



HOW TO PREPARE YOUR CLIENT FOR A DEPOSITION

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II. Who is the client and what is he/she thinking?

A. Nonprofessional Client

1. Scared to death.
2. Process is alien to him/her.
3. Doesn't know what the plaintiff's attorney is looking for, so you must explain in detail.
4. Put yourself in your client's shoes.
5. Calm your client down.

B. Professional Client (usually a doctor or lawyer)

1. Tell your client that he/she is the most important person in the case.
2. The client will win or lose the case, especially in a malpractice action.
3. This knowledge will cause the client to appreciate the importance of the deposition.

III. Theme – Identify the theme of your case before the prep session and know what your client can and cannot effectively convey.

IV. Answers to Interrogatories

- A. Bring an extra copy to the meeting and review the answers with your client.
- B. Identify the most important answers and tell the client to study them.
- C. Make sure the client knows the importance of not contradicting the answers at the deposition.

V. Request for Admissions

- A. Bring an extra copy to the meeting and review the admissions with your client.
- B. Identify the most important admissions and tell the client to study them.
- C. Make sure the client knows the importance of not contradicting the admissions at the deposition.

VI. Expert Reports – Study the expert reports and make sure that your client will not contradict them.

VII. Videos and Incident Reports

- A. Review these with your client by showing or describing them.
- B. If you show them, they are discoverable.
- C. If you describe them, they are protected by the attorney-client work product privilege.
- D. You must decide whether you wish to waive the privilege.

VIII. Plaintiff's attorney wants your client to

- A. look stupid,
- B. say, "I don't know,"
- C. argue, and
- D. admit fault, large or small.

IX. Client must be direct and polite, not evasive or rude.

X. Boxing Match Analogy – Client must be ready for the punch, then punch back with the theory of the case.

XI. No One-word Answers

- A. One-word answers will allow your client to be more easily impeached at trial.
- B. Answers should be yes, no, or it depends, followed by one or two sentences containing the theory of the defense.

XII. Example – Shoulder Dystocia Medical Malpractice Case

XIII. Client may ask why the deposition is being videotaped.

- A. Tell your client that the video will serve as trial testimony if he/she is unavailable due to death, being overseas, is incarcerated, etc.
- B. Because it may serve as his/her trial testimony, the client must dress appropriately.
 - 1. Men should wear a coat and tie.
 - 2. Women should dress as if they are going to church.

XIV. Body Language in Videotaped Deposition

- A. Extremely important for jury purposes.
- B. A jury will see a witness who puts his elbow on the table and rests his head on his hand as arrogant.
- C. Swiveling or rocking in chair projects nervousness.
- D. The jury will perceive hostility if arms are crossed in front of the body.

XV. Notes – Tell your client to take copious notes during the deposition prep session because he/she must study them later.

XVI. Cheat Sheet – Your client may create a cheat sheet. It will be discoverable, but that's better than an "I don't know" or "I don't remember" answer.

XVII. Cases Involving Records

- A. Give your client the key records.
- B. He/she must study them and bring them to the deposition.
- C. The client must always refer to the records for two reasons.
 - 1. Ensures the accuracy of the answer.
 - 2. Buys the client time so that he/she can think about what is being asked.

XVIII. Client Must be Contemplative

- A. Plaintiff's attorney will fire questions at your client to get him/her into the rhythm of firing answers back. Tell your client not to fall into this trap.
- B. Tell your client that he/she is in control of the tempo of the deposition.
- C. It's okay for the client to pause. At trial, you will tell the jury that your client was thoughtful; he/she thought about the answers before giving them.

XIX. Plaintiff's Attorney Will Attempt to Engage Your Client

- A. Explain to the client that you will do the fighting for him/her.
- B. Tell the client that his/her mantra is "I am happy to be here because I am finally getting the opportunity to tell my side of the story."

XX. When Client Works for a Large Company

- A. Go to the company's website looking for what your client has said or written.
- B. Research any presentations that are available on the internet.
- C. Google what your client has said on social media.

XXI. The Goals of Plaintiff's Attorney

- A. Wants to know what your client will say at trial.
- B. Wants your client to criticize himself/herself, fellow colleagues at work, and co-defendants.
- C. If plaintiff's attorney doesn't like your client's answers, he/she will keep asking the same question. Tell your client not to change the answer under any circumstances.

XXII. Humor – Nervous clients will sometimes make jokes or wisecracks. Tell your client not to do this because it will lengthen the deposition, thereby increasing the likelihood that he/she will make mistakes.

XXIII. Laser Beam Answers

A. Tell your client to answer every question like a laser beam, meaning that he/she should only answer the precise question that was asked.

B. Try these examples.

1. If you are asked if you know the time, and you do, your answer should simply be yes. Not “Yes, it’s 2:15.”

2. If you are asked when you graduated from high school, just give the year. Do not follow it with the name of the school.

XXIV. Speculation

A. Tell your client that he/she must never speculate about things he/she would never know because this will come back to haunt him/her at trial.

B. Example – If asked why the plaintiff would do something, the answer should be “I have no idea. You’d have to ask your client.”

C. Client must never speculate about the motives of co-defendants or others.

D. Client must never say “I don’t know” when asked about himself/herself or a close colleague. There must be an answer.

E. A corporate representative must always have an answer.

XXV. Objections

A. According to the rules of procedure, you may only object to the form of a question at a deposition, unless it is being videotaped for trial purposes. In that instance, you must state a basis for the objection. For example, compound question, confusing question, the question mischaracterizes the evidence, etc.

B. If the questioning is getting out of control, you may consider a speaking objection. Tell your client that when this happens, he/she must listen to what you are saying.

XXVI. The Fabre Doctrine (Florida) – Plaintiffs may recover for the portions of their losses caused by others, but individual defendants are not forced to pay for damages that they did not cause.

XXVII. Recollection of Events (*Also see XXXIII, infra.*)

A. Plaintiff’s attorney wants your client to say he/she has a clear recollection of events.

B. When this happens, he may ask your client to describe the plaintiff. To be prepared, show your client a likeness, or describe the plaintiff for him/her if you do not want the likeness to go out in discovery. *See VII, supra.*

XXVIII. Thinking Like Plaintiff's Attorney

A. It is very helpful for your client to think like the plaintiff's attorney.

B. Try asking your client to state the plaintiff's argument.

XXIX. Plaintiff's First Name

A. If your client knew the plaintiff for a long time, he/she should use the plaintiff's first name.

B. If the first name is used, the jury will not like the fact that the plaintiff is suing someone who was his/her friend.

XXX. Readbacks

A. At the deposition, you may ask the court reporter to read the question back.

B. Tell the client that this will signal to him/her that this is a very important question and that he/she needs to get it right.

XXXI. Admitting Fault

A. Tell the client not to admit fault under any circumstances.

B. Remind your client that in a negligence case, he/she only has to have acted reasonably.

XXXII. Inadmissible Testimony

A. Plaintiff's attorney will ask questions that will elicit testimony that is only admissible if your client lies.

B. Examples

1. Have you ever been arrested?

2. Have you ever been convicted of a misdemeanor or felony involving dishonesty?

3. Have you ever been sued?

4. Have you ever been disciplined by a hospital, state licensing agency, etc.?
(Make sure you know why your client left any and all jobs.)

C. Don't worry about these questions, but be prepared.

D. Must uncover all skeletons in your client's closet.

XXXIII. Recollection of Events (*Also see XXVII, supra.*)

- A. Plaintiff's Attorney: Do you really remember this accident from three years ago?
- B. Inappropriate Answer: All I remember is what I've read in these documents.
- C. If the client has gaps in his/her memory, the plaintiff will fill the gaps in with lies.
- D. Appropriate Answer: I have a good direct memory of the event that has been enhanced and refreshed by looking at photos, documents, etc.

XXXIV. Authoritative Sources

- A. Tell your client that there is no such thing as an authoritative text or a reliable text or source. This is especially true in medical malpractice cases, but applies in any type of suit.
- B. If your client says that there is such a thing, he/she will be crossed mercilessly at trial.
- C. When the client says that there is no such thing, the plaintiff's attorney will pretend to be shocked and will follow up by asking the client if he/she reads or has read particular sources. When your client says yes, the attorney will ask how then is the client saying that none of the texts/journals are authoritative.
- D. Appropriate Answer: It's very simple. My particular field changes all the time and what we did two or three ago is different now. The treatments and diagnoses change all the time, so there is not any one bible that tells me how to practice medicine. Therefore, I do not rely on any one source. I rely on lots of different things, but I don't find any one thing to be authoritative.
- E. Example in a case that does not involve medical malpractice.

1. Plaintiff's Attorney: You have a safety policy and procedure manual at work that you have read, don't you?
2. The attorney wants your client to say, "Yes, but I haven't looked at it in a long time."
3. Appropriate Answer: Yes, I have looked at it, but I have not memorized it.
4. Policy and procedure manuals cannot be used to set the standard of care. They may only set guidelines.

XXXV. Prepare Client for the Following Trick Questions

- A. What duty do you think you owed my client that day?
- B. Is what happened to my client an acceptable outcome to you?
 1. If your client says yes, and there has been a serious injury, the jury will hate him/her. If the client says no, the jury will take this as an admission of guilt.

2. Appropriate Answer: It depends on what you mean by acceptable. If you are suggesting that it is an outcome that I wanted, of course that's not the case. If an acceptable outcome is something that can occur despite the best of care, then that is the way that I would look at this.

C. Were you trained that failure to include something in the record means that it never happened?

1. Your client must never agree with this.

2. Appropriate Answer: No, that is not true. I was never trained that way. In fact, I have many interactions with my colleagues at work that cannot necessarily make it into the chart.

D. If you had the opportunity to go back into the record and make changes to it by adding information or deleting inaccurate information, what would you add to or delete from this chart?

1. Client should never say that anything in the record should be changed.

2. Appropriate Answer: Nothing. I think that my charting was sufficient. I'm certainly not perfect, and I've never seen a perfect record, but from my perspective, my chart is reasonable. I would not add or delete anything.

E. What did you review to prepare for this deposition?

1. Tell your client not to mention anything that is privileged, such as attorney letters and memos.

2. Tell your client that it is appropriate for him/her to mention any documents, reports, photos, etc. that you provided to him/her.

F. What did you do in terms of research to prepare for this deposition? Did you do any research online?

1. The client should not have conducted any research, especially online.

2. If there was any online research, the plaintiff's attorney will be allowed to look at the client's computer(s) after the deposition.

G. Any opinion about damages?

1. The answer depends on the case.

2. Sometimes yes, sometimes no. Just be sure to prepare your client.

H. The Reptile Theory

1. Theory designed to make the jury afraid of your client. Make sure your client gives the same answer and uses the same theme each time he/she is asked a reptile-type question.

2. Examples

a. Don't you agree that if you deny responsibility, you're endangering the public?

b. Don't you agree that if you make a mistake, you have to accept responsibility for it?

c. The client should never provide affirmative answers to these questions.

d. Appropriate Answer: I don't know what you're talking about. It has no relevance to this case. I don't even know what mistake you're claiming that I made. You're going to have to be more specific.

3. Tell your client that you will object, and that the basis for the objection is that the attorney is asking a reptile question. This will signal for the client the appropriate response.

XXXVI. Record-extensive Cases

A. If your case contains extensive records, do not give them all to your client. This will overwhelm him/her.

B. Pull out only those records that are relevant to what your client did. For example, out of 1200 documents, you might only give your client 50.