

For the reader's convenience, the deposition checklist is summarized in this section in the form of a thumbnail outline of the deposition. Each of the topics is covered in

100re detail in the sections that follow this one.

- Preliminary Questions
- The Witness's Background
- Relationship to the Parties and Witnesses
- **The Witnesses' Preparation for the Deposition**
- The Witness's Involvement in the Occurrence
- Where and When
- Weather Conditions
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- The Witness's Involvement in the Occurrence, Continued
- What Witness Saw and Did
- Traffic Tickets
- The Accident Report
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- Statements at The Scene by the Parties
- By Plaintiff
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- With Plaintiff
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- With Lawyers

[§§2:202-2:209 Resened]

2. Preliminary Questions

§2:210 Standard Introductory Questions

If the witness has given a number of depositions, you can, at your discretion, dispense with many of the preliminary questions about the deposition procedures. For 100re about the purposes of the standard preliminary questions in a deposition, *see* § 1:100 Preliminary Questions.

Q: Please state your name for the record.

Q: Where do you live?

Q: Have you given a deposition before?

Q: On how many occasions?

Q: I want to tell you some ground rules for this deposition, is that okay?

Q: The court reporter is taking down everything we say, so it is important that you answer with words, rather than with a nod or shake of the head. Do you understand?

Q: To make it easier for the court reporter to record what we say accurately, it is important that we not talk over one another. Please wait until I have finished my question before answering. Is that okay?

Q: You understand that you are under oath today?

Q: And sworn to tell the truth?

Q: Even though we're in an informal setting, your testimony has the same force and effect as if we were in front of a judge and jury. Do you understand?

Q: If you don't understand one of my questions, please let me know, and I'll rephrase it. Is that okay?

Q: If you need to take a break, let me know, and we can take a break. Okay?

Q: Are you prepared to answer my questions today?

Q: Is there any reason you won't be able to give me full, complete and truthful answers to my questions today?

§2:211 The Witness's Background

Obtaining basic background information about the witness will help you to "size him up." In addition, it is also important to know whether the witness has ties to the area from which the potential jurors will come.

Q: Would you summarize your educational history?

Q: Where did you grow up?

Q: What jobs have you held since graduating from high school?

Q: Your occupation is a police officer?

Q: How long have you been a police officer?

Q: Where else have you worked as a police officer?

Q: What training did you have in order to become a police officer?

Q: Have you had any special training in accident reconstruction?

§2:212 Relationship to the Parties and Witnesses

To probe for potential bias, you should ask whether the witness has any relationship or past dealings with any of the parties or witnesses. If the witness knows the parties or the witnesses, find out why.

Q: The Plaintiff in this case is Mrs. Smith. Do you know her?

Q: The Defendant is Mr. Jones. Do you know Mr. Jones?

A: "Yes ."

Q: How do you know Mr. Jones?

A: "His son and I used to play high school football together."

Q: What high school was that?

A: "Central High."

Q: What was Mr. Jones 's son's name?

A: "Peter."

Q: When was the last time you spoke to Peter?

A: "Not since high school- fifteen years ago ."

Q: When was the last time: you spoke to Mr. Jones?

A: "Before the collision. It was also not since I was in high school."

Q: In high school did you socialize with Peter?

A: "No. He wasn't a fiend ."

Q: There are three people in this case who claim to have witnessed the collision. These are [read names]. Do you know any of these people?

A: "No."

§2:213 Practice Tip: The Importance of Law Enforcement Witnesses

Because of their status as public officials, many jurors will hold police officers and other law-enforcement officials in high regard, and will accept their testimony first if it conflicts with that of other witnesses . This will not be a problem for you if the police officer supports your version of the facts. If not, you will have the additional problem of having to cross-examine without angering the jurors. Be sure to tread lightly.

§2:214 Preparation for the Deposition

Asking how the witness prepared for the deposition will key you in to any issues the witness was thinking about before the deposition. These might be problem areas, or these might be areas that help you. In asking how the witness prepared for the deposition, you will also find out what documents he recently reviewed.

Q: What did you do to prepare for the deposition today?

Q: Did you review any documents in preparation for the deposition today?

Q: Which documents did you review?

Q: When did you first learn of this deposition?

Q: After you learned about the deposition, did you speak with anyone about the deposition?

COMMENT:

If the witness talked to anyone about the deposition, find out who the witness communicated with and the subject and purpose of the communication.

[§§2:215-2:219 Resened]

3. The Occurrence

§2:220 The Witness's Involvement in the Occurrence

To set the stage, ask the witness to recount as much as he remembers about his experience from beginning to end. This will require a chronological approach.

Q: What specific recollections do you have of the day of the collision?

COMMENT:

At this point, many witnesses will refer to the accident report and say that they do not have any specific recollection of the collision. You can ask the

questions contained in this section anyway. When the witness answers the question with reference to the accident report, ask a follow-up question about

whether he remembers anything else other than what is contained in the report.

Q: How did you first learn of the collision?

Q: What time: was it when you arrived at the scene?

Q: How long were you there, total?

Q: What did you observe when you arrived at the scene?

Q: What were the weather conditions?

Q: Where were the vehicles located?

Q: Did you conduct any measurements at the scene?

Q: Do you make any observations that are not contained in your accident report?

§2:221 The Witness's Involvement in the Occurrence, Continued

The chronological questioning about the witness's involvement in the occurrence continues in this section. The commentary following the second question in the previous section also applies here.

Q: What did you do first upon arriving at the scene?

Q: You talked to several people at the accident scene?

Q: Please tell me everyone you talked to.

Q: You made notations of those conversations in the accident report?

Q: Is there anyone you talked to other than those who are listed in the accident report?

Q: Do you recall any conversations other than those that are noted in the accident report?

Q: Tell me what else you did at the scene of the collision, other than the events you have already recounted.

Q: Did you give any of the drivers tickets?

A: "Yes, the driver of the car who collided with the first vehicle."

Q: What was that ticket for?

A: "Following too closely."

Q: Why did you cite that driver with following too closely?

§ 2: 221. 1 Practice Tip: The Four W's

It's a basic tip, but one to remember: when you're taking a deposition, it pays to recall the four W's.

That's who, what, when, and where.

When asking about statements, discussions, and events, it's important to cover all the bases . Keeping the four W's in mind will help you do just that.

§2:222 The Accident Report

In many cases, the police officer's accident report will contain everything that he recalls about the collision he reported. Your job will be to find out anything he does recall

about the collision that was not recorded in his accident report.

Q: I'm handing you what's been marked Exhibit I. Is that the accident report that you prepared following the collision of November 21, 2017?

Q: Is there any handwriting on that report that is not your handwriting?

Q: And does your signature appear anywhere on that report?

Q: Am I correct that you put into your report anything that you considered material in relation to the collision of November 21, 2017?

Q: Please take a moment to review the report. Let me know when you are finished .

Q: Is there anything that you recall about the collision of November 21, 2017, that is not contained in your report?

Q: The report lists certain statements made by the drivers involved in the collision of November 21, 2017?

Q: Did you include in your report any and all statements made by the drivers involved in the collision of November 21, 2017?

Q: Are there any statements made by the drivers involved in the collision of November 21, 2017, which you recall now, but were not included in your accident report?

Q: You stated that Mr. Jones, the Defendant in this case, stated that the car traveling in front of him was traveling too slowly, in his opinion?

Q: You did not record a statement by Mr. Jones that the car in front of him-the car that he collided with-did not have its light on?

Q: Do you recall such a statement?

Q: You listed all the witnesses to the collision of November 21, 2017, in your accident report?

Q: Are there any witnesses that you recall today that you did not list in your report about the collision of November 21, 2017?

[§§2:223-2:229 Resened]

4 . Witnesses and Statements

§2:230 Knowledge of Other Witnesses

Discovery of the identity of eyewitnesses is a key component to working up a vehicular-liability case. Although the accident report will contain the names of some witnesses, be sure to follow up about others.

Q: In your accident report, did you attempt to write down the names of all the witnesses to the collision?

Q: The accident report lists three witnesses. To your knowledge, were there other witnesses to the collision?

§2:231 Statements at the Scene by the Parties

At this point in the deposition, you might have already covered statements made by the parties at the scene of the accident. Because statements are so important, however, it is important to ask follow-up questions.

Q: Did you have any conversations with Mrs. Smith about the collision other than those you have told me about?

Q: Did you have any conversations with Mr. Jones about the collision other than those you have told me about?

§2:232 Other Conversations About the Occurrence

In §2:191 Deposition Preparation, you asked the witness whether the witness had any conversations with anyone about the deposition itself. In this section, you'll ask a slightly different question- whether the witness, after leaving the scene, talked to anyone about the occurrence itself. If the witness answers yes, you should find out the details of the conversation.

Q: Other than the conversations on the scene that you have already told me about, did you have any other conversations about the collision at any other time?

A: "I don't think so."

Q: Besides your brief telephone conversation with me, have you talked to other lawyers?

A: "Yes, another lawyer called me on the phone."

Q: Which lawyer was that?

A: "The Defendant's lawyer."

Q: When did that conversation take place?

Q: What did you talk about?

A: "Nothing, really. He asked me what I remembered, and I said nothing except for what was in the police report."

Q: Did you take a look at the police report before you gave him that answer?

A: "I got a copy when he was on the phone with me."

Q: Did you talk about anything else with the lawyer at that time, other than the fact that you didn't remember anything except for what was in the police report?

Q: Did you talk to any other lawyers about the collision before today?

Q: At any time after you left the scene of the collision, have you talked to anyone who claims to be a witness to the collision?

Q: At any time after you left the scene of the collision, have you talked to any of the parties to this lawsuit?

[§§2:233-2:239 Resened]