

Expert Witness Work: 22 Tips

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About 16 years ago I walked into my first deposition as an expert witness with no guidance, no tips, and no pointers. I had a command of the subject matter, but I knew nothing about the rules of engagement. Recently, a colleague was dreading his first deposition, so I pulled together the attached list of tips. It seemed to help him out. Perhaps it may be of some value to someone out there. I welcome your feedback and constructive criticism.

Some quick tips to consider... Some of these tips would only apply if you do the deposition (depo) in person.

1. A week before your depo, get your most up-to-date CV (resume) to the attorney for whom you are working and ask him/her to share with all the pertinent parties.
2. Ask if the depo is to be recorded and/or video recorded.
3. Have a hardcopy of that CV with you at the depo. You may be asked to confirm information within it.
4. Have several of your business cards on you. Give them to the attorneys present and the court reporter. This will save time for you and the court reporter.
5. There may be other attorneys or related personnel participating in the depo from remote via telephone or computer.
6. You will typically be sworn in by the reporter.
7. Expect the opposing counsel to ask if you have ever been deposed and how many times.
8. Don't be surprised if opposing counsel asks about:
 - a. Your fee schedule (your hourly rate).
 - b. The total amount that your firm has billed on the project thus far.
 - c. Whether you always do "defense" or "plaintiff" work.
9. Remember, the opposing counsel who will be asking the questions may want to test your bona fides. This just means that he/she might challenge your abilities as an expert in your field of work.
 - a. How to pronounce "Bona Fides" <https://www.youtube.com/watch?v=00souovjmi0>
10. You may also hear the attorneys use the term "Wadeer" (more properly Voir Dire). This is simply the process of questioning an expert to challenge his/her bona fides. In some cases, they will try to argue that an expert is not actually an expert (Refer to the movie "My Cousin Vinny").
 - a. How to pronounce "Wadeer" <https://www.youtube.com/watch?v=RYCtaeO3vb0>
11. Remember to always give a clear verbal response to all questions. The court reporter cannot document nods or gestures.
12. If you do not understand a question, always say so and ask if the question can be restated.
13. If you are asked a question that was/is not part of your scope of work or area of expertise, say so. Indicate that you would leave that sort of questions to others.
14. From time to time, you may hear an attorney object to a question. When this happens turn to him/her and ask if you may answer the question. These objections are typically just objections to the form of a question, and the attorney wants to get his/her objection into the depo transcript.

15. Look for the attorney to insist that you answer a question with just a “yes” or a “no”. If you feel that your response is more complex than that, always qualify your response as you deem necessary. For example, he/she might ask if A always leads to B. “Always” is an absolute, and absolutes can be undercut or impeached. Instead of simply answering “Yes”, you might say that A tends to lead to B.
16. Regarding qualifying your responses... Keep in mind that he/she may ask questions in which he/she is changing different variables. Be sure to give Apples to Apples comparisons, not Apples to Hubcaps. This is done by simply stating “all other things remaining the same”. In legal or economic language this is known as “Ceteris Paribus” which is simply Latin for “other things being equal”.
 - a. How to pronounce Ceteris Paribus <https://www.youtube.com/watch?v=kvgwYPkX9f4>
17. Be sure to accept their offer of something to drink. You never know when you may need to wet your palate.
18. If you need a break, simply ask for one.
19. Note that if lunch time is approaching, one of the attorneys may ask if things are expected to wrap up shortly. If they believe that they need a significant amount of time to complete their questioning, you will probably take a lunch break for at least an hour. If they can wrap it up quickly, they may opt not to take a lunch break and instead press on with their work.
20. After opposing counsel states that he/she has no more questions, other attorneys may opt to ask his/her own questions to put a finer point on something that was asked or answered earlier in the depo. This is perfectly normal.
21. At the end, the court reporter may ask if you want to review and sign the transcript of your depo. I typically answer “yes”. This gives you a chance to make sure that what the reporter entered into the final transcript is indeed correct. Mistakes can be made by the court reporter.
22. Thank everyone profusely for their time and attention.