



PROGRAM MATERIALS

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Mastering Depositions in Personal Injury Cases

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MASTERING DEPOSITIONS IN PERSONAL INJURY CASES

A Comprehensive CLE for the Practicing PI Attorney
Michael J. DeBlis III, Esq.





TODAY'S AGENDA

01

Deposition Fundamentals

Types, rules & strategic purpose

03

Deposing the Defense Expert

Demolishing expert testimony

05

Impeachment Techniques

Locking in testimony & using it at trial

02

Pre-Deposition Preparation

Witness prep, documents & strategy

04

Your Client's Deposition

Prep, pitfalls & damage control

06

Common Mistakes & Best Practices

Lessons from the trenches



SECTION 01

Deposition Fundamentals

Understanding the rules, types, and strategic purpose of depositions in PI litigation



WHAT IS A DEPOSITION?

"Out-of-court sworn testimony taken before trial, recorded for use in litigation or at trial."



Sworn Testimony

Witness is under oath — same as trial



Recorded

Stenographic, video, or both



Admissible

Used for impeachment or as evidence at trial



Discovery

Broadest allowable scope under FRCP 26

TYPES OF DEPOSITIONS

- ▶ Fact Witness (lay)
- ▶ Corporate Rep (30(b)(6))
- ▶ Expert Witness
- ▶ Treating Physician
- ▶ Records Custodian
- ▶ Party Defendant



THE 5 STRATEGIC GOALS OF A PI DEPOSITION

1

Lock In the Story

Commit the witness to a version of events they cannot change at trial. Every inconsistency becomes impeachment gold.

2

Discover the Evidence

Uncover documents, witnesses, and facts the defendant hasn't disclosed. Ask: what do you know, who told you, what did you see?

3

Identify Weaknesses

Surface defenses before trial. Find the facts that hurt your case and neutralize them in advance.

4

Assess Credibility

Read the witness. Demeanor, evasiveness, and contradictions at depo predict how they'll perform before a jury.

5

Maximize Settlement

A devastating deposition of the defendant or their expert is often the single biggest driver of pre-trial settlement.



SECTION 02

Pre-Deposition Preparation

Your deposition is won or lost before you enter the room



PRE-DEPOSITION PREPARATION CHECKLIST

CASE FILE REVIEW

- ✓ Re-read complaint & all answers
- ✓ Review all discovery responses
- ✓ Analyze medical records chronology
- ✓ Map out liability & damages theory

DOCUMENT ORGANIZATION

- ✓ Organize exhibits by topic
- ✓ Prepare exhibit binders (2 copies)
- ✓ Create impeachment document file

BACKGROUND RESEARCH

- ✓ LinkedIn & social media search
- ✓ Prior lawsuits / bankruptcy records
- ✓ Prior depo or trial testimony
- ✓ Expert publication database search

LOGISTICS

- ✓ Confirm court reporter & videographer
- ✓ Reserve depo suite & arrange exhibits
- ✓ Issue depo notice / subpoena duces tecum

⚡ **PRO TIP:** Create a one-page "Deposition Attack Plan" — your theme, top 5 goals, and must-get admissions, reviewed the morning of.

PREPARING YOUR CLIENT FOR DEPOSITION

THE GOLDEN RULES

- 1 Tell the truth — always
- 2 Listen carefully before answering
- 3 Answer only what is asked
- 4 "I don't know" and "I don't remember" are complete answers
- 5 Pause before answering to let counsel object
- 6 Ask for clarification if you don't understand
- 7 Never guess or speculate

COMMON CLIENT MISTAKES TO PREVENT

- ✗ Volunteering information beyond the question
- ✗ Explaining or justifying answers unprompted
- ✗ Arguing with opposing counsel
- ✗ Getting emotional or defensive
- ✗ Giving "yes" when "it depends" is accurate
- ✗ Talking through breaks (counsel may not discuss pending Q)
- ✗ Social media posts pre/post deposition
- ✗ Dressing or behaving inconsistently with claimed injuries

Conduct at least 2 full mock deposition sessions. Record them. Review together. Do it again.



SECTION 03

Deposing the Defense Expert

How to systematically dismantle hired-gun testimony





FIVE-PHASE ATTACK ON DEFENSE EXPERTS

PHASE 1 · Establish Bias

- Percentage of work plaintiff vs. defense
- Total income from defense medical exams
- Relationship with insurance carriers / defense firms
- Number of times they've testified for same carrier

PHASE 2 · Attack the Review

- What records did they NOT review?
- How much time did they spend on the exam?
- Did they speak with treating physicians?
- What literature supports their opinion?

PHASE 3 · Lock in the Science

- Get them to agree on standard of care basics
- Identify peer-reviewed literature supporting your case
- Establish what would change their opinion
- Get favorable concessions for closing argument

PHASE 4 · Prior Inconsistencies

- Prior deposition & trial testimony
- Published articles or textbooks
- Opinions in cases with similar facts
- Deposition testimony for plaintiff clients

PHASE 5 · Daubert Prep

- Test methodology questions
- Peer review of their specific methodology
- Known error rates
- General acceptance in the relevant field

DEPOSING THE DEFENSE IME PHYSICIAN

85%

of IME physicians
work defense only

\$1,500

avg. fee per hour
for IME testimony

15 min

avg. examination
duration

3X

more likely to find
no disability

INCOME & BIAS QUESTIONS

- Q: How many IMEs per month?
- Q: What % result in 'no causation'?
- Q: Who schedules and pays your fee?
- Q: Do you accept plaintiff referrals?
- Q: Income from IMEs vs. treating patients?
- Q: History with this defense firm?

METHODOLOGY QUESTIONS

- Q: Describe your examination protocol
- Q: What records formed your opinion?
- Q: Did you contact the treating physician?
- Q: How long was the physical examination?
- Q: What tests did you perform — and which did you not?
- Q: What would change your opinion?

⚡ Always order the IME physician's prior deposition transcripts. Inconsistencies across cases = your best impeachment.



SECTION 04

Impeachment Techniques

Using deposition testimony to destroy credibility at trial





THE ART OF IMPEACHMENT AT TRIAL

THE 3-STEP IMPEACHMENT SEQUENCE

1

COMMIT

Elicit the conflicting version from the witness at trial. Get a clean, unequivocal answer. Don't tip your hand.

2

CREDIT

Establish the reliability of the deposition: You were under oath. A court reporter was present. You had every opportunity to correct the transcript.

3

CONFRONT

Read the impeaching portion verbatim. Pause. Let the jury sit with the contradiction. Never argue — the transcript does the work.

GROUNDS FOR IMPEACHMENT

- ▶ Prior inconsistent statements
- ▶ Bias, interest, or motive
- ▶ Conviction of crime (FRE 609)
- ▶ Prior bad acts (FRE 608)
- ▶ Learned treatises (FRE 803(18))
- ▶ Prior testimony (own depo)
- ▶ Contradiction by other witnesses
- ▶ Contradiction by physical evidence



SECTION 05

Mistakes & Best Practices

Hard lessons that cost cases — and how to avoid them





TOP MISTAKES PLAINTIFF ATTORNEYS MAKE IN DEPOSITIONS

01

Talking Too Much

Long questions educate the witness and give them a chance to formulate evasive answers. Short questions. One fact per question.

03

Not Getting the Concessions First

Before attacking an expert, get them to agree on anatomy, mechanism, or standard of care basics. These become the framework for closing argument.

05

Skipping the Completeness Check

Always end with: 'Is there anything else that's relevant to [topic] that we haven't discussed?' This closes escape routes at trial.

02

Failing to Follow the Money

In IME and expert depositions, attorneys skip financial bias questions. These are often your most powerful impeachment tools at trial.

04

Letting Evasion Stand

When a witness doesn't answer the question, counsel must re-ask it — calmly and precisely — until a responsive answer is given or the refusal is on the record.

06

Inadequate Client Preparation

Clients who are surprised at deposition look evasive or dishonest — even when they're not. Two prep sessions minimum. Simulate the hardest questions.

CORPORATE DEPOSITIONS: RULE 30(b)(6) STRATEGY

KEY DISTINCTION: The 30(b)(6) designee speaks FOR the organization. Their answers bind the company — not just the witness.

DRAFTING THE NOTICE

- › Use specific, targeted topic categories
- › Include all relevant time periods
- › Request the person most knowledgeable
- › List documents to bring (Exhibits A–Z)
- › Consider separate notices per area
- › Leave room to follow up with new topics

DURING THE DEPOSITION

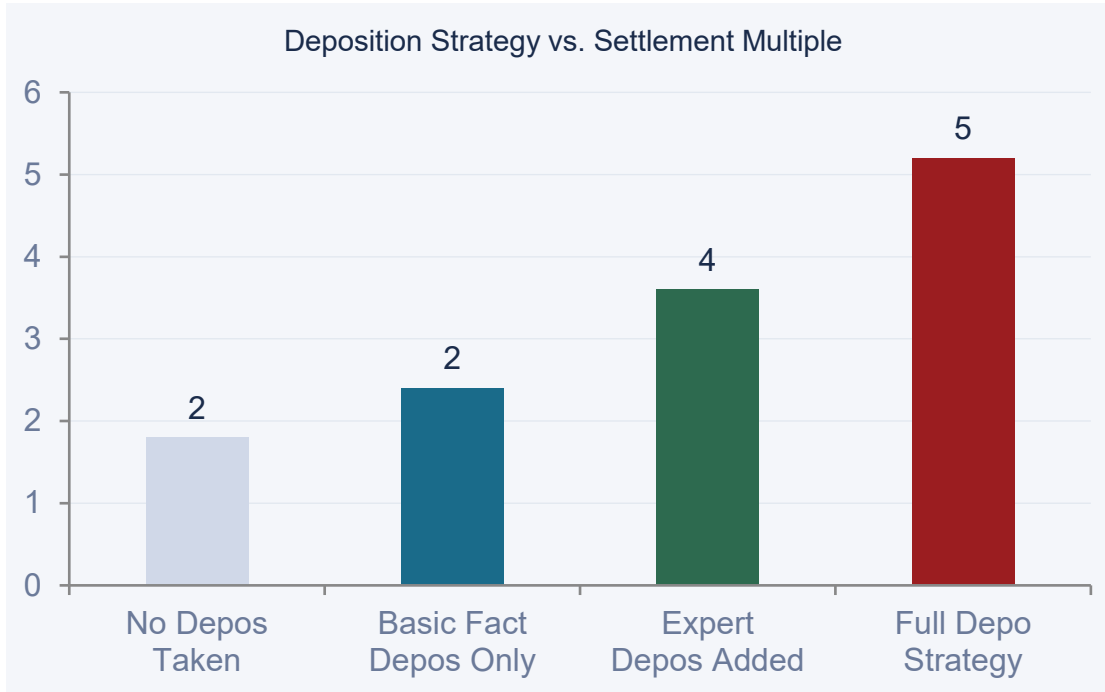
- › Confirm designee prepared on ALL topics
- › Ask what materials they reviewed to prepare
- › Pin down corporate knowledge — not personal
- › If unprepared on topic: document it for sanctions
- › Use 'Is that the company's position?' frequently
- › Ask about policies, training, and prior incidents

HIGH-VALUE TOPICS IN PI CASES

- › Prior similar accidents / complaints
- › Knowledge of defect pre-incident
- › Safety inspection records
- › Employee training & supervision protocols
- › Post-incident investigation findings
- › Insurance & indemnification agreements

Failure to prepare on a topic → move for sanctions / adverse inference instruction at trial (FRCP 37)

HOW DEPOSITIONS DRIVE SETTLEMENT VALUE



WHAT MOVES SETTLEMENT

- ⚡ A devastating defense expert deposition creates settlement urgency before trial
- ⚡ Video depositions of evasive corporate witnesses are powerful at mediation
- ⚡ Locking in low damages admissions from IME docs can accelerate offers
- ⚡ Prior similar incident testimony from 30(b)(6) often triggers punitive exposure
- ⚡ Strong client deposition = confident plaintiff going into mediation

Cases with a comprehensive deposition strategy settle for 2–3× more and go to trial less often.



ETHICAL OBLIGATIONS IN DEPOSITIONS

FRCP 30(d)(2)

Obstruction of Deposition

Counsel shall not impede or delay examination or frustrate the fair examination of a deponent. Sanctions including fees and preclusion are available. Coaching through objections violates this rule.

MR 3.4(d)

No Improper Objections

Objections at deposition must be limited to form, foundation, privilege, and responsiveness. Speaking objections that coach the witness are prohibited. Say the objection — don't explain it.

MR 1.1 / 1.3

Competence & Diligence

Failure to properly prepare a client or conduct thorough expert depositions may constitute a breach of competence. Know your case's medical and technical issues before deposing experts.

MR 4.1

No False Statements

Representing to the witness that a prior statement was made when it was not, or misrepresenting exhibit contents during depo, is a disciplinary violation. Verify before you represent.

When in doubt: Is this something I would be comfortable defending before the disciplinary board? If not, don't do it.



KEY TAKEAWAYS

1

Prepare relentlessly. The deposition is won before you walk in the door. Know the records, the prior testimony, and the expert's published opinions cold.

2

Short questions, one fact at a time. Every long question is a gift to the witness. Control the narrative by controlling the structure of your questions.

3

Silence is a weapon. After a good answer, stop. Do not fill silence. The witness will fill it — and often with gold.

4

Lock in, don't impeach at depo. Save your best impeachment for trial. At deposition, your job is to lock in the inconsistency, not expose it yet.

5

Client prep is case prep. A well-prepared client who presents authentically and consistently is worth more than any legal argument at mediation.

6

Always follow the money. In every defense expert deposition, establish financial bias early and thoroughly. Juries understand hired guns.



Questions?

Thank you for attending this CLE program.

Remember: *The deposition room is where cases are won. Prepare like a champion — your client's recovery depends on it.*

