



## Depositions in Civil Cases

### Should I read this?

Yes, if you are being deposed in a family law case.

### What is discovery?

In the months before trial, in a process called “discovery,” all parties in a court case try to find out the facts central to the case. Depositions are part of the discovery process.

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❖ Read [“Doing Discovery” in Family Law Cases](#).

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### 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.

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

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### Some expressions you 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.
- **CR’s** refer to Washington State’s [civil court rules](#).
- **RCW** stands for [Revised Code of Washington](#). This is our state law.

## What is a party?

It is a person, corporation, or other legal entity who in a civil (non-criminal) case does one of these:

- files a lawsuit (the **plaintiff** or **petitioner**)
- defends against (fights) a lawsuit (the **defendant** or **respondent**)

## What is a witness?

A witness

- Testifies under oath at a deposition or trial.
- Gives firsthand or expert testimony.

**Firsthand** means you experienced or saw it yourself.

## Where does a deposition happen?

It usually takes place at a lawyer's office or some other mutually agreed place.

## How does a deposition go?

The lawyer for the party who scheduled the deposition asks the deponent questions. The deponent's lawyer, if they have one, "defends" the deponent by

- objecting to certain questions
- instructing the deponent when to answer or not

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❖ If you are the deponent, and you do not have a lawyer, you can make these objections yourself. Before you go to the deposition, get advice from a lawyer about making objections.

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Generally, the opposing parties do not speak directly to each other. Lawyers for each party may speak to one another about matters like dates, deadlines, and so on. During the deposition testimony, a lawyer will only speak directly to an opposing party about the facts of a case.

## There are rules about how depositions in civil cases should go.

[CR 30\(h\)](#) says lawyers and parties should behave at depositions the same as if they were in court. You should be polite and respectful just as if a judge were there. Talk to a lawyer for more about the rules.

## I expect to be deposed. How do I find out when the deposition is?

The lawyer who wants the deposition will usually contact you about a date for it that fits everyone's schedules. Once you agree on a date, the party scheduling it must give five days' written notice of the deposition date to every party to the case. The notice must state:

- your name and address (as the deponent)
- the deposition time and place
- the general type of info the deposition will address

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❖ The five days do not include the day notice is actually served, Saturday, Sunday, or holidays. [CR 30\(b\)\(1\)](#).

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The party doing the deposition can mail you the notice **or** deliver it in a way that should give you actual notice of the deposition.

## Who will be at the deposition?

- You (the deponent)
- The parties to the case (if you are not a party)
- The parties' lawyers
- The court reporter

There are different rules for the victim in criminal cases. Read [Depositions in Criminal Cases: Tips for Victims and Witnesses](#).

## What does the court reporter do at a deposition?

The court reporter transcribes (writes down) the conversation between the lawyer and you. Everything the court reporter transcribes is **on the record**. You or the other party's lawyer can use the transcript as evidence at trial.

## What can they ask me?

They can ask about any info even slightly related to the case. **Examples:**

- your knowledge about facts of the case
- related events you have witnessed
- names of other witnesses or parties
- where documents or other evidence are and what they say
- your personal or professional background

## Do I have to answer all the questions?

You must answer the questions honestly, unless you **object** to the question under Washington's [Rules of Evidence](#). Even then, you might still have to answer the question. The court reporter puts the objection in the deposition transcript. Then you can raise the objection again at trial.

## Can I object to a question?

You should **object to the form** of questions that are

- unclear
- compound (more than one question in a sentence)
- confusing
- argumentative (the questioner is just arguing with you)
- ask for speculation

Such questions could cause you to say something you do not mean to say. It is better to have the lawyer ask a clear, narrow question. Ask the lawyer to rephrase the question (put it differently).

You should also object to questions asking you to discuss **privileged info**, including

- conversations between spouses
- conversations between lawyers and clients (including lawyers' advice)
- conversations between doctors and patients
- conversations between victims and sexual assault and domestic violence advocates
- confessions made to clergy or priests

Do not answer such questions.

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❖ [RCW 5.60.060](#) has a complete list of privileged communications.

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Courts recognize a **right to privacy**. Info about sexuality, health, or personal religious belief may also be privileged. Some of these matters may be fair game in a deposition. Talk to a lawyer if you are worried you will get such questions at a deposition.

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❖ Courts are careful to protect the privacy of witnesses who are not parties in the case.

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You may object to questions that are **improper** and meant only to embarrass or annoy you. You must say that you object to them and why. The deposing party must then explain how the question relates to the case. If you cannot agree on whether the question is acceptable, ask your judge to resolve the matter. Usually, the deposition will stop until you reach agreement or the judge makes a decision.

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❖ [CR 30\(d\)](#) explains how to make a motion to limit or end the deposition if a party is using the deposition to harass, annoy, or embarrass the deponent.

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## Can I keep my deposition answers out of the public court record?

You can try. If you must give private or privileged info in a deposition, you can ask the court for a **protective order** keeping that info from being available to the public. Protective orders may also limit the questions so only very specific info can be about privileged topics.

[CR 26\(c\)](#) explains the reasons for and types of protective orders available in a civil case. You must ask for a continuance (postponement) of the deposition and quickly make a written motion for the protective order. You must serve your motion on the other parties. Try to get a lawyer to represent you in this action.

## Can I see the deposition transcript before trial?

Yes. The court reporter will give you the transcript to read. You may make corrections to it. After the court reporter makes any corrections, you sign the transcript. You can use both the original and corrected transcript as evidence in any court actions.

You must pay the court reporter for a copy of the transcript.

## What can I do with the transcript?

If you are a party to the case, you can use the deposition transcript at trial to “**impeach**” a witness. If a witness gives an answer at trial different from their answer at the deposition, you can quote the deposition to try to show the witness is lying.

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❖ Either side may use the deposition to impeach someone.

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## Are depositions in criminal cases different?

Yes, a little. Read [Depositions in Criminal Cases: Tips for Victims and Witnesses](#).

## 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 the deposition and make mistakes. The other side could use that to convince the judge you are lying. The judge 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 your answer is 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 or party 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,” your answer implies that 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 any 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 other side gives data or evidence to prove a point, do not accept that it is accurate or true unless you personally know it is.

## Get Legal Help

**Outside King County:** Call the CLEAR Hotline at 1-888-201-1014 weekdays from 9:15 a.m. - 12:15 p.m.

**In King County:** Call 211 for referral to a legal services provider weekdays from 8:00 am – 6:00 pm.

**Persons 60 and Over** can call CLEAR\*Sr at 1-888-387-7111 (statewide).

**Deaf, hard of hearing or speech impaired callers** can call CLEAR or 211 (or toll-free 1-877-211-9274) using a relay service of their choice.

**Apply online with** [CLEAR\\*Online - nwjustice.org/get-legal-help](https://nwjustice.org/get-legal-help)

CLEAR and 211 will provide a free interpreter.

Visit [WashingtonLawHelp.org](http://WashingtonLawHelp.org). It has free info about Washington laws, do-it-yourself court forms, videos about legal issues and a legal help directory.

*Northwest Justice Project gratefully acknowledges the work of Legal Voice, whose original publication we largely adapted here.*

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