

**Presented:**  
Winning at Deposition: Skills and Strategy

June 28, 2018  
Houston, Texas

## **Deposing for the Plaintiff**

**Linda Turley**

Author contact information:  
Linda Turley  
Turley Law Firm  
Dallas, Texas

[lindat@wturley.com](mailto:lindat@wturley.com)  
214-691-4025

**TABLE OF CONTENTS**

TAKING AND TENDERING DEPOSITIONS FOR PLAINTIFF .....	1
FIVE STEPS TO SET DEPOSITIONS .....	1
GET THE NOTICE AND <i>DUCES TECUM</i> CORRECT .....	3
WHETHER TO VIDEOTAPE A DEPOSITION .....	4
NECESSARY PREPARATIONS FOR DEPOSITIONS .....	4
DEPOSING DEFENDANT’S COMPANY REPRESENTATIVE .....	5
DEPOSING DEFENDANT’S EXPERT .....	6
SIX ESSENTIAL THINGS YOU WANT FROM EVERY EXPERT DEPOSITION .....	7
PREPARING FOR NEUTRAL WITNESSES .....	8
ORGANIZING FOR THE DEPOSITION .....	8
HANDLING NON-RESPONSIVE OPPOSING WITNESSES .....	9
MAINTAIN CIVILITY WITH OPPOSING COUNSEL .....	10
HANDLING DEPOSITION TIME – YOUR’S AND THEIR’S .....	11

*This paper includes contributions from Windle Turley*

## **DEPOSING FOR THE PLAINTIFF**

“The Plaintiff’s case should be a race to disclosure.” Melvin Belli, one of the founders of the modern tort practice taught that in the 1960s. And perhaps nothing fuels that race to disclosure more than discovery depositions.

As a plaintiff’s attorney, if you have sued, you will probably be taking or tendering a deposition. The outcome of the depositions will to a great extent control the case result. Because depositions can be so important, the single largest litigation roadblock at many firms that prevents development of facts is simply setting depositions. I didn’t say taking depositions. Once a deposition, is set, unless it’s a very complex matter, taking it is a simple process. But setting the deposition often can be a major blockage in developing the plaintiff’s case. Progress just seems to shut down. We have developed a simple five-step procedure for securing deposition settings.

## **FIVE STEPS TO SET DEPOSITIONS**

First, identify who needs to be deposed. Some of the fact witnesses – the police officer, the investigators – you will know at the outset. You should know when the case is filed who will be deposed in that first round. So, identify who needs to be deposed and do it early.

Second, send a deposition request letter. We have a form for that and we send the first request letter suggesting two or three days.

The third step: if after about ten days you have heard nothing back from the defendants, and you probably will not, send a second notice letter. In the second letter, say, “We asked once, we’re asking again. Please give us deposition dates for taking these depositions.”

The fourth step occurs when you haven't received a response to your second deposition request after five days. The third letter is a little more aggressive: "We've asked you twice to give us dates to set these depositions. If I don't hear from you in the next three or four days, (not three weeks), we're going to have to pick a date and issue a notice." If you don't hear from opposing counsel, you must act. You've done everything you can do, and you've papered your file in the event of a hearing.

The fifth step, you issue the notice. The Defendant will probably file a Motion to Quash the Notice. As soon as you receive a Motion to Quash, you file a Motion to the Court to Set Depositions. Do not file a motion to have Defendant's Motion to Quash heard because the clerk will not let you set opposing counsel's motion. Instead, just file a simple Motion to Set Depositions. You won't have to wait until the defense lawyer gets around to having a hearing on their Motion to Quash, which they will most likely never request.

That's five simple steps. It's easy. It's not complex. If you'll just do this, you will remove what is frequently the single worst roadblock to case resolution. You must have the facts before you can prepare a settlement package. You're not going to get this case settled until you get that necessary information to the decision-makers on the other side. So, remove the depositions roadblock.

After you have taken depositions, you come back to the office, you say, "Aha, I learned the name of another witness." Or, you take an expert's deposition and say, "I need to follow up with this person who also knows about this occurrence, product, or procedure." Immediately, start that same

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Deposing for the Plaintiff

Also available as part of the eCourse

[2018 Winning at Deposition eConference](#)

First appeared as part of the conference materials for the  
2018 Winning at Deposition: Skills and Strategy session  
"Deposing for the Plaintiff"