique, or theory of interviewing that fits all situations or all interviewers. With that in mind, there are still foundational techniques that can give you the opportunity to become an excellent interviewer.

Develop your own style.

Every investigator will find a comfort zone. Don't be afraid early on to use different styles. For example, in your first couple of interviews you may want to be more formal. If you are not sure if the results are what you were expecting, try a more informal setting and style.

Learn from your experiences. Figure out what works and what doesn't. After each interview, take five minutes to consider what parts of the interview were comfortable and what aspects were stressful or awkward. Create an interview notebook where you jot down a few details about:

- *The subject matter of the case*
- *The location of the interview*
- *The setting*
- *Strong points of the interview*
- *Points where there could be improvement*

Attitude of the Interviewer

Understand the image you present. Not every interview calls for a formal approach. The subject of the interview and the reason for the interview will, to a great degree, determine whether the interview will be formal or informal and how formal or informal your attitude should be. Always be professional. Act appropriately. Don't ask personal questions unless they relate to the representation. Refrain from presenting an air of superiority.

Dress appropriately for the situation. Interviewing a teenager at a softball game or an auto mechanic in a garage may call for a different style of dress. To wear standard office attire under such circumstances may create a "wall" between the paralegal and the witness or client.

Sometimes pressure works, sometimes it doesn't

When the person being interviewed is not cooperative, the interviewer may be tempted to try to pressure the witness. Appropriate pressure would include informing the witness that a formal deposition may be required. It may even be appropriate, with the attorney's consent, to make the suggestion that once the interview has been conducted, the witness may not be needed at trial. Pressure will not work, however, if the witness has an interest in being uncooperative.

When interviewing morphs into interrogation

Interviewing is the process of cooperatively obtaining information from a person. The goal is to keep the session in "interview mode." If the witness or client is uncooperative, approach the subject matter from different angles, hoping to find an opening. If you are dealing with an uncooperative witness, you may need to take a more aggressive stance, becoming more of an interrogator.

Interrogation involves probing, asking "yes or no" questions (leading questions), and pressing for information the witness may be reluctant to provide. Once an interview turns into an interrogation, it will never go back to being an interview. Interrogate only as a last resort.

One other note: Never assume that just because a witness is hostile he will not cooperate. In fact, hostile witnesses are often willing to provide information. It's just that the information may be damaging to your client's case. So go in with a good attitude. It may rub off.

The Need for Privacy

Be aware of your surroundings. Unless safety is an issue, or other circumstances require it, don't interview a client in an area where others can hear the conversation. Privacy enables the witness to feel the information provided is confidential. When isolation raises safety issues, interview the witness in a room with windows. If this is not possible, leave the door open just a crack so that the sense of privacy is preserved.

Facilitate trust through your choice of setting. Foster a "just between us" atmosphere without misleading the witness about how the information will be used.

A Suitable Setting for the Interview

One important, and often overlooked, element of the interview is the setting. Think of it as setting the stage for obtaining as much information as possible. Depending on the person being interviewed, and sometimes the subject matter of the interview, the setting can enhance or limit the amount of information obtained.

Office interviews

An office provides an aura of authority and is appropriate for standard one-on-one interviews.

Conference room

A conference room is helpful when multiple subjects are being interviewed or when documents will be reviewed.

Field interviews

Interviewing in the field is sometimes necessary. Try to create a setting that is conducive to the exchange of information.

Advance Preparation for the Interview

A paralegal can enhance his or her value to a law firm in a number of ways, but one of the most dramatic is by being a strong interviewer. To become a top-of-the-line interviewer, though, requires dedication and a commitment to developing great habits.

Prepare questions in advance

The high point for most attorneys comes when they examine a witness at trial. Would you have confidence in your attorney if he examined a witness without prepared questions? The closest a paralegal usually comes to examination is interviewing a witness. To walk into an interview with simply a pad and paper is not doing your client justice.

Sometimes the questions prepared for an interview evolve into deposition questions for the attorney, and they, in turn, evolve into trial examination questions.

Prepare the room

Have cups and water ready. Consider providing pen and paper for everyone.

Detecting Deception

Eye movement and body language may be red flags, but don't overreact to body language. It is not your job to psychoanalyze a witness or client. But if the witness seems uncomfortable making eye contact, this may indicate deception or withholding of information.

"Prepared responses" may also be a red flag. A witness pausing dramatically prior to answering critical questions may indicate a prepared response. A prepared response means that the witness may be framing the answer to provide only the minimum amount of information. In such cases, the paralegal should probe for additional information.

Psychological Factors of Interviewing

Nervousness does not always indicate deception. It may simply indicate discomfort. Put yourself in the witness' position and be sensitive to external factors. Again, you are not a psychologist. You may, however, want to note a witness' demeanor. The attorney may have to rely on your impression when determining the potential effectiveness of calling a particular witness to testify.

Legal Considerations and Evidentiary Issues

Identify yourself. Paralegals working for an attorney must not misrepresent their identities. Identify yourself as a paralegal working for an attorney. You do not always have to identify your client, but you must not give the impression to the witness that you are an uninterested party.

Admissibility

Admissibility should not be a consideration during the investigative process. Don't ignore a line of investigation because the information would be privileged or result in hearsay. Collect the information now. Let the attorney worry about admissibility later.

Attorney Work Product

Attorney Work Product is material produced in anticipation of litigation as a part of the representative process. Notes made by the paralegal during the investigative process would be considered work product and, therefore, not discoverable. Once a person is designated by either party as a witness at trial, the notes and statements lose their work product status and are generally discoverable. Be careful what you put in writing. If it could damage your client's case, think twice before putting it on paper!

Audio and Video Recording of the Interview

A few points to consider when recording an interview.

Recording an interview

Any interview may be recorded, but never secretly. Recording makes taking notes during the interview less critical and provides an accurate record of the session. Always obtain the permission of the witness and make sure the recorder is clearly visible during the interview.

Confirm that you have permission to record

Once the tape starts rolling, state the following:

- *Your name and position*
- *The date, time, place*
- *The interviewee's name and other pertinent information*
- *Ask the question: "You are aware this interview is being tape recorded, are you not?" and make sure to get a verbal response from the witness*
- *Restate all the above whenever the recorder is stopped and restarted*

Double recorders

If the witness is reluctant to be recorded, offer to use two recorders. At the end of the interview, give the witness one tape and you keep the other. This assures the witness that the tape will not be altered.

§ 9.2 PREPARING FOR THE INTERVIEW

Most paralegals do not prepare questions prior to interviewing a witness. Most attorneys do not prepare questions prior to interviewing a witness. So, why should you prepare questions prior to interviewing a witness? The answer is simple: To be a better interviewer than most paralegals and attorneys.

Preparing questions for an interview has added benefits. Those questions are eventually easily morphed into deposition questions, or even discovery documents, such as interrogatories or requests for admissions. When a paralegal drafts questions for an interview, she is laying the foundation for other pretrial documents.

The Three-Stage Interview Process

There are three stages in preparing interview questions. For each stage, the interviewer should prepare questions in a chronological manner, possibly minute-by-minute, even second-by-second. Remember, time affects everything: liability, damages, perception. Present questions in a chronological manner whenever possible. Be absolutely meticulous.

A few points:

- *Don't jump into the questioning. Spend a couple of minutes breaking the ice.*
- *Do not be repetitive, unless it is part of a strategy to determine inconsistencies or deception.*
- *If a client answers a question you were planning to ask later, try not to ask it again later.*
- *Don't interrupt the witness; allow the witness to complete all answers.*
- *Try to keep the witness on-topic and focused.*
- *Be very careful not to give legal advice or set fees.*

The Intake Form (Background Information)

Intake forms vary from firm to firm, but they all gather background and general information: where the person works; where the person lives (if appropriate); how to get in touch with him or her; and other relevant information. If the person is a new client instead of a witness, this may be replaced by a document called a *New Matter Sheet*.

Pre-Event Questions

Take a natural point prior to the event as a starting place. This starting moment could occur an hour, a day, a week, or a month before the incident in question. There is no universal point. (It should be noted that it is often easier to identify the event stage first, then the pre-event stage.) For instance, in a car accident interview of the driver, the pre-event stage might be when the witness got up on the morning of the accident. The pre-event stage ends with the event.

Event Questions

The event begins at the point of no return. There should be a direct relationship between the beginning of the event and the point at which damages occurred. In the car accident case, the event might be when the driver got behind the wheel of the car prior to the accident.

The event ends at the point at which the eventual defendant is no longer in a position of liability for his conduct. The event ends because the defendant's conduct after the accident is usually irrelevant to the question of liability.

Consider having the witness relate the entire event in his or her own words first. Never interrupt during this recounting. When the witness is finished, wait a few seconds (sometimes referred to as a pregnant pause), then explain that you are going to go back over the event. This time use your prepared questions to make sure everything was covered.

Post-Event Questions

The post-event stage begins from the moment the potential defendant is in no legal jeopardy for his actions. It lasts up to the moment of the interview and should include:

- *What happened immediately after the event?*
- *Questions relating to damages*
- *Questions relating to the mitigation of damages*
- *With whom has the witness spoken?*
- *Has anyone else related to the matter attempted to contact the witness?*
- *Were other areas covered by other interviewers?*

Identifying Stages for an Interview

Identifying where *Pre-Event*, *Event*, and *Post Event* stages actually occur within a fact pattern is more art than science. Identifying those stages will help the paralegal create questions in chronological manner. Let's assume you are going to interview potential clients for each of the following matters. Assume the firm has a *New Matter Sheet* for background information. For the purpose of developing interview questions, determine what point the *pre-event*, *event* and *post-event* stages would begin. Remember that it is often easier to identify the event stage first.

- 1. *A spousal abuse incident.*

Pre-Event: _____

Event: _____

Post-Event: _____

- 2. *A drunk-driving accident.*

Pre-Event: _____

Event: _____

Post-Event: _____

- 3. *A landlord/tenant dispute where the tenant refuses to pay rent until the plumbing is repaired.*

Pre-Event: _____

Event: _____

Post-Event: _____

Assignment § 9.2 | Prepare Interview Questions

Prepare *Pre-Event*, *Event* and *Post-Event* interview questions for either your client or a witness in the case you were assigned. Use the example on the following pages as a guide. When your assignment is returned to you, make any recommended corrections necessary and file it in the *Work Product* panel of your client's file. *Keep track of your billable hours* and turn a copy of your time sheet in with the questions.

§ 9.3 EXAMPLE OF A LEGAL INTERVIEW

Following is an example of prepared questions for an interview. In this case, the interview began with very little known about the beginning of the event. All that was known was that the client had been charged with assault on his wife, and that the alleged assault occurred at the couple's home around 11:00 p.m. after they returned from a party.

Introduction

"Hello! My name is Pamela Legalskills. I'm a paralegal. Joe Lawyer asked me to meet with you to get some information about your situation. Why don't you come into my office?"

"Would you like something to drink before we start?"

"Okay. I want to explain a couple of things. I'm going to be asking a set of prepared questions. You may not understand the purpose of some of the questions, but please be patient. They are being asked for a reason. Feel free to ask me the reason for any question if you need to. I'd like to tape record this interview. Is this all right with you?"

"No one except the attorney, you, and I will ever hear the tape or see the transcript. In fact, I will provide you with a copy of the transcript so you can change any of your answers if you want. When I start the tape, I will ask you to identify yourself and acknowledge that you know this interview is being recorded. In fact, anytime the tape is stopped and started, I will ask you the same introductory questions. Do you have any questions before we begin? Okay. Let's get started."

Background Information

Use the firm's *Intake Form* or *New Matter Sheet*. (Not required for the assignment.)

Pre-Event Questions

(Begin recording.) *"This is Pamela Legalskills. I am a paralegal working for Joe Lawyer, the date is June 7, 2011, it is 10:00 a.m., and today I am interviewing Robert Neeley. Robert, are you aware that this interview is being tape recorded? (Wait for verbal response.) Do I have your permission? (Response.) Thank you. This interview is regarding an arrest for assault on the evening of March 20th, 2011."*

Pre-Event Questions

1. What did you do the night before the event in question?
2. What time did you go to bed that night?
3. What did your wife do the night before?
4. What time did she go to bed that night?
5. Did you sleep well?
6. Did your wife sleep well, to your knowledge?
7. How do you know whether she slept well or not?
8. Do you use medication to help you sleep?
9. Does your wife use medication to help her sleep?
10. What time did you get up the morning of the event in question?
11. What time did your wife get up the morning of the event in question?
12. Did you eat breakfast? If yes, what?
13. Did your wife eat breakfast? If yes, what and how do you know?
14. Did you work the day of the event?
15. If yes, what times did you leave for and arrive at work?
16. If yes, how did work go?
17. If no, why not?
18. If no, what did you do?
19. Did your wife work the day of the event?
20. If yes, what time did she leave for work, and how do you know?
21. If no, why not?
22. If no, what did she do, and how do you know?
23. Did you have any conflicts with someone other than your wife on the day in question?
24. Did your wife have any conflicts with someone other than you on the day in question? If yes, how do you know?
25. What time did you have lunch?
26. Do you know what time your wife had lunch? If yes, how do you know?
27. What did you have for lunch?
28. What did your wife have for lunch? How do you know?
29. Did you consume any alcohol at lunch?
30. Did your wife consume any alcohol at lunch? How do you know?
31. What time did lunch end for you?
32. What time did lunch end for your wife, if you know?
33. What did you do in the afternoon?
34. What did your wife do in the afternoon? How do you know?
35. Did you take any medication the day or evening of the event?
36. If yes, was this a regular occurrence?

37. Did your wife take any medication during the day or evening in question? If yes, how do you know?
38. If yes, was this a regular occurrence? How do you know?
39. Did anything unusual happen in the afternoon?
40. Did you have dinner?
41. If yes, where and with whom?
42. What did you have for dinner?
43. Did your wife have dinner?
44. Did you drink alcohol at dinner?
45. Did your wife drink alcohol at dinner? If yes, how do you know?
46. If yes, where and with whom, and how do you know?
47. What did she have for dinner? How do you know?
48. What time did your dinner end?
49. What time did your wife's dinner end? How do you know?
50. What did you do immediately after dinner?
51. What did your wife do immediately after dinner? How do you know?
52. When did you first know you and your wife would be attending a party that night?
53. Where was the party?
54. What time did the party start?
55. What exactly did you do between dinner and the party?
56. What exactly, to the best of your knowledge, did your wife do between dinner and the party? How do you know?
57. How did you get to the party?
58. How did your wife get to the party? How do you know?
59. What time did you leave for the party?
60. What time did your wife leave for the party? How do you know?
61. Did you stop anywhere on the way to the party?
62. Did your wife stop anywhere on the way to the party? How do you know?
63. Did you consume alcohol or drugs on the way to the party? If yes, what and how much?
64. Did your wife consume alcohol or drugs on the way to the party? If yes, what, how much, and how do you know?
65. What time did you get to the party?
66. What time did your wife get to the party? How do you know?
67. Describe the party, in general terms.
68. Did you consume alcohol or drugs at the party?
69. If yes, what specifically and how much?
70. Did your wife consume alcohol or drugs at the party?
71. If yes, what specifically, and how do you know?
72. Did you or your wife have any conflicts with other people at the party? How do you know?

73. Did you have a conflict with your wife at the party?
74. Did you spend most of the time at the party together or apart?
75. What time did you leave the party?
76. Did you and your wife leave together or separately?
77. What did you do when you left the party?
78. Did you or your wife consume alcohol or drugs after you left the party? How do you know?
79. If yes, what and how much?
80. How much time elapsed between the end of the party and the time you got home?

Event Questions

1. In your own words, describe what happened from the time you got home to the time you were arrested.
2. What time did you get home?
3. What time did your wife get home? How do you know?
4. What was the general attitude between you and your wife when you got home? Why do you say this?
5. If the attitude was negative, when & why did it become negative?
6. If the attitude was positive, when & why did it become negative?
7. What did you do when you got home?
8. What did your wife do when you got home? How do you know?
9. Did you talk with your wife when you got home?
10. If yes, what did you talk about?
11. At what point did you first have an indication that there would be a confrontation with your wife?
12. How did you react?
13. How did she react?
14. What provoked the confrontation?
15. What in your mind could have prevented the confrontation?
16. Was there physical contact between you and your spouse?
17. If yes, who initiated it?
18. How did your wife react?
19. What is the last thing said before there was physical contact?
20. Describe the physical contact.
21. What was the very first thing that happened after the physical contact?
22. What was the very first thing said after the physical contact?
23. What happened the first five minutes after the physical contact?
24. What happened the next five minutes? (10 min.)
25. What happened the next five minutes? (15 min.)

26. What did your wife do immediately after the physical contact?
27. What did she say?
28. How did she react? What makes you say this?
29. At what point, if any, did you first become aware that the police had been called?
30. At what time did the police arrive?
31. What was the first thing said to the police and by whom?
32. Did you say anything to the police? If yes, what?
33. Did your wife say anything to the police? How do you know?
34. If yes, what?
35. What is the first thing you remember the police saying?
36. Did the police ask any questions of you? If yes, what?
37. Did the police ask any questions of your wife? If yes, what?
38. What did the police do?
39. How long were the police at the house?
40. Did the police tell you why you were arrested?
41. Did the police arrest your wife?
42. How did your wife react to your arrest? Why do you say this?
43. Did the police read you your rights?
44. If yes, did the police ask you any questions after reading you your rights?
45. How did you respond to the police questions?
46. Where did the police take you?

Post-Event Questions

1. Did the police ask you any questions at the station? What?
2. If yes, did you answer any questions or say anything?
3. Were you asked to sign anything? If yes, what?
4. Did you sign anything? If yes, what?
5. How long were you at the station?
6. Why do you think you were released?
7. Did you post bail? If yes, what was the amount?
8. What time did you leave the station?
9. Were you given any instructions by the police? If yes, what?
10. Have you talked to your wife since the event?
11. If yes, who initiated the contact and what was said?
12. Where have you been living since the event?
13. Where has your wife been living? How do you know?
14. Finally, is there anything else you would like to tell me?

Note: As you are asking the questions, you will want to avoid the “How do you know” or “If yes, what” follow-ups if you have obtained that knowledge from previous responses. Again, if possible avoid repeating questions.

Interview Wrap-Up

"I want to thank you for your help. I will get a copy of the transcript to you as soon as possible. If you think of anything after you leave, feel free to call me. Here is my card with my number on it. You can call me any time with any questions or concerns you might have. It will usually be easier to reach me than the attorney. I will get this information to the attorney, and I'm sure he will be in touch with you soon. Do you have any questions? Okay. Have a nice day. Good-bye."

CHAPTER 9 WRAP-UP

WHAT YOU SHOULD KNOW...

After reading this chapter you should know the following:

- Relevant skills related to interviewing clients and witnesses*
- Issues related to styles and techniques of interviewing*
- The advantages of preparing questions prior to interviewing a client or witness*
- The three-stage interview process*

ASSIGNMENTS

For this chapter you will be required to complete the following (unless otherwise instructed):

- Assignment § 9.2** Due Date: / /
Using the three-stage interview technique, prepare pre-event, event, and post event questions for your client or for a witness in your client's case. (In some cases post event questions may not apply because the "event" is still ongoing.)

WEB STUFF

For more information, articles, and links to additional resources visit:

www.essentialskillsforparalegals.com/vol1chapter9