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# Don't let your client sit for a deposition by the seat of their pants

## Prepare them for what's coming

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Has a father ever shown up at their child's birthday party and been asked what year they were born and not known the answer? Would you ever want to show up at a corporate meeting and not know the agenda ahead of time? Of course not! No one likes to provide off-the-cuff answers or come unprepared to discuss a topic. The same holds true for depositions. Make sure your client understands the characters, the setting, the process and, most importantly, the agenda items. How your client does in deposition is essential for a proper presentation of your case.

The agenda for depositions is always: background information, education history, employment history, prior medical history, incident facts, subsequent medical treatment, current injuries and symptoms and injuries' effects on employment.

### Preparing your plaintiff for deposition

Ensuring your client is well prepared for deposition is perhaps the most important aspect of your case. The ultimate presentation of facts related to liability, causation and damages is closely tied to your client's deposition testimony. Poorly presented testimony will handcuff the medical and engineering experts. Additionally, the defense attorney will be preparing a written report to the adjuster regarding your

client's appearance and credibility. As in any setting, first impressions are important.

Your client's testimony must always be truthful and not exaggerated. But you must protect your client from the classic misrepresentations of fact and credibility that the defense attorney will assert if your client presents poorly.

### Spend quality time preparing your plaintiff

Get to know your client, spend quality time with them so they are comfortable with you and gain your trust. I commonly spend at least two hours or more preparing clients for the simplest personal injury case. We all know how nervous clients are as the deposition nears. The more time you spend with them explaining the process, the more comfortable they will be when answering questions. The first deposition preparation should occur several days before the deposition. That gives you additional days to further prepare them, if necessary. It also gives the client time to absorb what was reviewed, and to contact you with any questions.

### Discuss the typical deposition process

Go over who will be present for the deposition and their role, the deposition layout, the typical admonitions. Be sure your client knows you will be present and take an active role in protecting their rights, and that they will be asked about documents they reviewed in preparation.

Be careful about the documents you review with your client. If they review it, and it refreshes their recollection, it must be produced at the deposition upon request. Otherwise, their testimony may be stricken. (Evid. Code, § 771.)

Be sure to start your review with the client regarding the damages that can be recovered in civil litigation. Differentiate between negligence claims and other civil actions such as family law, contracts, etc. They should understand the basic difference between civil law and criminal law and keep it simple – monetary compensation versus jail time. Ensure the client knows that in the personal injury setting, a plaintiff seeks monetary compensation of three types: economic and non-economic damages, and possible punitive damages. Describe each type that applies in their case and the reason. The client needs to grasp the reason for their deposition and its scope.

### Thoroughly review with your client their discovery responses and document production

Inform your client that many depositions follow a similar path that mirrors the form interrogatories, except that non-economic damages questioning commonly occurs last. This at least gives the client an outline of what they should expect. Then, go through all the client's substantive interrogatory responses and document production. Be sure they have a copy of the discovery to review before your preparation and then personally review it with them again.



APRIL 2022

As to the client's background, education and work history, those items are straightforward and, in most circumstances, need not be a major focus point.

Regarding injuries claimed, the client must be able to articulate what body part was injured and how the injury persisted. Since your client is typically not a medical professional, they need only speak as to their physical complaint and not know medical jargon. The client must also be able to generally describe the treatment they received and whether the treatment was effective.

Always go over with your client what they remember about their prior medical history. Even if the plaintiff believes there is no prior relevant medical history, they are commonly incorrect. Because memories fade, an outright denial of a prior physical complaint or injury can negatively affect their damages claim. Defense attorneys like to take an absent-minded response where a witness forgets about certain medical treatment and then use the failure to remember to accuse them of being a liar. Don't let your client fall into this typical defense trick.

The details of a crash or other injurious event would likely have been asked in the interrogatories. Make sure they review their prior answers and description, because you do not want the client to inadvertently leave something out and then have the

defense attorney call your client a liar or state that they are changing their story. This is another typical defense trick.

### Damages

I typically end the client's preparation with a discussion of damages. Ensure your client understands the types of economic damages, wage loss, out-of-pocket expenses, personal property loss, medical expenses, co-pays, etc. You should already have all documents they possess along these lines, so preparation should follow the economic documents trail. Economic damages are relatively straightforward, and, if they are not, you can put the client at ease by explaining that some evidence and testimony will be presented through a forensic economist.

Non-economic damages require careful preparation. Not everyone is comfortable with talking about their pain and suffering. Before the deposition preparation, I speak to the client about the types of recoverable damages. The client should not be expected to appear in deposition and rattle off every aspect of their suffering. However, they must be able to describe what pain they experience with different types of activities and the suffering they experience every day as a result of their injuries.

### Social media

This is a hot topic often being discussed by the defense attorney in each

case. You should review all postings upon case intake and before responding to written discovery, but do so again before the deposition to ensure the client remembers the context of each posting. Defendants often like to use the photo of your client on vacation or smiling with a group of people to argue that your client looks happy and fine so there must be nothing wrong. Remember, social media is an alternate reality where no one shows how they are truly feeling.

### Conclusion

Preparing your client for deposition is a process. Start the process well before the deposition date and ensure your client is given the best opportunity to understand the process so that they can describe the full impact of their trauma upon their lives.

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