**The 9 Biggest Mistakes Experts Make During Depositions**

By Steven Babitsky, Esq., excerpted from *How to Excel During Depositions.*

The discovery depositions of expert witnesses are increasingly playing an important role in the litigation process. Under Federal Rule of Civil Procedure 26 (4) A:

“A party may depose any person who has been identified as an expert whose opinions may be presented at trial.”

With this in mind, we turn to the ten biggest mistakes experts make during their depositions.

***#1 – Waiving The Reading of Signing Of The Deposition Transcript***  
At the start of most depositions, counsel will agree on stipulations. Use of the most common stipulation is that the deponent waives the right to read and sign the deposition transcript. The expert who is interested in accuracy should not agree to this waiver lightly. Experts who agree to waive the reading and signing are agreeing to a document’s accuracy without even seeing the document.

Lesson: You have a right to read and sign your deposition. You shouldn’t let counsel waive that right unless you want to.

***#2 – Failing To Take Breaks***  
Experts routinely fail to ask for and take a break when they need to or when they would benefit by a break in the proceedings.

Lesson: Ask for a break or recess any time you want one, need one, or feel that it will help you collect your thoughts so that you can return reinvigorated.

***#3 – Conference With Counsel***  
Experts often fail to obtain an in-depth meeting with counsel who has retained them.

Lesson: Ask for and obtain a meeting with counsel to review the types of questions you will be asked, the pertinent legal standards, your file for work product and privileged information and an update on the current status of the pleadings and litigation.

***#4 – Your Curriculum Vitae***  
Experts often bring a curriculum vitae to the deposition which is not accurate and is not up-to-date.

Lesson: As part of the preparation process, it is crucial for experts to update and fact check the accuracy of their CVs carefully. Failure to do so can result in needless damage to your credibility that proper preparation could have prevented.

***#5 – Sanitizing Your File***  
Experts attempt to hide damaging documents and notes by removing them from their file. This is a serious logical and strategic mistake.

Lesson: Any attempt by the expert witness to “sanitize” his/her file is improper. Such an attempt will frequently make the expert look bad in the eyes of the jury of fact finder. A single act of removal of documents from a file can completely destroy the credibility of an expert witness.

***#6 – Opinions***  
Experts frequently state their opinions without giving adequate thought as to how they will defend them during cross-examination.

Lesson: Experts should prepare for an in-depth series of questions regarding their opinions. They should prepare to discuss:

* The facts and assumptions upon which the opinions are based
* The methodology employed in deriving the opinion
* When the opinion was first formed
* The documents used by the expert in forming the opinion
* The degree of flexibility in the opinion and
* How the proposed opinion compares to answers previously given during discovery

***#7 – Losing Your Temper***  
Experts are pushed into losing their temper by counsel’s questioning. This is always a serious mistake.

Lesson: Do not allow yourself to be goaded by counsel into losing your temper. If you lose your temper, you will give an emotional response to a question. Such an emotional response will not be carefully considered and will come back to haunt you.

***#8 – Volunteering Information***  
Experts seek to help counsel by volunteering information to help “clarify” the issues.

Lesson: Volunteering information can be one of the biggest mistakes an expert makes at deposition. An expert should answer only the questions she is asked and not volunteer information. The volunteering of information will almost always result in new lines of cross-examination. It may also disclose information to which counsel otherwise never would have become privy.

***#9 – Videotaped Depositions***  
Experts act in the same manner for their videotaped deposition as they would for one that is recorded by a stenographer.

Lesson: Experts need to look and sound good for their videotape deposition. I recommend the following:

* Practice with counsel with a videotape camera
* Dress conservatively
* Look directly in the camera when testifying
* Avoid long pregnant pauses
* Handle exhibits so they can be easily seen
* Use make-up powder (for men, get close shave)
* Avoid eating, chewing gum, drinking, or chewing on pens and pencils
* Turn off pagers, cell phones, and beepers

**Conclusion**

The single most important piece of advice for the expert witness is to tell the truth, simply and directly. This cannot be overemphasized. As an expert witness, you have a legal, moral, and ethical obligation to tell the truth. You are testifying under oath. Experts who tell less than the truth run the risk of criminal prosecution for perjury, civil suits for negligence, and revocation or suspension of their professional licenses. Experts who do not tell the truth are discovered and discredited eventually. Experts who are aware of the above mistakes and take the appropriate action to avoid them are well positioned to succeed during depositions.