



What to Bring to a Deposition

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You have been asked to provide dates that you are available for a deposition, then a date has been chosen and now you need to prepare for this deposition. Remember that you are not required to bring anything unless there is a request in your notice of deposition. However, you obviously need something to jog your memory and to quote the dollars and cents of your report.

Sometimes there are no requests for bringing anything in. In this case, I bring a binder with what I think is relevant, generally a copy of my CV, fee schedule, testimony log, retainer agreement, and invoices. I also bring my report/s and any material that I want to have on hand. Examples are rebuttals to my report or physician reports that support my report. I don't print out medical records unless there is something special I want to refer to, for example, an operative report in the case of reviewing bills.

Not every case has a deposition. I estimate that I give my deposition testimony in about 20% of the cases that I produce an expert report. Some states may be like Utah where the opposing counsel EITHER gets your report OR your deposition. During these depositions, they still can't see your report.

You don't always have your deposition taken before a trial. I have gone directly to Court without a deposition in New Mexico and California.

Notice of Deposition (NOD):

Before your deposition, be sure to obtain the actual Notice of Deposition, to confirm the date and time (and sometimes location) of your deposition. There may be instructions about what you are expected to bring with you in the subpoena duces tecum or subpoena for the production of evidence.

Attorney Consultation:

I usually call my retaining attorney after I receive the NOD to discuss. There are sometimes new federal or state laws or rulings that mean you may not be required to bring emails or drafts or other particulars that you might consider bringing. As well, there are often requests for things that you may not have (see sample of Subpoena Duces Tecum). Examples are past deposition transcripts, lists of all cases you have consulted upon, and lists of testimony before the past "four-year" interval. Your retaining attorney may need to make filings or motions to object to some of the things in the notice.

Entire File:

What is your entire file, you may ask? In the distant past, you may have kept all relevant material about this case in a physical file. This would include intake, agreements, invoices, medical records, correspondence, time records, reports, and notes.

In the world of electronic records, you may store most of these things in a "folder" on your computer. But you may have medical records "in the cloud" and invoicing through your bookkeeping service. Your time records may be a word file or maybe through a time-keeping service such as Harvest and others. You may keep your updated CV, fee schedule and testimony log on your personal computer but not with any particular case. Signed copies of retainer agreements may be in file for this case or in the cloud with other records.

You may have taken notes directly into your report and not have another place where notes from discussions could be found. You may continuously update your report and therefore have no "drafts" or "previous versions" to present. If you did take handwritten notes, you may have scanned them to your computer and have them in a file. Letters to physicians may never have been printed, but may be created on your computer, then emailed or electronically faxed to an office, and returned the same way. You may have these as a file in the patient's folder or screenshot directly into your report.

Medical Records:

You likely never printed out any medical records and therefore don't have any handwritten notes or post-it notes attached, so these can remain electronic. Check with your retaining attorney, who may advise you on whether you need to produce these or not. It may be that your retaining attorney has a file of all the records that were sent to you, and the law firm can produce these (electronically, of course) on your behalf. I consider CD-ROM and flash drives with medical records to be electronic and destroy these devices, as well as all electronic records, once the case is settled.

If you are asked to produce the medical records electronically before the deposition, I use the HIPPA-complaint service "Hightail" to transfer them to my retaining attorney. This service can take very large volumes of records. You could also share the records via drop box or one of many services that they may have been originally sent to you.

If you received medical records physically, you may be asked to bring them with you. In the case of a Zoom/virtual deposition, check to see how this may be accommodated. If you are asked to scan these into your computer, be sure to confirm that you will get paid for your time doing this. Don't take these to a business store to be scanned, as they can't maintain HIPPA standards.

Alternatively, you could mail them back to the retaining attorney who could present these for the deposition. In the past ten years that I have been doing this work, I have received medical records in a box a couple of times, but I ask them to resend them electronically, and I return the physical records or shred them, after checking with my retaining attorney.

Your Reports

Your report/s will have already been received by opposing counsel, so there is no need to send another copy unless they ask for it. However, you may need to produce materials that did not end up in the report. If there are notes, screenshots of internet research, communications with the law firm or physicians, or emails in your report, bring the original copies to be entered as exhibits.

Drafts: They may ask for drafts of your report. If this is a Federal case or in a state that uses federal rules, you may not need to produce any drafts. Check with your retaining attorney, however, as some states (like Alaska) use some rules as federal guidelines and not others.

Notes: If you have any notes that you used to create your report, you are required to bring these too. Think about your interview of the plaintiff, did you have a special form for the interview and write notes as you went along? Or did you have the outline of the interview in your laptop computer and simply typed as you interviewed? If there are no handwritten notes, there is nothing to produce.

Photos: You may have taken photos when interviewing the plaintiff. Even photos that you didn't put into the report must be produced for deposition discovery. It is helpful if you carefully plan your shots so that you can just take the ones that end up in the report. Be sure to label them in the report and save all photos so you can produce them as requested. If you used your cell phone to take pictures, be sure to delete them after uploading them to your computer.

Research: You may have done cost research for your report. If you didn't include the web addresses, copies of catalogs, screenshots from computer research, or letters to/from physicians in your report, be sure to bring them as exhibits for your deposition.

Timekeeping and Bookkeeping

You may have a handwritten account of time spent on the case or a Word file or you may have a timekeeping app that projects the time into an invoice for the attorney. Whatever you have for tracking time spent on the case needs to come with you to the deposition.

You need to produce invoices even if they have not yet been paid.

You may be asked if you have done additional work since the last invoice, such as reviewing additional material, talking with the retaining attorney, updates with the plaintiff, producing your file, and any study you have had, to prepare for the deposition. If you have not produced an invoice for this time, you may be asked to estimate the additional time and amount of money that will be invoiced in this case.

Emails and Other Communications

Part of your file that you may need to produce (i.e. bring to the deposition) is all your email communication for this case. This would include emails with the law firm, the plaintiff, physicians, cost research emails, etc. You may be asked for "all" communication such as letters and phone logs.

Be sure to ask about this, as some may be protected and do not need to be produced.

Other Things You May Choose to Bring:

Records for Reference During Deposition:

You may wish to bring some printed records for your deposition, maybe an operative report or an expert's report. It's OK to bring them, but you may be required to submit these as exhibits. They may be photocopied during your deposition along with anything else you brought and entered as evidence. Be sure to explain why you brought them.

If you are doing a rebuttal report or if there is a rebuttal against your report, you may want to bring a copy of this, to reference as you give your opinions. If there are handwritten comments or highlighting, you may be asked to explain. Again, it will likely be entered as evidence.

Timeline Notes:

You may be asked what date you were first contacted by the law firm, when you received records, when you had phone discussions with the law firm, and other timeline discussions. If this is not in your report or invoices, you may want to bring a brief list of critical dates. Again, this may be copied and entered into evidence.

Submitting Your File Before Your Deposition

In the age of remote/virtual depositions or for some state guidelines (California for instance) you may be required to send your "entire file" a few business days before the scheduled deposition. Since you would generally run this by your retaining attorney first if you were having an "in-person" deposition, you should send your file to your retaining attorney, and then they will forward this to the opposing attorney unless you are advised otherwise. Don't send it directly to the opposing attorney unless your retaining attorney advises you to do this.

Finally

You will generally be asked about your qualifications, what you reviewed to form your opinions, your methodology to come to an opinion and what your opinions are. Your binder should help you to explain all your opinions and the basis of your opinions.

Remember, anything you bring to a deposition is discoverable and will likely be copied and put into the record. But with the above list, you should be bringing what you are required to bring, and what will be helpful for you to be able to explain your opinions for the record.

Sample of *subpoena duces tecum*

Documents and/or Tangible Things to Be Produced

The information is pursuant to California Code of Civil Procedure 2034.415)

1. The deponent's entire file(s) for this case
2. All documents/tangible things/electronically stored information and/or evidence reviewed by the expert in preparation for his/her deposition.
3. A copy of the deponent's curriculum vitae, or resume, and, if not included within said curriculum vitae, a list of each, and every article, books, treatises, or other literature authorized by the deponent whether published or not published.
4. All documents/tangible things/electronically stored information (including, but not limited to, depositions, statements, journals, articles, bills, reports, medical records, hospital records and charts and other documentation) or items

of evidence given to and/or reviewed by the deponent in this case.

5. The original and drafts of all animations, graphics, photographs, images, models, diagrams, renditions, sketches or drawings of any item or thing that has been used by or will be used by the deponent in connection with this case.
6. All documents/tangible things/electronically stored information that establishes the basis for the deponent's expert opinion(s) to be rendered in this case.
7. All documents/tangible things/electronically stored information that reflects communications (including memoranda of oral communications) between the deponent and/or his/

her office staff and any other person wherein this case was mentioned, discussed and/or referred to.

8. Any and all books, treatises, articles, publications, journals (or journal articles and/or learned documents of any sort referred to or relied upon by the deponent in forming his/her expert opinions to be rendered in this case.

9. If any items listed in number 8 are unavailable, all documents/tangible things/electronically stored information that reflect the title, author, publisher, date, volume chapter, and/or page information.

10. Copies of any notices, announcements, advertising materials, or any other form of printed materials whatsoever pertaining to the availability of the deponent's services as an expert consultant, including, but not limited to, any such documents the deponent has mailed or otherwise distributed to anyone within the last four years.

11. Any and all transcripts or other documents/tangible things/electronically stored information reflecting deposition or trial testimony given by deponent in any case where deponent has testified (whether in deposition or at trial) as an expert where the expert was retained by the Defendant or for any motor vehicle case.

12. All documents/tangible things/electronically stored information that reflects the number of times the deponent has been retained and/or testified as an expert for the Defendant, as an expert for Defendant's law firm, as an expert for the insurance carrier for any of the Defendants and/or as an expert for any plaintiff.

13. Any and all lists or compilations (including any Federal Court disclosures) that reflect each case wherein the deponent was retained as an expert and testified at deposition or a trial (including the name of the case; the name of the parties; the name and address of the court wherein the case was filed; and the name, telephone number and address of the attorneys for all parties.)

14. All documents /tangible things/electronically stored information that reflect the amount of compensation paid or to be paid to the deponent for his/her services, in this case, including but not limited to, a record of all charges billed, and the total number of hours spent in this matter.

15. Any and all reports (including drafts) that reflect the deponent's expert opinions and/or review of records in this case.

16. Any billing records for services rendered by the deponent or anyone acting at his/her direction or behalf in connection with this case, and the work and consultation thereof including all time records showing time spent and the expenses incurred.

17. All documents/tangible things /electronically stored information that reflects any experiments and/or re-creations considered or performed by the deponent in this case, including but not limited to photographs and videotape of said experiments and/or re-creations.

18. Copies of all articles and/or publications referenced in the deponent's authored by the deponent.

19. Copies of all documents/tangible things/electronically stored information given by the deponent or on the deponent's behalf to participants or attendees at any of the deponent's presentations referenced in the deponent's CV and the actual PowerPoints or slides or presentations shown.

20. All documents/tangible things/electronically stored information which reflect the amount of money earned by the deponent (or his/her firm) acting as a consultant or expert witness in any type of claim or action for the period from 2011 through 2021.

21. All documents/tangible things /electronically stored information that evidence or reflect contracts, agreements or arrangements between the deponent and any law firms or insurance companies with regard to compensation to be paid to the deponent (or his/her firm) for work done on multiple matters, claims or files.

22. All documents/tangible things/electronically stored information that establishes or from which it can be established the percentage of matters where the deponent has been retained by the defendant versus the plaintiff for the last 10 years.

23. All documents/tangible things/electronically stored information that evidence or reflect court orders where the deponent's testimony has been limited or excluded.

25. If the expert has utilized a computer program or software to calculate any value or to test any assumptions or conclusions, a copy of all data files relating to the work (in native format as well as excel, word, or PDF), all graphics or reports that can be generated for the testing done, the data used or ultimate calculations and a copy of all manuals relating to the software used.

26. If the expert is relying on simulations, crash tests crash test data for any assumptions or opinions in this matter, all evidence relating to the simulations, all crash tests, and all crash test data.

27. As to any scientific techniques or methods used (like correlating a change in velocity to injury potential or whether a particular injury can occur in a particular event), all documents establishing the foundation for the techniques/methods, including but not limited to all studies all peer-reviewed articles, peer-reviewed publications and all other documents/tangible things/electronically stored information showing (1) the reliability of the technique/method, (2) the expert is qualified to give an opinion on the subject; and (3) the correct scientific procedures were used and (4) the scientific technique/method is sufficiently established to have gained general acceptance in the relevant scientific community.

If any of the above items, as described in Nos. 1 through 26 are unavailable at the time and place of the deposition, the deponent is requested to identify where such items are located, who has possession of them, and how they may be obtained through the processes of the Court. The deponent's entire file(s) for this case.