



SEAK DEPOSITION PREPARATION OUTLINE

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TYPE OF DEPOSITION

- A. Preservation of evidence
- B. Discovery

HOUSEKEEPING DETAILS

- A. Manner of dress
- B. Where and when to report
- C. Parking availability
- D. Estimated time of deposition
- E. Who will be present for deposition

COMPENSATION

- A. Obtain fee in advance
- B. Charge for preparation, travel, and out-of-pocket expenses
- C. Charge for last-minute cancellations

STIPULATIONS

- A. Do not agree to waive reading and signing

YOUR PREPARATION

- A. Locate all records and tests you have reviewed
- B. Organize your file for easy reference
- C. Review your opinion and case weaknesses/strengths
- D. Discuss case with client attorney
- E. Try to get opposing counsel's style, techniques and theory of the case
- F. Think about the difficult questions and issues
- G. Know the timeline in the case

PREPARATION WITH COUNSEL

- A. Types of questions opposing counsel will ask
- B. Questions retaining counsel will ask
- C. Review legal standards and "magic words"
- D. Look at contents of your file
- E. Discuss what to bring to deposition
- F. Update on status of litigation
- G. Review of opinions

IN DISCOVERY DEPOSITION COUNSEL'S GOALS ARE TO

- A. Learn opinions
- B. Explore qualifications
- C. Lock down the expert
- D. Evaluate credibility
- E. Probe for bias
- F. Learn factual assumptions
- G. Gather as much information as possible
- H. Use the expert to bolster counsel's case
- I. Intimidate the expert
- J. Learn as much as possible about the case

SUBPOENAS

- A. Have you received a subpoena duces tecum?
- B. Have you complied with the subpoena?

CURRICULUM VITAE

- A. Make sure it is accurate and up-to-date
- B. Bring extra copies to deposition
- C. Any exaggerations?

INCONSISTENT PRIOR STATEMENTS

- A. Interrogatories
- B. Prior written statements and reports
- C. Prior cases

INVOLVEMENT IN CASE

- A. When were you first contacted concerning this case?
- B. By whom were you contacted?
- C. How were you contacted: Phone, letter, e-mail, other?
- D. When did you accept the case?

RELATIONSHIP WITH COUNSEL

- A. What is your personal/financial relationship with counsel who has retained you in this case?

WORK YOU HAVE DONE IN THIS CASE

- A. Records and documents reviewed: Which ones and when?
- B. Examination: What was done and when was it done?
- C. Testing: What was done, when was it done, and what were the results?
- D. Is all of this work reflected on your bills and invoices?
- E. What additional work do you anticipate doing prior to the trial?

EDUCATIONAL BACKGROUND

- A. What schools have you attended?
- B. What were your major areas of study?
- C. What degrees did you obtain?
- D. What are the dates for your attendance and degrees?
- E. What additional training courses have you attended?
- F. What continuing education courses have you attended in the past ten years?
- G. Have you been the subject of any disciplinary actions?
- H. Have your licenses ever been suspended or revoked?
- I. What were your grades?
- J. What did you do between any gaps in your education?

OPINIONS

- A. The opinions you will be testifying to
- B. The facts and assumptions upon which the opinions are based
- C. The methodology employed in deriving the opinion
- D. When the opinion was first formed
- E. The documents you used in forming the opinion
- F. The degree of flexibility in the opinion
- G. How the proposed opinion compares to answers previously given during discovery

ORGANIZATIONS

- A. What professional organizations and societies are you a member of?
- B. What is your status in these organization(s)?
- C. Have you ever paid a fee to obtain additional credentials?

FORENSIC INCOME

- A. Percentage of income from forensic work
- B. Percentage of time testifying for plaintiffs
- C. Percentage of time testifying for defendants

PUBLICATIONS

- A. State all of the articles, chapters, books, reviews, abstracts, and other writings that you have had published
- B. When and where were these published?
- C. Specify if any of your writings have not been accepted for publication

DATES

Make sure you know the key dates:

- A. When you were first contacted by counsel
- B. When you were retained as an expert
- C. When you received the records
- D. From whom they were received
- E. When you formed your opinion(s) in the case
- F. The date of the event in question
- G. The date(s) key tests were performed

FEES

- A. Hourly rate
- B. Rate for deposition and trial testimony
- C. Amount billed/paid to date
- D. Future billing



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WHAT MATERIALS OR RECORDS WERE YOU PROVIDED? BY WHOM? WHEN WERE THEY PROVIDED?

- A. Correspondence
- B. Reports
- C. Messages
- D. Notes
- E. Computer disks/e-mails/files
- F. Police reports
- G. Investigative reports
- H. Medical and hospital records
- I. Literature
- J. Tables
- K. Standards
- L. Contracts
- M. Photographs
- N. Videotapes
- O. Research
- P. Test results
- Q. Other materials

VIDEOTAPE DEPOSITIONS

- A. Prepare with counsel and practice before a videotape camera
- B. Dress conservatively
- C. Look directly at the camera when testifying
- D. Avoid long pauses that may make you look evasive or uninformed
- E. When handling exhibits, make sure you hold them so that they can be appreciated by the viewers
- F. Avoid eating, smoking, drinking, chewing gum, or chewing on pens or pencils
- G. Turn off pagers, cell phones, and beepers
- H. Avoid making unnecessary and distracting noise by rustling papers, touching the microphone, or moving furniture
- I. Avoid being goaded into flashes of anger, arrogance, and combativeness
- J. Watch out for your nonverbal behavior and body language
- K. Don't let counsel lead your eyes away from the camera

GENERAL ADVICE

- A. Tell the truth
- B. Act naturally
- C. Don't be arrogant
- D. Avoid slang
- E. Be careful of what you highlight or write down
- F. Don't argue with counsel
- G. Don't elaborate
- H. Don't estimate
- I. Don't exaggerate
- J. Don't guess
- K. Don't interrupt the question
- L. Don't lose your temper
- M. Don't speculate
- N. Leave yourself an out
- O. Listen carefully to the questions
- P. Make sure you know your role in the case
- Q. Don't joke
- R. Pause before answering
- S. Read the documents before you testify about them
- T. Say you don't know if you don't know
- U. Say you don't remember if you don't remember
- V. Stay within your area of expertise
- W. Take breaks when needed
- X. Avoid absolute and hedge words

PLEADINGS

- A. Complaint
- B. Answer
- C. Interrogatories
- D. Depositions
- E. Motions
- F. Motions to compel
- G. Others

AUTHORITATIVE TEXTS

- A. Know what is "authoritative"
- B. Do not commit unless you see the text

BREAKS

- A. Ask for breaks when needed
- B. Don't consult with retaining counsel during breaks

ANSWERING DEPOSITION QUESTIONS

- A. Tell the truth
- B. Answer only what you are asked and do not volunteer information
- C. Pause before answering
- D. Actively listen to the entire question and do not interrupt
- E. "I don't know" may be an appropriate response
- F. Don't exaggerate, speculate, or guess
- G. Keep your cool
- H. Do not argue with counsel or get involved in the lawyers' arguments
- I. Don't fall for the "silence" gambit
- J. Avoid jokes, sarcasm, and inappropriate remarks
- K. Don't ramble
- L. Avoid absolute words
- M. Be flexible and be prepared to concede some points
- N. Avoid slang
- O. Don't fall for the "bumble and fumble" gambit
- P. Do not act like a jerk
- Q. If confused, ask for the question to be repeated
- R. Ask to see documents, reports, and statements before answering questions about them
- S. Take adequate time to review any "new" documents, reports, etc.
- T. Prepare thoroughly

DAUBERT ISSUES

- A. Has the theory or technique used been tested?
- B. Has the theory or technique been subjected to peer review and publication?
- C. What is the known or potential rate of error of the method used?
- D. What is the degree of the method's acceptance within the relevant scientific community?

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