

# What to Expect At Your Deposition

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*“A lawsuit is a marathon not a sprint.”* Stewart R. Albertson.

## **Introduction.**

A deposition is the live questioning of a witness under oath with a Court reporter present. Depositions are typically scheduled once the written discovery in your lawsuit is complete or near completion. Depositions can be taken of parties to the lawsuit and third-party witnesses. Once a person has his or her deposition taken, it cannot be taken a second time without Court permission. However, there are times when a deposition cannot be completed in a single day, in which case a continuation day may be scheduled at a later time.

Any party to the lawsuit has a right to attend a deposition. During your case, you may have your deposition taken. If that occurs, we will schedule a time to meet with you prior to your deposition date to prepare you for your deposition. When we are taking the deposition of an opposing party or third-party witness, we will prepare for and take the deposition. You have the right to be at all depositions if you are a party to the lawsuit, but you are not required to attend any depositions (other than your own deposition of course).

Once the deposition is complete, the Court reporter will prepare a written transcript. You will have an opportunity to review your own deposition testimony and the deposition testimony of all other witnesses. At times, we may choose to video record a deposition as well.

Generally, deposition testimony cannot be used at trial, except for depositions of parties. However, if a witness testifies differently at trial than he did at his deposition, then that inconsistency can be read into the record. There are other limited exceptions to when deposition testimony can be used at trial.

## **Preparing for Your Deposition.**

Anytime a deposition is scheduled in your particular case we will inform you of that and schedule a time to meet with you prior to your deposition date. We have a method we use to properly prepare you for your deposition so that you will feel ready to answer questions about your case. Below are some common depositions pointers that you should know when having your deposition taken:

*You Are Not Alone*

As your attorneys, we will defend you at your deposition. By defending, we will voice relevant objections to the questions being asked of you when we deem it prudent to do so. We will also ensure that the opposing counsel does not harass you or ask you questions that are protected by any privileges—such as the attorney-client privilege.

*Do Not Volunteer Information*

This is the seminal rule of having your deposition taken, only answer the questions that is asked. Never volunteer additional information. This is also one of the hardest rules to follow because it's the opposite of what we typically do in a social conversation.

For example, if you are at a social gathering and someone asked you “do you live around here?” you might say “No, actually I live about 30 miles away, but I have only lived there for 5 years because I was born and raised in Colorado.” This is a fine response in a social setting because we understand that it would be rude to force someone to ask us 20 questions to get information. We want and expect people to fill in the gaps for us.

But at deposition, if you are asked “do you live around here?” the proper answer is “no” and that's it. The other information can be given if it is asked for. Thus, the person conducting the deposition may then ask “where do you live?” to which you would answer “about 30 miles away.” If the questioning continues with “how long have you lived there?” then you can say “for 5 years.” At a deposition you give the information only as it is asked even though it may not feel normal (because it's not normal).

*If You Don't Know An Answer, Say So*

You are required to answer all relevant questions at your deposition, unless we direct you not to answer a question based on your right to privacy or privilege (such as the attorney-client privilege). Your obligation is to state what you know as you are sitting at your deposition. You are not required to remember every fact asked of you. That would be impossible. Therefore, there will be times during your deposition when you are asked a question you do not know the answer to. If that occurs, simply say you don't know. Saying “I don't know” is a proper answer as long as it is truthful. If you know the answer, but say you don't, that would be a lie and improper in a deposition setting.

But we also don't expect you to know every little detail and fact asked of you either. For example, what did you have for breakfast on this day five years ago? I don't know. That is a truthful answer because I honestly have no idea what I had for breakfast five years ago.

After saying “I don’t know” the opposing attorney may show you a document or other information in an attempt to jog your memory. If this occurs, you should review the document or information carefully and then answer the question as best you can.

*You May Estimate, But Never Guess*

There are times when you may not know an answer with certainty, but the opposing attorney will ask you to estimate. Making reasonable estimations is acceptable at a deposition, but guessing is not. You should ***never*** guess at an answer at a deposition. Either you know the answer or you don’t (in which case you say “I don’t know.”)

But you can provide a reasonable estimate. For example, “on what exact date did you buy your last car? I don’t know. Was it within the last five years? Yes.” Estimating the purchase of your last car to be within the last five years is a reasonable estimation and an acceptable answer.

In contrast, if I were to ask you when was the exact date that I bought my last car, you would have no way of knowing or even estimating an answer to that question (unless you were with me when I bought it). That is the difference between a reasonable estimation and a guess, and you should never guess. If you think you would be making a guess, simply say so.

*Pause Before Each Answer*

You’re not the only one performing at your deposition. We also have a role to play and a few objections to make along the way. When the deposing attorney poses a question, we may choose to voice an objection to the form of that question. Our objection is supposed to be stated before you answer. And there may even be times when we instruct you not to answer a question, such as when the objection is based on attorney-client privilege.

As a result, you should pause for several seconds before answering each question. This slight pause will allow us time to state an objection if we have one. Again, pausing before answering is hard to do because it is not natural, but it is necessary and helpful. If you find pausing difficult, then try counting to two before answering the stated question.

**Need More Information?**

This is a brief overview of what you can expect at your deposition. We will keep you informed regarding all discovery requests made or received in your case throughout the process. If you ever have any questions or would like more information regarding your case, feel free to contact us:

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