

Preparing for plaintiff's deposition in a motor-vehicle collision case

Prepare your client to give a deposition that supports her credibility and your case

By Malosack Berjis

"Before anything else, preparation is the key to success." – Alexander Graham Bell

As with most endeavors in life, the extent of your preparation will directly impact your success. Depositions are no exception. Whether you are taking, defending, or testifying at a deposition, preparation is the key to success.

Before a plaintiff is presented for her deposition, adequate and effective preparation is vital. Proper preparation ensures a successful deposition, where the only thing defense counsel walks away with is a positive impression of your client.

Schedule preparation meetings

When I call the plaintiff to notify her of the scheduled deposition, I also let her know that we will be preparing in person, during the week before her deposition, for a total of six to eight hours. While not every client will need the full six to eight hours, you will not know how much time will be required until you meet with them.

I follow up the conversation with an email confirming the date, time, and location of each preparation meeting, as well as the deposition itself. I also attach a copy of the deposition notice and include a privileged and confidential letter explaining the deposition process, the basic rules, and what the witness should and should not do during the deposition. I ask the client to review the letter at least once before our first preparation session.

Do not be surprised if your client expresses displeasure about the amount of time required for preparation. However, rest assured that the same client will likely leave her deposition feeling satisfied and appreciative of the time you invested in preparing her effectively.

Your preparation

As the attorney, you cannot properly get your client ready for her deposition unless you are completely prepared yourself. This requires a comprehensive review of the case file, along with effective organization of key documents and information.

Case file review

Before the initial preparation session with the plaintiff, it is crucial that you thoroughly review her case file and reacquaint yourself with the facts – both good and bad – of her case. Essential material to review include the police report and any other incident reports, photographs of the collision or the plaintiff's injuries, video footage, audio recordings of 911 calls or recorded statements to insurance companies, any records related to lost earnings if the plaintiff is claiming wage loss, ISO ClaimSearch results showing the plaintiff's claims history, demand letters, and any records documenting pain and suffering (such as the plaintiff's diary/journal).

It is also essential to review the plaintiff's current medical records – particularly those subpoenaed by the defense – in addition to any relevant prior medical records, if the plaintiff has a history of injuries to the same body parts involved in this case. Also, make sure to go over the plaintiff's responses to written discovery and any initial disclosures served.

Understanding what defense counsel will be attempting to prove during the deposition is critical. Reviewing the defendant's answer, as well as their deposition testimony and responses to written discovery, will give you insight into their contentions. This understanding will help you better prepare your client for what to expect.

From your review of these materials, identify the key areas of anticipated questioning, including any potential weaknesses or pitfalls. Make a list of these topics to address with your client during her preparation sessions.

Where possible, I also recommend obtaining transcripts of any prior depositions taken by defense counsel. This can provide valuable insights into their questioning strategy and how they conduct themselves during depositions.

Deposition binder

Having an organized binder with key documents readily accessible is invaluable. It will not only aid the plaintiff's preparation sessions but also allow for quick reference during the deposition itself. Always keep a copy of the deposition notice in the front pocket of your binder, and then organize and tab the remaining documents as follows:

1. List of anticipated topics to discuss with the plaintiff
2. Brief summary of the plaintiff's written discovery responses (i.e., facts and contentions)
3. Summary of the plaintiff's current and relevant prior medical records, including complete timeline charting out complaints of injury pain, and physical limitations, plus course of treatment
4. Excel spreadsheet of the plaintiff's medical bills to date
5. Police report (or any incident reports)
6. Photographs
7. Vehicle repair estimates
8. Demand letters and C.C.P. § 998 offers
9. ISO ClaimSearch results
10. Pertinent case law and statutes
11. Anything else you feel is important/relevant to the case

Copyright © 2025 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**



Plaintiff's preparation sessions

At the initial preparation meeting, provide the plaintiff with a general overview of the deposition process. Explain that, while the deposition will not take place in a courtroom, it is still a formal and adversarial proceeding where she will give sworn testimony. Inform the plaintiff that defense counsel will ask her questions, and her answers will become part of the official record in the case. The more your client is educated on what to expect, the more comfortable and confident she will feel on the day of the deposition.

General overview

The plaintiff must understand that deposition testimony is just as important as live testimony at trial. Since it is given under oath, it subjects the deponent to the penalties of perjury. Additionally, deposition testimony is intended to be used at trial and can be used against the plaintiff if her story changes. Therefore, it is imperative that the plaintiff take the deposition seriously and be adequately prepared.

Remind the plaintiff that defense counsel is not her friend and is not there to hear her side of the story. The defense attorney's primary objectives are to gather information beneficial to the defense and harmful to the plaintiff's case, get the plaintiff to contradict any prior sworn statements, and "pin down" the plaintiff's testimony so that it is more difficult for her attorney to introduce new, favorable facts later.

Appearance and demeanor

The plaintiff's deposition is also an opportunity for defense counsel to "size up" the plaintiff and assess how she might present to a jury. Your client should know that her appearance and demeanor will be reported by the defense lawyer to the insurance carrier for settlement evaluation purposes. Therefore, it is essential that the plaintiff presents herself as a credible, capable, and confident witness. The more favorable an impression defense counsel has of her as a witness, the more they will respect her.

Advise your client that, just as her demeanor should be polite and professional, her appearance at the deposition is also significant. She should dress conservatively and professionally, as though attending a job interview, and be well groomed to present herself in the best possible light. It is also important for the plaintiff to be aware that her deposition may be videotaped, and the footage could be shown to the jury during trial.

Admonitions

One of the most helpful ways to prepare your client is by familiarizing her with admonitions given at depositions. It is important that the plaintiff is not encountering questions like, "Do you know the difference between a guess and an estimate?" or "Have you consumed any alcohol or medication within the past 24 hours that could affect your ability to testify?" for the first time during the deposition. You should go over a list of any medications your client is taking, and if the medication she is on does not affect her memory or ability to think clearly, then she would not need to identify it at this point in the deposition.

Telling the truth

The most important rule in any deposition is that the witness must tell the truth. It is vital to emphasize to the plaintiff that honesty is essential throughout her deposition. Remind her that she will be testifying under oath, and that any false statements made under oath carry the penalty of perjury. Lying during her deposition will damage her credibility and harm her case.

Listening carefully and understanding the questions

Explain to your client that she must listen carefully to each question and make certain that the defense attorney has finished asking their question before considering her response. Stress that the plaintiff should not answer a question unless she is 100% sure she understands it. Warn your client that, by answering a question, it will be assumed that she understood it correctly. While she has the right to change her answers when reviewing the deposition transcript, it is always better to provide accurate answers from the start, rather than needing to make corrections later.

Assure the plaintiff that she should not feel embarrassed if she does not understand a question, as long as it is the truth. It is perfectly acceptable for her to ask the defense attorney to repeat or rephrase the question.

If you don't know, then just say so

Similarly, the plaintiff should only answer a question if she is confident she *knows* the answer. Responses like "I don't know" or "I don't remember" are perfectly acceptable if they are truthful. If she is unsure, a more precise response, such as "I don't recall at the present time," is ideal because it allows her to revise her answer if she remembers later. The plaintiff should never guess, speculate, or fabricate an answer just to provide one.

Additionally, the plaintiff's testimony must be based on first-hand knowledge. If she knows an answer based on what someone else told her, rather than from her own direct experience, she must clearly identify the source of that information.

For questions involving times, dates, distances, heights, or weights – items that are often difficult to recall with precision – it is better to provide an estimate or approximation. For example, saying, "It took us between 10 and 20 minutes" or "He was about 35 to 40 feet away" is preferable to selecting a specific number that might imply perfect recall. This approach ensures the plaintiff's testimony remains accurate and credible.

Take your time; we have nowhere to go

Once the plaintiff is confident that she fully understands defense counsel's

Copyright © 2025 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**



question and knows the answer, she should pause to assess any potential pitfalls, consider her response carefully, and allow time for her attorney to object to the question and possibly provide instructions not to respond. Advise your client to pay attention to any objections you raise and to respond accordingly (unless instructed not to respond). It is crucial that the plaintiff understands that if you instruct her not to answer a question, she must refrain from responding under any circumstances. If the plaintiff begins to respond before giving her attorney a chance to object, she should stop speaking immediately once her attorney begins to address the question or raise an objection. Encourage your client to take her time in answering questions, since rushing will not expedite the deposition and could lead to issues with her testimony.

Make sure the plaintiff knows that, if she realizes she made a mistake, believes the defense attorney may have misunderstood her answer, or has concerns about an area of inquiry, she should request a break from defense counsel as soon as possible to address the issue.

"Just the facts, ma'am"

Instruct the plaintiff to answer only the question asked and to stop speaking once she has answered defense counsel's question. While it is essential to be truthful, it is equally important not to offer more information than what is required. Often, the plaintiff may unintentionally elaborate on a topic, providing information the defense counsel was not aware of or might not have considered asking about. This can inadvertently open up areas that may cause significant issues. The only time where additional details may be appropriate is when the plaintiff is discussing her pain and suffering.

No need to explain

Likewise, inform the plaintiff that she does not need to explain her answers unless specifically asked to do so by the defense attorney. This also applies to instances where she cannot recall information. The plaintiff should avoid statements like, "I don't remember because it was a long time ago" or "I don't remember because I have a poor memory." Saying such things could undermine her credibility.

Keep calm and stay cool

The plaintiff should never argue with or become angry at defense counsel. She must remain cool, calm, and collected, even if the defense attorney is rude, argumentative, or brusque, or attempts to upset or provoke her. Reassure your client that *you* will be present at the deposition to protect and defend her if defense counsel behaves inappropriately or shows disrespect.

Things to avoid

Advise your client to avoid using definitive words or phrases such as, "never," "I can't," "always," or characterizing anything as "impossible." Defense counsel may seize on any exception to these statements and use it to challenge the plaintiff's credibility. Instead, the plaintiff should use more flexible language that avoids absolutes and allows for some wiggle room. Additionally, caution the plaintiff not to be lulled into a relaxed conversation with the defense attorney, which could cause her to let her guard down. Finally, remind your client not to look to you for guidance during questioning.

Key documents and evidence

During your preparation sessions, have your client review the police report, examine photographs, and watch any relevant video footage. Additionally, provide the plaintiff with a printed copy of her responses to any Form Interrogatories (highlighting sections 6.0, 8.0, 10.0, 11.0, and 20.0 in yellow), Special Interrogatories, Requests for Production of Documents, and Requests for Admissions served by the defense. It is essential that the plaintiff's deposition testimony aligns with her written discovery responses. If, for some reason, the plaintiff's answer to a written discovery question is incorrect, consider serving an amended response with the correct information prior to the plaintiff's deposition. This will help prevent inconsistencies that could be used by defense counsel to impeach the plaintiff.

Medical history and pain and suffering

Go over the medical timeline with the plaintiff, making sure to highlight any relevant prior injuries. The plaintiff should also be able to articulate the pain and suffering she has endured as a result of the collision. To assist with this, discuss any notes found in the plaintiff's medical records detailing how her injuries affected her activities of daily life. If the plaintiff maintained a pain diary or journal, read aloud the sections that describe how her injuries impacted her life. It is crucial for the plaintiff to be able to describe any activities she is now unable to perform, or any activities she can no longer do without pain.

Anticipated questions and potential pitfalls

It is essential to thoroughly review anticipated deposition questions with the plaintiff during her preparation sessions and to assess how she responds. This includes standard questions commonly asked in depositions, such as whether the plaintiff has discussed the deposition with anyone other than her attorneys, whether she has reviewed any documents in preparation for the deposition, among others.

In the context of a motor vehicle collision case, the plaintiff should be well prepared to answer the following questions:

- Was there any warning of the impending collision, such as honking horns or screeching tires?
- Which part of your vehicle was struck by the other vehicle?
- How did the impact feel?
- Did the impact cause your vehicle to move? If so, in what direction, and how far did it move?
- How were you seated at the time of the collision?

Copyright © 2025 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**



• Did your body move inside the vehicle upon impact? If so, how?
• Did any part of your body make contact with any part of the vehicle interior?

When defense counsel asks these questions during the deposition, it will reassure the plaintiff that she has been thoroughly prepared and that her attorney anticipated the process. This familiarity helps build confidence and reduces any anxiety she may have.

Preparing the plaintiff for potential pitfalls is a critical part of the deposition preparation process. It is important to ensure the plaintiff is aware of any traps that defense counsel may use in an effort to undermine her case. By doing so, you can help avoid situations where the plaintiff might inadvertently say something damaging to her case, especially when there is a reasonable and honest explanation available.

Medical treatment and liens

If there have been any gaps in treatment, ensure that the plaintiff can provide a clear explanation for any delays between medical appointments. If the plaintiff received care on a lien basis despite having medical insurance, she should be ready to explain why she chose not to use her health-insurance benefits. Possible, truthful reasons may include having to pay out-of-pocket for deductibles and co-pays, delays in approval for specialist consultations under her HMO plan, or long wait times for physical therapy. Additionally, the defense attorney may attempt to challenge the plaintiff by questioning how she can maintain an active lifestyle while still reporting pain. For example, if the plaintiff continues her activities due to personal responsibilities, she should be prepared to explain that.

Conclusion

There is no denying that thoughtful and thorough preparation for a deposition requires significant time and effort. But be confident that dedicating the necessary time and energy to fully understand your case and adequately prepare your client will ultimately be time well spent.


Berjis

Malosack Berjis is a founding and managing partner at BERJIS | MYERS, PLC, *where her practice focuses exclusively on representing plaintiffs in serious personal injury and wrongful death cases involving motor vehicle, motorcycle, bicycle, pedestrian and trucking collisions. She can be contacted via email at malosack@bmfirm.com.*

Copyright © 2025 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**