

Depositions

Should I read this?

Yes, if you are being deposed in a family law case OR a criminal 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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- ❖ [“Doing Discovery” in Family Law Cases](#) has more info.
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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 a person gives in a deposition could become evidence in court.
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What are some words and expressions 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.
- **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?

A party is a person, corporation, or other legal entity who in a civil (non-criminal) case EITHER

- files a lawsuit (the plaintiff/petitioner) OR
- defends against (fights) a lawsuit (the defendant/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 **set** (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

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.

Are there rules about how depositions in civil cases should go?

- [CR's 26 - 37](#) cover all types of discovery.
- [CR 30](#) covers oral depositions.
- [CR 32](#) covers how you use deposition testimony in court.

Your county may also have its own civil and criminal rules of procedure. You should check. Some local court rules are [online](#).

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- ❖ [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.
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I am a party to a case or a witness who expects to be deposed. How do I find out there is a deposition?

Parties usually schedule depositions as soon as someone has filed the case with the court OR as soon as the defendant has been served.

The lawyer who wants the deposition will usually contact you about a date for the deposition that fits everyone's schedules. Once you have agreed 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's 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, or Saturday, Sunday, and 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. The section called "Are depositions in criminal cases different" has more info.

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 writes the objection in the deposition transcript. Then you can raise the objection again at trial.

How/when 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/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, you can 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?

If you must give private/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 that 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.

What does the court reporter do with my deposition answers?

The court reporter creates a written record (**transcript**) of everything said at the

deposition. Either party can use the written record as evidence in the case.

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- ❖ A judge or jury may read what you said at the deposition.
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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. The parties can use both the original and corrected transcript as evidence in any court actions.

The parties must pay the court reporter for a copy of the transcript.

What can a party do with the transcript?

At trial, a party may use the deposition transcript to **“impeach”** a witness. If a witness gives an answer at trial different from their answer at the deposition, a party may 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.

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- ❖ [CrR](#) stands for the [Washington State Criminal Court Rules](#). These are the rules for the state’s criminal legal procedures.
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If you are a witness or victim in a criminal case, and **you are not testifying at the trial**

or you refuse to discuss the case with the prosecuting attorney or defense attorney, they can ask the court to order you to be deposed and bring specific books/papers/objects to the deposition. The lawyer must show both of these:

- your testimony is “material” (important to the case)
- taking your deposition will prevent a failure of justice

The judge does not have to grant the order. A judge who does grant the order may also order some limits to the deposition. The judge may deny the request if both of these are true:

- answering deposition questions may subject you to physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment
- the negative effect of such result outweighs the value of your answers

If you do not want to be deposed, ask the court for a **protective court order** limiting or delaying your deposition. If you are deposed, and you object to some of your answers becoming a public record due to any of the above risks, you can ask for a court order keeping certain info out of the deposition record.

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- ❖ [Washington State Rules of Criminal Procedure](#) cover standards for depositions in criminal cases in [CrR \(Criminal Rule\) 4.6](#) and in the general rule on criminal discovery, [CrR 4.7](#).
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If you are a **domestic violence victim**, communication with the domestic violence advocate you are working with is confidential. Usually, the advocate can only disclose info if you say to. The advocate **may** disclose confidential communications if not doing so puts anyone at clear, imminent risk of serious physical injury or death.

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- ❖ [R.C.W. 5.60.060\(7\) and \(8\)](#) is about privileged info with sexual assault and domestic violence advocates.
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If you are a **rape victim**, and you are a deponent in the criminal prosecution of your alleged rapist, the court may want to prevent or limit questions about your past sexual behavior such as your

- marriage history
- divorce history
- general reputation for sexual activity or attitudes that are different from community standards

If the order requiring your deposition does not limit such questions, you can ask for a protective court order before the deposition. The defendant may ask such questions only if prove both of these are true:

- they are directly material to defendant’s case
- answering them will not cause you physical harm, intimidate you, or cause other negative effects

Judges are sensitive to your privacy in such matters. Even if the judge permits such questions in your deposition, you may be able to get an order keeping them out of the public record. The judge may also ban such questions when you testify at trial. See [CrR 4.6](#) and [CrR 4.7](#).

Sexual assault victims: You have the right to have an advocate or other support person of your choice 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](#).

What are some tips for answering questions at a deposition?

1. **Always tell the truth.** This is the most important thing to remember. All cases have good and bad sides. Trying to hide the bad things will not help your case. It could even hurt it. The other side 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 and at a normal speed. This makes the court reporter's job easier. This will also help you to think carefully about your answers.
4. **Answer only the question asked.** Do not give more info than asked for, unless asked to! There may be some good facts on your side that will be important to your case when you go to court. If you tell the other side all those good facts in a deposition, they will be more ready to argue against you in court. Listen very carefully. Offer only what you need to. **Example:** The lawyer asks you, "Do you have the time?" If you have a watch, only answer, "Yes," not "Yes, it's 3:00." Wait for the lawyer to follow up with, "What time is it?"
5. **Ask for a break if you need one.** You can ask for a break 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. They will usually expect you 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, you must 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 and hurt your case.

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 in answering. 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/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. Answer such questions very carefully. Be clear about your situation.
12. **Never say “never.”** Try not to use words like “never” and “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 you if you looked at any documents to get ready for the deposition. If you did, the lawyer has the right to ask you for copies of those documents. Tell the lawyer to subpoena you for those documents. Do not bring anything with you to the deposition unless your subpoena says to. Otherwise, the other side 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 it harder to think and answer clearly.
15. **Use simple answers.** Keep your answers short and easy to understand. Give only as much info as you need to answer honestly. If the other side wants more info, make them ask for it.
16. **Keep calm,** even if the other side 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 at that time.

18. **Be thorough.** During the deposition, you may remember more info to an earlier question. Tell the person questioning you 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 try to win the case at the deposition.** This will only help the other side. **Do not tell your story at the deposition.** Each side has an idea about the truth of what happened. **Example:** You believe you agreed to pay the other party ten dollars an hour to do a variety of tasks. Now you and the other party do not agree on what those tasks were. Do not try to prove to the other side all the details of the agreement. Answer only the questions they ask you about the agreement. Be short and clear in your answers.
20. **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.
21. **Do not assume anyone is right.** If the other side gives you data or evidence to prove a point, do not accept that it is accurate or true unless you personally know it is.

What if I need legal help?

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- <https://nwjustice.org/get-legal-help>
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- Call CLEAR at 1-888-201-1014

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- **King County:** Call 211 for information and referral to an appropriate legal services provider Monday through Friday from 8:00 am – 6:00 pm. You may also call (206) 461-3200, or the toll-free number, 1-877-211-WASH (9274). You can also get information on legal service providers in King County through 211’s website at www.resourcehouse.com/win211/.
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211 and CLEAR will conference in interpreters when needed at no cost to callers.

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