

WHAT TO EXPECT AT YOUR DEPOSITION



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WHAT IS A DEPOSITION?

When you are involved in an accident and sustain injuries, the first step is having your attorney file a claim for you with the insurance company. When a claim cannot be resolved with a settlement, then your attorney will file a lawsuit on your behalf, and what ensues is known as litigation. During the litigation process, there is a phase known as the discovery, which takes place before a trial.

A personal injury deposition is a pre-trial discovery procedure. Essentially, it is a question and answer session where an attorney finds out what a person knows about a case from that person's answers – given under oath – to a series of questions asked by the attorney. These questions will attempt to discover how and when your injury occurred, what type of injury you suffered, and other evidence/specifics of your accident.

In addition to discovering more information about a case, the deposition also seeks to preserve testimony for trial; determine how a witness/person will testify at trial (do they speak well and are they likable); and determine what type of impression a witness/person will make on a jury (do they convey honesty). It can also avoid surprise at trial, and may assist attorneys in the questioning or impeaching of a witness.

Whether the evidence presented in depositions will be favorable or unfavorable, every party has the right to take depositions of the plaintiff(s) and witnesses involved in the matter.

HOW TO PREPARE FOR A DEPOSITION

The deposition may just be one of the most significant phases of the discovery process. With that in mind, your attorney will usually go over how a deposition works and how to behave during a deposition.

Your attorney will likely advise you to behave courteously at all times during the deposition, and to dress appropriately as if you were going to court. This generally means to consider wherever the deposition is held a formal environment and to dress conservatively in business or business-casual attire.

It is also likely that your attorney will remind you to guard your emotions during the deposition. At times, you may be tempted to exhibit annoyance, displeasure, or even frustration. Don't! The goal of the opposing attorney oftentimes is to make you display this type of behavior to see how you will react and/or to "throw you off," so that you can become confused/rattled during the deposition. If you anticipate this becoming an issue, it might be a good idea to go into the deposition knowing what topics could become difficult for you to talk about, and let your lawyer know about them. You can also mentally prepare for these topics before the deposition, so they don't come as shock when and if they are brought up by opposing counsel.

You will also want to make sure that your attorney has a copy of all your medical records related to your injury from your accident. If you have other medical conditions or any previous injuries, advise your attorney prior to the deposition, so it will not come as a surprise to your attorney when you are being questioned by the opposing side.

Don't bring paper evidence or medical records to the deposition without speaking with your attorney first.

WHAT HAPPENS DURING A DEPOSITION?

The deposition does not take place in court, usually occurs in a conference room at the office of the attorney conducting the questioning, and can last anywhere from 30 minutes to 8 hours. The deposition can be audio recorded or videotaped as well, but you will be notified if your deposition will be videotaped prior to the deposition.

The deposition will begin after all necessary parties (lawyers, yourself, and court reporter) have been introduced. The court reporter will then administer an oath, asking you to swear to answer all questions truthfully, just as if you were testifying in a court of law. Thereafter, the attorney who requested the deposition will begin asking you questions.

During questioning, make certain to listen to the complete question before you answer, as this will give you the opportunity to give the most complete and accurate answer, and also give your attorney an opportunity to object, if necessary. These questions will attempt to find out how and when your injury occurred, in what manner you were injured, and other evidence/specifics of your accident.

While the following list is not all inclusive of the questions that you may be asked at an accident deposition, the following is a general overview of what questions may be asked.

- **Name, Date of Birth, and Address**
- **Family History**
 - Examples: Are you married, single, divorced or widowed? How many children do you have? Where do the children reside?
- **Job History for the last 10 years**
 - Examples: Where were you last employed? Are you still currently working for that employer? If not where you fired, laid-off or did you quit?
 - Example: Have you ever been hurt on the job before?
- **Medical and Health History for the last 10 years**
 - Examples: Have you ever been injured before? Have you ever received inpatient care? Have you ever received outpatient care? If so for what injury and for how long?
- **Criminal History**
 - Examples: Have you ever been arrested before? Have you ever been convicted of a felony?
 - In most states, opposing counsel is allowed to question you no further than 10 years in the past in regards to your criminal history. They may also ask you about misdemeanors, traffic tickets, and convictions.
- **Civil Litigation/ Claims History**
 - Examples: Have you ever filed a claim before? Have you ever filed a lawsuit before? If so what year, and the nature of your claim and/or lawsuit?
- **The Car Accident**
 - Examples: How did the accident occur? What is sunny or rainy that day? What time of day did the accident occur? What day of the week did the accident occur? What were the traffic conditions? Where you the driver or passenger in the car? After the car accident what did you do? Did you notice the other driver speeding?
- **Medical Injuries**
 - Examples: Did you seek medical attention immediately after the accident? What injuries did you sustain from the car accident? What doctor did you treat with for you injuries? What exactly did you treatment consist of for your injuries? Did you miss time off from work due to your injuries? Did your life change in anyway due to the injuries, if so, how?

During your deposition, you may also be asked about other witnesses who have knowledge of your pain and suffering, injuries, or the accident. Remember to answer the questions accurately and truthfully, and to only answer the question that was asked; do not volunteer information unless it is necessary to truthfully, completely, and accurately, answer a question. You always have the right to state that you don't understand a question, ask for a question to be repeated, say you don't remember, and ask for a break.

While you are being questioned, your attorney may object to certain questions; refrain from speaking while your attorney notes objections for the record. Once he or she is done, under the direction of your attorney you may continue and/or finish responding to the question. Objections are noted for the record; however, they do not mean that you cannot answer the question.

During the time you are giving responses, make sure you are giving verbal responses. Head nods, and hand or body gestures are not appropriate, and cannot be recorded by the court reporter.

When the defense attorney is finished with his or her questions, your attorney may ask you a few questions to clarify your testimony or fill in gaps in the testimony, if necessary. After all questions have been asked and answered, the court reporter will note the official end-time of the deposition for the record, and the deposition will be concluded.

If your case is very complex or you have extensive injuries from your accident, there may be a need for a second deposition.

WHAT HAPPENS AFTER A DEPOSITION

In most jurisdictions, after a deposition ends, depending on where you are at in the discovery process, the court will call for a settlement conference to see if the matter can be resolved without going to trial. In other cases, if the testimony given in the deposition is compelling, opposing counsel may reach out with a settlement offer. However, if a settlement is unable to be reached after the discovery phase has ended, then the case will be taken to trial.