**Rules for Deposition or Trial Testimony**

1. All verbal comments are recorded on the written transcript. You should not ask to go off the record; only an attorney can do so. Please do not make side comments.
2. The court reporter, if present, can only take down verbal responses. A nod of the head is not an acceptable answer.
3. If asked by the court reporter to repeat an answer, do so word for word. It does not mean s/he did not understand what you said, it means that s/he did not fully record it.
4. Speak clearly and slowly.
5. The court reporter can only hear one person speaking at a time, so wait for the question to be finished before you start to answer. This is, in reality, very difficult to do but very important.
6. The transcript is only words. So if you are asked a question and say “here” pointing to your shoulder the transcript will only show the word “here.” The correct way to answer the question is to point to your left shoulder and say “Here, at the left shoulder.”
7. If asked to read something or you choose to read something, please do so slowly. We all tend to read faster than we normally speak making it difficult for the court reporter to accurately record what you are reading.
8. Do not joke. This is a serious matter. No jokes, even about unrelated matters, as it distracts from your credibility and professionalism. If the jury sees you laughing and joking they will not know what you are laughing about. The jury may resent jokes.
9. In most states your testimony needs to be “to a reasonable degree of — [medical, dental, engineering, construction, etc.] probability. Check with the retaining attorney as to the magic words for the jurisdiction in which you are testifying.
10. You cannot review for both sides. Once one side has contacted you and explained the facts of the case from their perspective, you cannot be retained by the opposing side even if you do not agree to be retained by the side that first contacted you.
11. It is unethical and unfair to agree to be retained by an attorney and then decide you will not testify at trial, or you will not testify in a deposition. The client is depending on you and so is the attorney. If you were to change your mind at certain key points in the case –just before the expert disclosure is due, shortly before your deposition, or shortly before trial — the case may well be dismissed by the judge. Not only has the money paid to you been wasted, it is likely that the case has been irreparably harmed. You may be asked to refund the money paid to you and you may be the target of a lawsuit. Talk to Med League if you have doubts.
12. Do \*not\* chat with the questioning attorney as if s/he were a colleague in the lounge.
13. In a written transcript, pauses, even long pauses, are rarely noted. However, pauses glaringly appear on a video transcript or in live testimony.
14. If any of the attorneys object, stop speaking mid-sentence. If during deposition, follow the instructions of the retaining attorney. If during trial, remain silent while the attorneys meet with the judge, and then follow the lead as to whether to answer the question, in which case it will usually be asked again, or go on to a new question that is asked.

*The above article is excerpted from*Expert Witness Preparation for Deposition and Trial*, by attorney Rhoda Faller.*

1. Be prepared to answer these questions:
   1. How many times have you been deposed? How many times have you gone to trial?
   2. What percentage of the cases you have reviewed were on behalf of the plaintiff? The defense?
   3. Some attorneys will ask what percentage of your income is derived from expert work. In most states, an attorney is not permitted to find out how much money you have earned from being an expert. If you are asked for dollar amounts or for your tax return, request a break and the opportunity to confer with your attorney. Don’t answer these questions without that opportunity. Another way to handle the question is to say that your income has nothing to do with your opinions in this case. Remember, if you are asked about your rate for a deposition or trial, quote the rate Med League bills for your services. Refer to your agreement for this rate or call our offices.
2. Insist on breaks. Do not allow the attorneys to depose you through a meal break without you being given an opportunity to eat. You will not be at your peak performance if you are hungry. Explain that you get irritable if you cannot eat, and you’ll find the attorney will agree to a meal break. If not, it is up to you to insist on it. You are calling the shots, not the attorney.