

IMPEACHMENT OF WITNESS USING PRIOR DEPOSITION TESTIMONY

If you anticipate that you will be able to impeach the witness, ask the witness a DIRECT (not leading) question, using the same language you used when you asked the question of him or her on deposition. If the witness tells the truth, great, no need for impeachment. If the witness does not tell the truth, you can impeach using the following questions. Because you have matched the "live" question format to the deposition question format, your impeachment will be clear, and opposing counsel will not be able to object that the deposition passage fails to directly impeach the witness' live testimony.

Question: Do you remember giving your deposition on [DATE] at [PLACE] before a court reporter in this case?

Answer: Yes.

Question: And Mr./Ms. - (other attorney) and I were present?

Answer: Yes.

Question: Do you remember being sworn to tell the truth?

Answer: Yes.

Question: For the benefit of Court and counsel, I'm on page -, lines - to -. Do you remember being asked this question and giving this answer? [Read text of both. Don't paraphrase.]

Answer: ???

At this point, it doesn't really matter what the answer is. Your point has been made. [

So, to the attorney asking the questions: STOP! You've made your point. Anything else you say is likely to water down that point.