



Depositions in Criminal Cases: Tips for Victims and Witnesses

Should I read this?

If you are a victim or witness in a criminal case, read this to learn about depositions and being deposed.

What is a deposition?

It is a face-to-face session where one party asks another party (or a witness) questions to discover all the facts, whether they help or hurt. In a criminal case, the parties are the prosecution and the defense.

❖ The answers you give in a deposition could become evidence in court.

What are some words I should know?

- If you are the person answering the questions, you are being “**deposed.**” You are the “**deponent.**”
- You **testify** in a deposition. You swear under oath to tell the truth just like testifying in a courtroom.
- **RCW** stands for [Revised Code of Washington](#). This is our state law.

Can I refuse to testify in a criminal case?

If you will not testify at trial or you refuse to discuss the case with the **prosecutor attorney or defense attorney**, that attorney can ask the court to order you to sit for a deposition. They can also ask the judge to order you to bring specific things to the deposition. The lawyer must show both of these things:

- 1.** Your testimony is important to the case.
- 2.** Taking your deposition will prevent a failure of justice.

Does the judge have to grant the order?

No. The judge may not order your deposition if both these are true:

- 1.** Answering deposition questions may subject you to real risk of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment.
- 2.** The negative effect of such a result outweighs the usefulness of your answers to the lawyer's case.

The judge can allow the deposition and still protect you.

The judge can put conditions on the order granting the deposition. You can ask the court for a protective court order limiting or delaying your deposition.

If you object to any of your deposition answers becoming a public record due to any risks to you, you can ask the court to order certain info left out of the deposition record.

I am a victim of domestic violence. Can they depose my advocate?

If you are working with a domestic violence advocate, communication with your advocate is confidential. Usually, the advocate can only disclose it with your consent. The advocate **may** disclose confidential communications if not doing so would likely result in a clear, imminent risk of serious injury or death to someone. [RCW 5.60.060\(7\)](#) and [\(8\)](#).

I am a victim of rape. I am afraid of what they might ask me in a deposition.

If you are being deposed in the prosecution of your alleged rapist, the court may want to prevent or limit questions about your past sexual behavior such as

- your marriage and/or divorce history
- your reputation for sexual activity or attitudes contrary to your community's standards

If the order requiring your deposition does not have these limitations, you can ask for a court order before the deposition. Defendant may ask such questions **only** if Defendant can show both of these:

- They directly matter to Defendant's case.
- Answering them will not subject you to physical harm, intimidation, or other negative effects.

Courts are sensitive to your privacy. Even if the court permits such questions in your deposition, you may be able to get an order taking them out of the public record. The court may also prohibit such questions when you testify at trial.

I am a sexual assault victim. Can someone come to the deposition with me?

Yes. You have the right to have an advocate or other support person with you at proceedings about the alleged assault. This includes police and prosecutor interviews and court proceedings. [RCW 70.125.060](#); [RCW 7.69.030](#).

Where can I read more?

See [CrR \(Criminal Rule\) 4.6](#) and [CrR 4.7 in the Washington State Rules of Criminal Procedure](#).

Tips for answering questions at a deposition

- 1. Always tell the truth.** This is the most important thing. All cases have good and bad sides. Trying to hide the bad things will not help your case. It could even hurt it. The lawyer could use your answers to discredit your later testimony. If you are not honest, you may not remember what you said at a deposition. When you have to tell your story in court, you may get confused about what you said at your deposition and make mistakes. The other side could use that to convince the judge you are lying. The court will not take seriously anything you say after.
- 2. Listen.** Make sure you have heard the whole question. Think carefully before answering. Take your time. Do not feel pressured into answering before you are ready. If you do not understand the question, say so. Ask them to reword it so you understand exactly what they are asking.

- 3. Answer aloud.** Do not shake your head or use other gestures. The court reporter cannot record unspoken answers. Speak clearly, at a normal speed. This makes the court reporter's job easier. It will help you think carefully about your answers.
- 4. Answer only the question asked.** Do not give more info than asked for!
- 5. Ask for a break if you need one** any time during the deposition. You may be tired and need to rest. You may need to think about how to answer a hard question. You will usually have to finish answering the current question before taking a break. When you take a break, you must tell the court reporter you are "off the record." Then the court reporter will stop transcribing. When coming back from the break, tell the court reporter to go back "on the record."
- 6. No jokes.** Depositions can be tense. Do not make a joke to cut the tension. It may not look like a joke in the record. Jokes can be misunderstood.
- 7. Beware of inaccurate assumptions in the questions. Example:** A lawyer asks, "Were you married on January 1, the date that you stole the money?" It may be true that you married on January 1. It may **not** be true that you stole the money. You must be very clear in your answer that the assumption you stole the money is incorrect, but you did marry on that date. This is a simple example. Such questions may be more complicated. Think carefully before answering. Take your time. Do not be afraid to ask the lawyer to rephrase the questions more simply.
- 8. If you do not know the answer, do not guess.** Simply respond that you do not know or do not remember. If you know, you must answer. If you think you might know, but are not sure, give the answer and say you are not sure you are right.
- 9. Answer only based on what you personally know to be true.** You might think something someone told you is true, but you do not know, yourself. If that is so, say you do not know. Do not give your opinion.
- 10. Do not argue with the lawyer asking you questions.** Be calm and confident even if they are trying to upset you. They are trying to figure out what kind of courtroom witness you will be. If you seem scared, mad, or too emotional, they may try to get you to act badly in front of the judge at trial.
- 11. Be careful answering questions that are answers in disguise. Example:** They might ask, "Do you still have a drinking problem?" If you answer, "No," that implies you did have a drinking problem in the past. Be clear about your situation.

- 12. Never say “never” or “always.”** You may have forgotten something. It could look like you lied.
- 13. You can admit it if you prepared for the deposition.** The lawyer may ask if you looked at any documents to get ready for the deposition. If you did, the lawyer has the right to ask for copies of those documents. Tell the lawyer to subpoena you for those documents. Do not bring anything to the deposition unless your subpoena says to. The lawyer can ask for copies of whatever you have with you.
- 14. Be ready.** Get plenty of rest before the deposition. Do not take medications that might make you sleepy or make thinking and answering clearly harder.
- 15. Use simple answers.** Keep answers short and easy to understand. Give only as much info as you need to answer honestly. If the lawyer wants more, make them ask for it.
- 16. Keep calm,** even if the lawyer is rude or sarcastic. Stay polite and honest.
- 17. Do not be too certain.** If you must give a list to answer a question, answer carefully. If you are not sure the list is complete, say there may be more to add later, but this is all you remember now.
- 18. Be thorough.** During the deposition, you may remember more info to an earlier question. Tell the lawyer the info, to make your earlier answer clearer. Make sure they cannot use your deposition to make it look like you lied.
- 19. Do not guess.** Know the difference between “know” and “surmise.” “Surmise” means to guess, assume, or speculate. A lawyer might ask what you surmise about something. Answer only what you know. If they ask you to “surmise” something, say you do not know.
- 20. Do not assume anyone is right.** If the lawyer gives data or evidence to prove a point, do not accept it as accurate or true unless you personally know it is.

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