

Deposition Survival Guide: What They Don't Teach You in Law School

By Tyler R. Paboojian

Introduction

It feels like just yesterday I took my first deposition, which isn't surprising, considering I was only licensed as an attorney last fall. Being tasked with deposing a witness as a newly minted attorney is exhilarating, but let's be honest: it's also nerve-racking. Most seasoned lawyers have their style, rhythm, and line of questioning dialed in. For them, it's second nature, like riding a bike. But for new attorneys, we are stepping into the unknown. No reps on the record. No experience handling opposing counsel's attempts to rattle us.

This article offers a firsthand perspective from a new attorney thrown into the deep end, with the aim of demystifying the process, sharing practical tips, and highlighting lessons learned, so when it's your turn, you're ready to question with confidence.

Start With the Why

Sun Tzu said it best in *The Art of War*: "Know thyself, know thy enemy." A bit dramatic, sure, but it applies. Before you

do anything else, ask yourself: Why am I taking this deposition? What's the purpose? Who is the deponent, and what do I need to learn from them? Whether it's a third-party witness, a defendant driver, or a PMQ, set a clear intention for what this deposition should accomplish. Are you establishing liability? Proving damages? Locking in testimony? Authenticating documents? Knowing your goal from the outset focuses your preparation and cuts through the nerves. Once you've set your intent, do a deep dive on the deponent. Study them like you're writing a profile. Consume everything you have on hand. Read the police report, track down any relevant statements, body worn footage, deposition transcripts where they are mentioned. This kind of prep builds confidence before you even walk into the room.

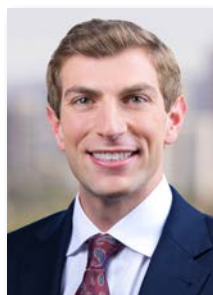
Know the Issues

Once you know your purpose, zero in on the key issues. If you're deposing the defendant driver, ask yourself: Is there a course-and-scope dispute? Is there disagreement about who had the green light? Identifying the core issues will shape your outline and help you focus on what actually matters. Take, for example, a potential course-and-scope defense. Say the crash happened while the defendant was driving from home to work. That triggers California's going and coming rule, which generally holds that employees are not acting within the scope of employment during their commute. But there are exceptions, and it's your job to be ready for them. Fire up your favorite legal research platform

(hello, Westlaw), and pull the relevant CACI jury instructions to see what factors support an exception. One key exception? When the commute provides an incidental benefit to the employer, like transporting work equipment, traveling between job sites, or heading to a client meeting. So, as you build your outline, prep targeted questions: Were you transporting any equipment? How many job sites do you have? Were you heading directly to a client location? Knowing the issues ahead of time gives you a roadmap and helps make sure no critical fact slips through the cracks.

Exhibits Are Your Friend

Before you dive into crafting your outline, compile your exhibits. Using exhibits in a deposition, especially as a new lawyer, can feel intimidating at first, but they're actually one of your best tools. Why? First, exhibits help break up and structure the witness's testimony. For example, during a recent deposition of a defendant driver, I used photos of the scene and vehicle damage to walk the deponent through how the collision occurred. It made the narrative clearer and reduced confusion that can come with open-ended questioning. Second, if the deponent starts dodging your questions or getting slippery with their answers, an exhibit can help you regain control. Sometimes putting a document or image in front of them forces specificity where vague answers won't cut it. And finally, you've now got an added bonus: potentially authenticated exhibits you can use later in motion practice or at trial.



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Crafting Your Outline

Now you're ready to build your outline. The good news? It's not a law school outline ... thankfully. It can be as brief or as detailed as you need, depending on what makes you feel most prepared. It's all about personal style.

For my first deposition, I created a thorough outline with main topic headers, subheadings, and specific questions underneath. In a motor vehicle collision case, organizing your outline chronologically often helps keep the flow natural. Start with admonitions, then cover the deponent's background—education, employment, training—before walking through the incident date, the collision itself, post-incident conduct, and anything else relevant. You don't need to be glued to your outline, but especially early on, having a roadmap gives you structure and confidence when things get unpredictable.

Brush Up on Your Deposition Procedure

You've got your outline in hand, nerves kicking in, but you're ready. Before walking into the deposition, take one more critical step: know the rules. Understanding deposition procedure will give you the confidence to stand your ground, especially when facing a seasoned (and often assertive) opposing counsel who may try to take advantage of your inexperience. Depositions are a fact-finding tool. You can ask broad questions, and unless the answer involves privilege or privacy protections, the witness is required to answer. (*Stewart*

v. Colonial Western Agency, Inc. (2001) 87 Cal.App.4th 1006, 1014, 1015.)

If opposing counsel instructs the witness not to answer on any improper basis, like relevance or form, don't let it slide. Make your record: "Counsel, I'm entitled to an answer unless it's privileged or private. Please state the legal basis for the instruction not to answer." Stay calm and firm. You've done your homework. The best practice is to note the objection, move on, and mark the transcript for potential court intervention. If you want to fully preserve the issue for a discovery motion, ask a follow-up question confirming whether the witness is refusing to answer based on counsel's instruction. This clarifies the record, making it clear whether the refusal was based on counsel's instruction rather than the deponent misunderstanding the question.

The same goes for document production. Under California Evidence Code § 771, you're entitled to inspect any writing shown to or relied upon by the witness to refresh their memory, even if it was shown to them by their own attorney during prep. Brushing up on these basic rules will protect your record, keep the deposition on track, and help you get the answers you're entitled to.

Taking the Deposition: Take Your Time and Make a Clean Record

It's go time. You're nervous. Your voice might shake a little. Breathe. You're prepared, and you've earned your seat at the table. Remember, this isn't a race. The most important thing is the record. What

helped me during my first deposition was realizing that the transcript doesn't reflect how long you paused between questions. So, when a witness gives a vague or evasive answer, especially on a key liability point, don't rush to move on. Think about how that exchange will read later. Keep it clean and tight. If opposing counsel interjects or tries to derail your questioning at a critical moment, stop, stay composed, and rephrase the question. Don't let the interruption cloud the record. Those clean, clear admissions are exactly what you'll be cutting and pasting into your mediation briefs, oppositions, or motions later. So instead of worrying about sounding slow or unsure, remember what matters: the record. Have your key lines of questioning ready because those are the moments that will carry weight long after the deposition ends.

Taking Control of the Evasive Deponent

As a new lawyer, you may be concerned with witness control when taking depositions, especially when dealing with an evasive or obstinate deponent. It is easy to feel like you are losing your footing when a witness responds with long, rambling answers that dodge the question. This is where staying calm and narrowing the scope becomes essential.

With adverse witnesses, you are not always going to get clean, direct answers. That is okay. The goal is to guide the testimony in a way that builds clarity and commitment. One effective tactic is to break up your questions into smaller,

digestible parts that leave less room for the deponent to wiggle. For example: “You were changing lanes before the accident?” “You should check your mirrors before changing lanes, correct?” “During that lane change, you didn’t see Plaintiff in the adjacent lane?” “You merged into that lane?” “And the accident occurred after you changed lanes?” Once you have those answers, follow up with a clean summary that ties the testimony together: “So, it is your duty to check for traffic before changing lanes, you did not see Plaintiff in the lane next to you, you merged, and then collided with Plaintiff. Correct?” Remember, the goal is to capture clean soundbites from the record. Not every question or answer needs to be perfect. You just need a few nuggets.

Another useful technique is to restate evasive answers with clarity and control. If the witness dodges a question, stay composed and say, “Respectfully, that was not my question. Let me rephrase.” Then repeat the core of what you are asking. Keep it short, direct, and neutral in tone. When appropriate, a yes-or-no format can help anchor the witness and prevent long detours.

You can also establish ground rules early. During your admonitions, remind the witness to only answer what is asked and to wait until the full question is complete before answering. This gives you something to reference later if you need to rein the witness back in. Above all, do not take the bait. If the witness tries to derail your flow or wear you down, stay grounded. Stick to your outline, stay patient, and redirect as needed. A steady tone and thoughtful pacing often go further than pressing too hard.

Loosen Up and Get Curious

Once you’re in the groove and the questions are flowing, don’t be afraid to loosen up and get a little creative. Depositions don’t have to be stiff or robotic. You’re allowed to be human. In my first deposition, the deponent mentioned living near one of my favorite BBQ spots. So I asked him his go-to order. It may sound off-topic, but it helped break the ice, lowered the tension, and gave me a bit more control over the room. I even thought: *what if he gave an answer that didn’t check out?* Maybe I’d pull up the menu live during the depo and

ask him to point to the item. Unorthodox? Sure. But depositions are a fact-finding mission, and sometimes a little creativity opens the door to unexpected insights or at least makes the process more human. So, yes, stay focused. But don’t be afraid to get curious. You never know what you’re going to uncover.

Post-Deposition: Learning From Your Mistakes

After wrapping up my first deposition, my immediate reaction was: “I should’ve asked that question” or “Why didn’t I ask if they had a copy of that email?” But a colleague put things in perspective when they said, “99% of the time, the deposition never sees the light of day, and if the case does go to trial, you can ask then.” In other words: it’s not the end of the world.

The real learning begins when you receive the transcript. Don’t be afraid of it like I was at first. Read it. Mark it up. Cross out your “ums” and “uhs” to remind yourself to cut the filler. Highlight spots where you missed a follow-up or where your phrasing could’ve been tighter. Find the strong moments too and give yourself credit where it’s due.

Aside from reviewing the transcript, take time to reflect on the uncomfortable moments, those instances where you felt yourself losing control or getting thrown off track. For example, I realized I let the deponent steer me off my outline, jumping from personal background straight into post-incident details. Instead of staying grounded, I followed the tangent and disrupted the flow of my questioning. In hindsight, I should have made a quick note and circled back later. Maintaining that structure is key, especially for new attorneys still building confidence and rhythm. But that’s the beauty of taking your first deposition: you *will* make mistakes. Review them with purpose, and you’ll come back stronger.

In closing, taking your first deposition is equal parts nerve-racking and exhilarating. You’ll make mistakes, miss questions, and learn on the fly, but that’s the point. Each deposition is a chance to sharpen your instincts, find your voice, and grow into the litigator you’re becoming. So show up prepared, stay curious, and trust that with every rep, you’re getting better. ■