

How to Prepare for your Deposition in a Personal Injury Case

A whitepaper by Travis Mayor, Attorney

If you have filed a civil lawsuit in your personal injury case against the at-fault driver, person, corporation, or entity that caused your injuries, then at some point the defense attorney representing the other side will take your deposition.

What is a deposition?

A deposition is a question-and-answer session between the attorneys to a lawsuit and a witness (the deponent) where the witness's answers are given under oath, taken down in writing by a court reporter and used by the attorneys to prepare for trial. In fact, deposition testimony can also be used in court at trial. A deposition is typically held in a lawyer's office with lawyers for each side present, a court reporter and the parties to the lawsuit. While the deposition process can seem informal, it is extremely important because what you say can be used against you.

Depositions are governed in Oregon by ORCP 39, which sets forth the legal requirements and procedures for a deposition. However, for the personal injury client, the most important thing to worry about is that you are properly prepared for your deposition in your personal injury case. To fully prepare, you must understand why the other side wants to take your deposition in the first place.

Why are depositions taken?

The following are the typical reasons why the defendant's attorney will take your deposition:

1. To discover what you know about the case. The opposing attorney is searching for evidence.

2. To find evidence favorable to the defendant. In doing so, the opposing attorney may attempt to get you to make statements against your interest.
3. To commit you to statements under oath. If you testify under oath in your deposition that the motor vehicle collision occurred in a certain way, and you attempt to change your testimony later at trial, the opposing attorney can read that portion of your deposition to the jury, thereby using your deposition testimony against you.
4. To discredit your testimony or the testimony of other witnesses through you.
5. To see what you look like, hear you speak and see how you might present to a jury. The deposition is the only opportunity the defendant's attorney can speak to you about the case prior to trial, and often it is the first time the defense attorney will see the plaintiff. Oftentimes the defense attorney will report back to the defendant's insurance company about whether the plaintiff made a favorable or unfavorable impression during the deposition.

How to deal with the opposing attorney

You must be prepared for an opposing attorney who will emphasize the strong points of the defendant's case, ignore or try to explain away the weak points of the defendant's case, and try to poke holes in your case. Opposing counsel may attempt to ridicule your story or contrive ways to suggest that you are not telling the truth or are in error. He or she may even attempt to put words in your mouth by getting certain admissions from you with confusing and leading questions. For these reasons, you must be on guard and prepared. While you must be truthful, you must also be cautious. The following tips, if exercised, should help you be a good witness during your deposition.

Deposition Tips

1. **Be prepared.** You should review the facts of your case with your attorney so that your memory is refreshed and you can answer correctly. This is important not only for knowing how to deal with potential weak spots in your case, but also for remembering and knowing all of the strong points in your case. You want the defense attorney to know the strengths of your case with respect to the defendant's liability, your injuries, symptoms and the impact they

have had on your life. By being prepared you can make a good, truthful and forthright impression.

2. **Think before answering.** Listen to the entire question and think about it before answering. By waiting for the entire question to be asked and not jumping in with an answer to what you think is the question, you will not mistakenly give away information that the other attorney was not actually asking about. Also, a short pause allows you to think about the truth and the answer you want to give. Finally, this also allows your attorney to make an objection to the form of the question if there is a basis to do so.
3. **Never volunteer information.** Do not volunteer information or give testimony about something that was not asked. Your duty is to tell the truth and answer only the question that has been asked. If the answer to the question is “yes” then you answer “yes” and that is it. You do not explain why the answer is “yes” unless the opposing attorney asks for that question. Keep your answers brief. Too many people have hurt their cases by volunteering information that was not asked by the opposing attorney. Doing so might reveal something the opposing attorney had not thought of asking about and it also opens up other lines of questioning that may be damaging. If you have answered the question asked then sit quietly and wait for the next question.
4. **Make sure you understand the question.** If you do not fully understand the question that has been asked then do not answer it. Ask for clarification. If you did not hear the question, then ask that it be repeated. You have the right to understand the question before you give an answer. If you give an answer to a question the opposing attorney will assume you understood it. If you thought you were giving an answer to a question when the opposing attorney was asking a different question, then you might harm your case. If in doubt, ask for clarification or rephrasing of the question.
5. **You must tell the truth.** This is your obligation even if you think the truth will hurt your case. More often than not the harm caused to a client’s case by not being truthful and getting caught is far worse than the harm caused by being truthful about a weakness in the case. Prior to your deposition, you should review perceived weak areas in your

case with your attorney so that you will know how to address them if questions arise during your deposition.

6. **Don't get rattled or upset.** Remember, you want to make a good impression on the defense attorney who will be reporting back to a client representative or insurance company who makes decisions about settlement and going to trial. If you get rattled, upset or argumentative in your deposition in response to the defense attorney's questions, then you will not make a good impression. The opposing attorney will assume you will make the same bad impression on a jury in response to cross-examination. So, even if the questioning becomes uncomfortable or tough, be pleasant, straightforward and professional. If you maintain your composure and make a good impression on the defense attorney, then you will likely do the same with a jury.
7. **Don't guess.** Do not guess in response to a question. If you do not know the answer to a question, say so. Nobody has a perfect memory. "I do not know" is a proper response to a deposition question if you truly do not know. Also, do not guess if you do not have personal knowledge of the question asked.
8. **If you do not remember, say so.** If you do not remember a particular fact or answer to a question, say so. If you knew it at one point, but cannot remember, then say so. If you are pretty certain of an answer, but not absolutely certain, then say so. Do not make assumptions if you cannot remember.
9. **Stay true to your answers.** If your original answer to a question is accurate, stick to it if the opposing attorney asks the question again. Many attorneys use the tactic of asking the same or similar question repeatedly or in different ways in an attempt to get a different answer. Stick to your original answer and do not let the opposing attorney puts words in your mouth or influence your testimony with this tactic.
10. **Read the fine print.** Oftentimes documents or photographs will be evidence in a personal injury lawsuit and will be exhibits in your deposition. You may be asked by the defendant's attorney detailed questions about a document or photograph. The attorney may also read a portion of a document to you and then ask you questions about

it. It is important that you never testify about the contents of a document that you are not familiar with. Therefore, the document must be before you and you must completely review it before answering any questions. Make sure to read the fine print as well. If the opposing attorney uses the document to ask a question, insist that the document is returned to you prior to answering the question. Finally, if the defense attorney suggests that the document or photograph states certain facts or shows something, always check the document or photograph to see whether it truly does before answering. Don't let the opposing attorney interpret a document or photograph in a manner in which you do not agree. Use the document or photograph to frame your answer to the question.

11. **Silence and breaks.** After you have answered the question, do not speak until the next question is asked. Witnesses sometimes become uncomfortable with long silences and feel compelled to keep talking. Be silent! Sometimes defense attorneys will use silence after you have answered a question as a ploy that you should give another answer or keep talking. This tactic may be accompanied with a look of disbelief, raised eyebrows, or a tilted head. If this happens, be silent. You must ignore the silent treatment. Wait for the next question.
12. **Do not bring documents to the deposition.** Do not bring notes, a diary or other documents with you to your deposition that you may want to refer to or review. If you do so, the defense attorney will likely request to review them and question you about them line by line. Also, some notes and written communications are privileged, but that privilege may be waived if you use those items to assist with your testimony. To avoid this from happening, prepare for your deposition with your attorney beforehand and do not bring documents with you to the deposition.
13. **Deposition questions can cover irrelevant topics.** The subject matter of deposition questions often goes way beyond the subject incident itself and can be very broad. Because depositions are used as a discovery tool, the opposing counsel can ask the witness about virtually anything, including childhood, education, work experience, personal relationships, criminal background, credit history, other accidents, lawsuits, claims and beyond. These types of questions can be very personal and get into sensitive and private matters that have

nothing to do with the case. Be prepared for this to happen. Most of the questions and your answers are not admissible and would not come into evidence at trial. However, sometimes a defense attorney will uncover something useful that can be admissible. Your job is to give truthful testimony and nothing more. If there is something in your history that is problematic or sensitive, tell your attorney. If you are prepared for the possibility of these types of questions then they will not come as such a surprise when they are asked.

14. **Objections.** Your lawyer may object to certain questions asked by the defense attorney. If that happens, wait until he or she is finished. The court reporter will note the objection on the record for a later ruling by the judge at trial. After most objections, you will be instructed to answer the question anyway. However, some questions are objected to because they seek privileged information. For instance, something said between you and your attorney is subject to the attorney-client privilege. Under those circumstances, your attorney should object and instruct you not to answer. Try not to be distracted if you hear an objection.
15. **Correcting Mistakes.** You have a right to read the transcript of your deposition and correct any mistakes. However, the best time to correct mistakes in your testimony is at the deposition before a transcript has been prepared. Raise any concerns you have with your attorney on a break. After the break, you can often clarify or supplement a prior answer to the defense attorney's questions. For example, if you forget to mention an injury or symptom caused by the collision and subsequently remember, bring this to your attorney's attention at a break. This can easily be corrected by bringing this to everyone's attention after the break when you are back on the record.
16. **Relax.** Finally, while it is important to be prepared and to tell the truth, also try and relax. Be confident in knowing that the truth should prevail and that you and your attorney have properly prepared for your deposition. If you follow the tips above and make a good impression, then you are likely on your way to putting your case in a good position for settlement or trial.

For a **free consultation** and case evaluation, call Travis Mayor at (503) 444-2825, email travis@mayorlaw.com, or visit our website at MayorLaw.com.

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PERSONAL INJURY IS MY SPECIALTY.
**PERSONAL SERVICE IS
MY COMMITMENT.**

-travis mayor

