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P: 888.777.7077 | W: aicpa.org



Forensic and Valuation  
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# Quick reference guide

to deposition, trial preparation  
and testimony



Disclaimer: This guide is intended as a basic resource guide for litigation practitioners. It should not be construed as providing legal advice and it is not intended to replace the advice and expertise of a qualified professional in the accounting or legal fields. Working with a qualified professional is strongly recommended.  
Provided by the AICPA Fraud Task Force

## Quick reference guide to deposition, trial preparation and testimony

Welcome to the *Quick reference guide to deposition, trial preparation and testimony*. This guide is intended to provide you, the expert witness, with a quick review of those areas in preparation for testimony in either a deposition setting or at trial. These comments are intended as reminders to your more detailed study and work as a testifying expert.



## Trial testimony

- Conduct on the stand is very important.
  - If possible, visit the courtroom prior to testimony.
  - Dress appropriately.
  - Make sure there is water available to you for hydration.
  - Be modest but respond confidently. Leave your ego at the door.
  - Display good humor.
  - Avoid nervous mannerisms.
  - Make eye contact and answer by speaking to the trier of fact and jury as appropriate.
  - Sit forward in the witness chair and do not slump, i.e., be careful with body language.
  - Maintain a consistent voice level and inflection from direct to cross.
  - Be patient and respectful in the heat of cross.
- Speak clearly and at a pace using words that laypeople can understand.
- Arrive early for your appointed testimony time and get a sense of the environment in the courtroom.
- Make sure any electronic equipment is operating properly and that easel or other props are available in the courtroom.
- Be confident, relaxed and rested.
- Get out of the witness chair with visual aids.
- Know your audience.
- Stay focused on your area of knowledge; be an educator, storyteller and get the jury to relate to the issue; your teaching style is critical.
- A dull soft voice is not authoritative sounding and is difficult to follow.



## Introduction

This guide is intended as a quick reference reminder aid in the preparation for and testifying in a deposition setting and at trial. It is assumed that the reader has the necessary training and experience to properly execute and complete the engagement. This may include the

issuance of a report compliant with the engagement, the use of acceptable methodologies, work papers evidencing your opinions, the basis of and documentation supporting your opinions and the proper organization of your materials.

## Preparation for deposition: Administrative

- Know where and when the deposition is going to be held well in advance of the date.
- Compensation issues
  - Who is paying for the deposition time?
  - Who is paying for any related preparation and travel time?
  - Consider addressing current outstanding fees, if any.
- Have you received and complied with a subpoena?
  - Make sure your curriculum vitae (CV) is up to date.
  - Dress professionally.
- Questions to ask of counsel include:
  - Who will be present?
  - Will the deposition be videotaped?
  - How long is the deposition likely to last?
  - What, if anything, should be brought to the deposition?
  - Where is the deposition taking place and what time do I need to be there?

## Preparation for trial

- Meet with your attorney.
  - Discuss the direct examination, particularly considering your deposition.
  - Discuss the potential subjects of cross-examination.
  - Have there been any new developments in the case?
  - Discuss the use of prepared exhibits, and the ability to step down from the stand and teach.
  - Ask if you may sit in on the opposing expert’s testimony.
  - Bench or jury trial?
  - Discuss the characteristics of the presiding judge.
- Personal preparation
  - See the preparation list under the deposition phase.
  - Review your deposition transcript, look for the probable line of questioning from the opposing attorney, and cure any problem answers in your direct testimony.
  - Practice your direct testimony and anticipated cross-examination.
- Do understand that this is your testimony.
- Do answer only the question asked, with as few words as possible.
- “I do not remember” or “I do not recall” is a valid answer, but it should not be a constant response; there are certain things that you should know.
- Do answer yes or no, if possible, then ask to explain.
- Do read any documents presented before answering.
- Do listen to the complete question.
- Do take time to answer; pausing is okay.
- Do ask for breaks when needed.
- Do take fluids before and during the examination.

## Preparation for deposition: Preparation for testimony

- If you are to bring your files, locate and organize them for easy reference.
- Know dates involving your engagement such as: date (by whom and how) contacted, date hired as consulting expert and date engaged as testifying expert.
- Know the applicable AICPA professional standards and related pronouncements, including non-authoritative publications, e.g., practice aids, and on the matter to which you are testifying.
- Review your report and support; know where weaknesses and strengths lie.
- Review the opposing experts report; know what his/her weaknesses and strengths are as disclosed in the report and possibly prior testimony.
- Review the legal issues in the case and what each side is arguing.



## Deposition

- What you need to consider in video depositions:
  - Posture, voice level and inflection and facial expressions; look at the camera and talk to the trier of fact as if he/she is (or they are) in the room; avoid long periods of silence; listen to your attorney's objections or other statements.
  - Recognize that your deposition carries the same weight as your trial testimony.
- What you need to consider in traditional depositions:
  - There is no clock, camera or other device that you need to be concerned with
  - Listen to the question and make sure you understand what is being asked.
  - Listen carefully to all questions but especially for trap/hypothetical questions and embedded assumptions
    - Are you aware that ...?
    - Please assume that ...?
    - Isn't it true you did not ...?
  - Questions that contain exclusionary words, such as: Always, never or any



## Preparation for deposition: Anticipated questions

- Understand the typical line of questioning and goals of the attorney regarding:
  - Qualifications, beginning with your CV
  - Education, career path, licenses, certifications, member organizations, publications and presentations, and continuing education
  - Who, when and how were you first contacted; when were you hired; what have you been paid? Is there any outstanding amount owed to you or your firm? Is there any unbilled amount owed to you or your firm?
  - Percentage of your work from the engaging law firm, plaintiffs v. defendants and other related potential biases
  - Percentage of you and your firm's work/revenue in particular professional areas, or lack thereof
- What were you originally engaged to do and how did that change over the course of the engagement?
  - Your opinion considering the methodology that you employed and why certain methodologies were not employed or ruled out
  - What you relied upon and what you consider to be a treatise or authoritative
  - Your work papers and notes for thoroughness, opinion statements, mistakes, unexplained conclusions and erroneous staff comments
- Your knowledge of the specific industry
  - Your knowledge of the specific company and its business
  - Your level of confidence or flexibility in your opinion
  - Bias and/or credibility
  - Invoices for descriptive language or comments
  - If your work is complete or if additional work is still to be performed and additional opinions reached or adjusted
- What your engaging attorney advised you in this case; what was the nature of the preparation for this deposition involving the attorney?
  - Conflicts or prejudice with the opposing party, hiring attorney or the attorney's client
  - Prior testimony for potential conflicting statements by you or someone in your firm
  - Your opinion and the assumptions made by you
  - Your opinion considering the facts in the case, including your understanding of the facts
  - Your opinion considering your research
  - Your opinion considering the information (or lack thereof) provided to you by counsel