

How to Excel at Your Expert Witness Depositions

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Follow the Six Rules to Excelling at Deposition:

In order to excel at deposition expert witnesses should follow the six rules below:

First: Focus all attention on the question. Picture the question as if it were written on a board.

Second: If you don't understand the question, say so.

Third: If you don't know the answer, say so.

Fourth: If you can't remember the answer, say so.

Fifth: If you need to refer to a document or reference, do so. Depositions are not closed-book examinations.

Sixth: Answer the questions truthfully, completely, and artfully. This often involves leaving yourself some wiggle room. This *always* involves listening carefully to the question and telling the whole truth.

Example Questions:

Let's see how these rules can be applied to 20 sample trick and difficult deposition questions for expert witnesses.

Advertising/Marketing/Promotion

1. **Q:** You do advertise that, for a price, you are available to testify, correct?

A: I list myself in several professional directories and I do expect to be paid for my time.

Lesson: The expert reframes the question and then answers it.

2. **Q:** You promote yourself as an expert witness by using a website?

A: Yes, I do.

Lesson: Any attempt at denial will result in a series of promotion/advertising questions that will help portray the expert as a businessman. Experts are best served by not quibbling and not denying the obvious.

3. **Q:** You are represented by an expert witness referral agency that obtains work for you through advertising, emails, sponsorships, and bulk mail solicitations, is that correct?

A: Yes, I am.

Lesson: The expert makes this concession gracefully and does not permit counsel to drag it out of him in a dramatic fashion.

4. **Q:** How do you promote your expert witness practice?

A: By word of mouth and listings in professional directories.

Lesson: The expert is not defensive about his very professional promotional activities and does not try to run away from them.

Advocacy

5. **Q:** You are here as an advocate for the plaintiff, correct?
A: I am an advocate for my opinion.
Lesson: The expert avoids the mischaracterization of his role.
6. **Q:** What do you think your purpose and function are in this case?
A: I was asked to examine the facts and records and offer my expert opinion, which I have done.
Lesson: The expert does not fall into the trap of arguing with counsel over his comment “What do you think...?”
7. **Q:** Do you think the party that retained you should prevail?
A: That is the jury’s decision.
Lesson: The expert respectfully defers to the jury who may be hearing her deposition testimony.
8. **Q:** At trial you will try and persuade the jury, correct?
A: I will answer the questions posed by counsel for both sides; counsel’s job is to persuade the jury.
Lesson: The expert defines her role and defers to counsel.
9. **Q:** Are you trying to help retaining counsel win the case?
A: It is counsel’s job to try and win cases, not the job of the expert.
Lesson: This is a far better answer than a “yes,” which may be misleading.
10. **Q:** Are some lies permissible in your own personal code of conduct?
A: In extreme cases, yes.
Lesson: The expert is ready with a devastating example (“I told my cancer-stricken father he looked good”).
11. **Q:** Are you aware that you are under oath and that your responses will in essence become part of your permanent record that can be brought up in all future cases that you testify in?
A: Yes, I am.
Lesson: The expert is not intimidated by this transparent tactic.
12. **Q:** Whom do you represent?
A: I do not represent anyone.
Lesson: The expert knows his role and resists the attempt by opposing counsel to portray him as an advocate.

Assumptions

13. **Q:** What are all the assumptions you made in the case?
A: The major assumptions I made were:
- The damage period was from March 6, 2009–March 25, 2012.
 - The growth rate was 4%.
 - Fringe benefits were 20.4% of the decedent’s earnings.
 - The discount rate was 3%.
 - The work life expectancy was 14.07 years.
- Lesson:* The expert demonstrates a good command of the assumptions but leaves himself a little wiggle room due to the “all” in the question posed.

14. Q: If the factual assumptions you based your opinion on were incorrect, would you change your opinion?

A: I would consider any new facts.

Lesson: The expert is open to new information, but it would not necessarily change her opinion.

15. Q: If you were to assume the examinee lied to you, would that change your opinion?

A: I would consider any new or different information provided to me.

Lesson: The expert is open to new information, but does not agree to change his opinion without knowing what exactly the information is.

16. Q: Your opinion is based on the assumption that the road was dry, correct?

A: My opinion is based in part on a dry road.

Lesson: The expert points out that the dry road was just one of the factors he considered when formulating his opinion.

17. Q: You would agree with me that there are circumstances in which employees who are under the influence of alcohol or intoxicating substances have poor judgment in terms of the safety that they use on a work site?

A: In some cases.

Lesson: The expert at deposition does not deny the obvious, but he leaves himself plenty of wiggle room to distinguish specific cases if requested.

18. Q: Do you know why counsel hired an expert witness who lives 1,500 miles from here to testify in this case?

A: No.

Lesson: This simple reply should force counsel to move on to a new line of questioning.

Authoritative Texts

19. Q: What are the authoritative texts in this field?

A: There are several excellent textbooks, however, I do not consider any one of them to be completely authoritative.

Lesson: The expert does not vouch for entire textbooks when she may disagree with some passages.

20. Q: Do you consider the latest edition of the *Diagnostic and Statistical Manual of Mental Disorders* to be authoritative?

A: No, I do not.

Lesson: The expert does not vouch for a large textbook that is being constantly changed and revised and invites the “why not?” follow-up question.

Conclusion:

Expert witnesses who excel at deposition will earn repeat and word-of-mouth business and see their practices take off. Following the six rules in this white paper will help you improve at your next deposition. Those experts who truly desire to excel at depositions are well advised to read up on this subject and pursue testifying training.

About SEAK, Inc.:

SEAK is the Expert Witness Training Company. Through our products, services, seminars, expert witness directory, conferences, and one-on-one consulting, we assist expert witnesses to start, build, run, and expand their practices.

About the Authors:

James J. Mangraviti, Jr., Esq. has trained thousands of expert witnesses through seminars, conferences, corporate training, training for professional societies and one-on-one training/mentoring. He is also frequently called by experts, their employers, and retaining counsel to train and prepare individual expert witnesses for upcoming testimony. Mr. Mangraviti is a former litigator with experience in defense and plaintiff personal injury law and insurance law. He currently serves as Principal of the expert witness training company SEAK, Inc. (www.testifyingtraining.com). Mr. Mangraviti received his BA degree in mathematics *summa cum laude* from Boston College and his JD degree *cum laude* from Boston College Law School. He is the co-author of twenty-five books, including: *How to Prepare Your Expert Witness for Deposition*; *How to Become a Dangerous Expert Witness: Advanced Techniques and Strategies*; *The A–Z Guide to Expert Witnessing*; *Depositions: The Comprehensive Guide for Expert Witnesses*; *Writing and Defending Your Expert Report: The Step-by-Step Guide with Models*; *The Biggest Mistakes Expert Witnesses Make: And How to Avoid Them*; *Cross-Examination: The Comprehensive Guide for Experts*; *National Guide to Expert Witness Fees and Billing Procedures*; and *How to Market Your Expert Witness Practice: Evidence-Based Best Practices*. He can be reached at 978-276-1234 or jim@seak.com.

Steven Babitsky, Esq. is the President of SEAK, Inc. – The Expert Witness Training Company (www.testifyingtraining.com). Mr. Babitsky trains hundreds of experts each year and serves as a one-on-one consultant to expert witnesses. He has helped expert witnesses and their attorneys prepare for deposition in a broad range of cases, including antitrust, patent, medical malpractice, wrongful death, computer forensics, and many others. He has been brought in to train experts from the Federal Bureau of Investigation and The Federal Aviation Administration and worked with numerous forensic and financial companies including Fortune 500 companies. Mr. Babitsky is the co-author of the texts *How to Prepare Your Expert Witness for Deposition*; *Depositions: The Comprehensive Guide for Expert Witnesses*; *How to Become a Dangerous Expert Witness: Advanced Techniques and Strategies*; *Writing and Defending Your Expert Report: The Step by-Step Guide with Models*; *How to Excel During Cross-Examination: Techniques for Experts That Work*; *The A-Z Guide to Expert Witnessing*; and *How to Excel During Depositions: Techniques for Experts That Work*. Attorney Babitsky is the co-developer and trainer for the “How to Be an Effective Expert Witness” seminar, and the seminar leader (since 1990) for SEAK’s Annual National Expert Witness Conference. He was a personal injury trial attorney for twenty years and is the former managing partner of the firm Kistin, Babitsky, Latimer & Beitman. He may be contacted at 508-548-9443 or stevenbabitsky@seak.com.