**Deposition Tips**



**What to take to the deposition:**

* Your report
* Your resume (2 copies)
* All medical records and other discovery documents sent to you by the law firm such as answers to interrogatories, complaint, depositions, policies and procedures. (One of our experts did not take her file and had to be re-deposed with her records.)
* Your correspondence from the law firm

**If you are asked to supply information:**

1. You are not obligated to turn over any information to the opposing counsel unless he or she puts a request in writing and sends it to our client.
2. You are not obligated to give the opposing counsel a list of cases you have reviewed. You ARE required to keep a list of cases in which you have testified.
3. You are not obligated to tell the opposing counsel how much money you earned this or any year as an expert witness. This information is not discoverable in the vast majority of states. Do not answer these questions without discussing the request with your client. Ask for a break so you can confer.

**You should be prepared for these strategies. See the link for sample dialogue and suggestions on how to avoid these traps.**

**Detailed probing into your background, fee structure, experience as an expert** – calmly and nondefensively provide the answers to these questions.

**Asking questions in no obvious order** – this is designed to prevent you from seeing a pattern in the questions. Answer each question as clearly as possible.

**Deliberate mispronunciation of words** – the attorney is trying to present an uneducated air so that your guard will be let down. Ignore the mispronunciations.

**Flattery** – the opposing attorney acts impressed with your credentials in order to lower the expert’s guard. Politely acknowledge the flattery and wait for the next question.

**Goading** – the attorney is hoping you lose your temper or respond in a flippant way. Remain calm. (Pat was asked in a 2009 deposition about details of trials in which she testified in the previous 5 years. When she said she could not recall everything the attorney asked her, he leaned over, and sneered: “What’s wrong with your memory? Are you on any medications that make you forget? Do you have a disease that makes you forget?” The client who hired Pat sat like a bump on a log. Pat kept her cool but was very displeased with her client. His passivity was unusual and frustrating.)

**Using body language to intimidate** – pointing fingers, shouting, leaning into your space are common tactics that the attorney who retained you should bring to a halt by objecting.

**Asking questions in a rapid manner** – the attorney may be hoping that you will mimic the pace of questioning and give a careless answer in haste. Think through the answer to each question and establish a pace that is comfortable for you, remembering that a pause does not show up on a transcript.

**Asking repetitive questions** – Provide consistent answers to the same question asked several times.

**Asking complex convoluted questions** – whether done on purpose or because of difficulty framing questions, ask the attorney to rephrase the question so that it is clear.

**Questioning you about details in the medical record to test your memory** – You are allowed to refer to the materials that were reviewed and do not have to answer questions based on memory alone. Your intense preparation before the deposition will pay off.

**Use of silence** – the attorney may pause after your answer hoping you elaborate on the answer.

**Asking about nursing literature to identify “authoritative texts”** – the attorney should prepare you to answer these questions based on the jurisdiction’s case law.

**Hypothetical questions** – Be sure that the details included in the hypothetical question match the case issues.