

Tips for Preparing to Take Your Next (or First) Deposition

By Christopher Branch

Depositions play an important role in civil lawsuits and often provide the only opportunity lawyers have to question a particular witness under oath. Information obtained in depositions can be critical to securing a favorable outcome for clients. Therefore, you need to be as organized and thorough as possible when preparing to take depositions.

While there are no absolute rules for preparing to take a deposition, there are three primary phases of deposition preparation: (1) determining your goals and purpose for taking a deposition; (2) familiarizing yourself with the facts and legal concepts of your case; and (3) preparing an outline of the deposition.

1. **Determine your goals and purpose.** Every effective deposition must have a goal and purpose to accomplish the desired outcome for the deposition. Your goals and purpose often are related, but they should be viewed separately. Your *goals* for taking a deposition are what you are trying to obtain from a particular witness. The *purpose* for taking a deposition is the direct reason for the deposition. For example, your goal may be to have witnesses authenticate documents or to lock them into a particular position. Your purpose, however, may be to preserve testimony of a witness who may be unavailable at trial, lay the groundwork to impeach witnesses at trial, determine witnesses' credibility, test case theories, or show the strength of your case. Keep in mind, however, that your goals and purpose may change and need to be refined as you acquire more information during your preparation.
2. **Educate yourself about the facts, legal concepts, and witnesses in your case.** The second phase of deposition preparation involves familiarizing yourself with the facts and the applicable legal standards of your case. This is the most important phase because the more you know about your case the more effective you can be in questioning witnesses. To develop your factual and legal knowledge, you should:
 - **Review the pleadings and jury instructions.** The pleadings indicate what the claims, counterclaims, and defenses are in the case. The jury instructions lay out the elements of those claims and defenses.
 - **Research applicable case law.** Applicable case law should indicate how courts interpret the elements of claims or defense and what evidence was used to establish or disprove those elements. Once you know the elements to claims and defenses and how courts have treated such elements, you can have witnesses establish or refute such elements.
 - **Review prior discovery.** Review deposition notices or subpoenas, discovery responses – particularly documents produced – and prior deposition transcripts in your case and other cases if possible. Your review of prior discovery can provide topics for discussion with and potential questions for witnesses.
 - **Review the applicable rules of civil procedure.** Procedural and evidentiary rules may impact the length of your depositions and may dictate how to handle certain issues during depositions. You should become familiar with the rules of civil procedure before such issues arise. Even if you have extensive experience taking depositions, a quick review of the procedural rules can be helpful because the rules may vary depending upon your jurisdiction.
 - **Research witnesses.** You should try to find out as much information about witnesses as possible which then can be used during depositions. Prior deposition or trial testimony, if available, is a great place to start. In addition, public records searches and searches on social media Web sites may yield useful information. If witnesses claim to have professional licenses or certifications, verify that those licenses or certifications are current and if the witnesses have ever been disciplined.
3. **Prepare an outline.** In the final phase of your deposition preparation, you prepare an outline. At this stage, you determine:
 - the depositions' sequence and structure, including whether depositions should proceed chronologically or by subject matter;
 - your strategy for questioning;
 - what exhibits you will use;
 - topics to discuss with witnesses; and,
 - in some cases, the actual questions you will ask.

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Deposition outlines also should provide the foundation for all documents you want admitted into evidence at trial. One way to start is by writing out the elements of the claims and defenses in your case and listing what information you could obtain from witnesses concerning those elements.

How you create your outline is up to you: you could script every question, identify topics using bullet points, or simply write out a few broad concepts. If you do not have deposition experience, consider looking at outlines of more experienced attorneys to find a format that works best for you. Whatever your approach, your outline should be comprehensive, cover all of your points, and be consistent with your goals of and purpose for taking depositions.

Although there are no absolute rules for preparing to take a deposition, the tips above should get you started. And while you may experience frustration when conducting your next deposition, knowing that you prepared to take the deposition in an organized and thorough way should help you relax so that you can effectively question the deponent.

NEXTSTEPS

[Effective Depositions](#). 2010. PC # 5310397. Section of Litigation.

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