

# EXPERT WITNESS DEPOSITION CHECKLIST

## PREPARING FOR YOUR WITNESS

BACKGROUND INFO	KNOW THE RULES	KNOWING ABOUT YOUR EXPERT
<ol style="list-style-type: none"> <li>1. Know the cases where expert has previously testified</li> <li>2. Learn the outcome of those cases</li> <li>3. Reach out to attorneys who have worked with the expert</li> <li>4. Probe for any apparent bias</li> <li>5. Look into any disciplinary history of expert</li> </ol>	<ol style="list-style-type: none"> <li>1. FRCP 30(c)(2) governs expert testimony</li> <li>2. Make sure expert's testimony passes muster under Daubert principles</li> <li>3. Make sure expert prepares written report with:               <ul style="list-style-type: none"> <li>o Complete statement of all opinions and basis for them</li> <li>o Facts or data used in forming opinion</li> <li>o Any exhibits that will be used to summarize or support them</li> <li>o The witness's qualifications</li> <li>o A list of all publications authored in the previous 10-years</li> <li>o A list of all other cases in the previous 4-years where the witness testified as an expert at trial or by deposition</li> <li>o A statement of the compensation to be paid for the study and testimony</li> </ul> </li> </ol>	<p>Make sure you have gathered accurate information on the following:</p> <ol style="list-style-type: none"> <li>1. Educational background</li> <li>2. Academic performance</li> <li>3. Professional experience (CV)</li> <li>4. Qualifications and credentials</li> <li>5. All current certifications</li> <li>6. Honors and awards</li> <li>7. Memberships / affiliations in organizations and interest groups</li> <li>8. Participation in community projects</li> <li>9. Additional training courses</li> <li>10. Any disciplinary history</li> <li>11. Explanation for any professional / employment gaps</li> </ol>

## PREPARING YOUR WITNESS

BRING THE EXPERT ON BOARD	DEPOSITION MATERIALS	PRACTICE MAKES PERFECT DEPOSITIONS
<ol style="list-style-type: none"> <li>1. Integrate the expert into case theme</li> <li>2. Familiarize your witness with the members of the opposing party</li> <li>3. Review questions and answers of any interrogatories</li> <li>4. Evaluate damages settlements</li> </ol>	<ol style="list-style-type: none"> <li>1. Prepare a binder of materials and a copy for opposing counsel</li> <li>2. Include expert's written report</li> <li>3. Include any relevant materials previously disclosed by opposing counsel               <ul style="list-style-type: none"> <li>o A copy of opposing expert's report</li> <li>o Answers to interrogatories by opposing party</li> </ul> </li> <li>4. All exhibits (including graphs, charts, pictures, official reports and publications)</li> <li>5. Expert's written report of opinion and methodologies used</li> <li>6. Have a quick index of exhibits for yourself for quick access</li> <li>7. If subpoenaed, make sure expert met subpoena requirements</li> </ol>	<ol style="list-style-type: none"> <li>1. Practice direct examination questions</li> <li>2. Practice anticipated cross-examination questions</li> <li>3. Remember cross-examination questions may be used for impeachment and need not be admissible otherwise</li> <li>4. Practice your objections</li> <li>5. Do this in a realistic setting, with the exhibit binders to practice flipping through them</li> </ol>

## DURING THE DEPOSITION

### KNOW YOUR OBJECTIONS

1. Check FRCP Rule 30(c)(2) for permissible objections
2. Check FRCP Rule 32 for admissibility of deposition testimony at trial

The only time a deponent may be instructed by counsel NOT to answer a deposition question is to:

3. Preserve a privilege (like attorney-client or work-product)
4. To enforce a limitation ordered by the court
5. To present a motion under FRCP Rule 30(d)(3)

### REMEMBER THE LITTLE THINGS

1. Have water or a refreshment for your witness
2. Adjust lighting, temperature, ventilation of preferable to take some time before answering a question
3. Remind the expert that silence is OK, and it is preferable to take some time before answering a question
4. Remind the expert that he cannot leave the room to speak with the attorney once a question has been asked

### DEPOSITION ARRANGEMENTS

1. Confirm the venue of the deposition with opposing counsel
2. Make sure this is a proper and convenient enough venue for your expert
3. Clearly communicate the times and immediately update any changes
4. Be wary of government holiday
5. Make proper arrangements for out-of-town experts