

# SEAK

## DEPOSITION PREPARATION OUTLINE

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### 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.
- K. Evaluate settlement value of case.

### SUBPOENAS

- A. Have you received a subpoena duces tecum?
- B. Have you complied with the subpoena?
- C. Have you left superfluous material at home (including superfluous electronically stored information)?
- D. Have you brought billing records and correspondence if requested?
- E. Has anyone removed anything from the file?

### 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?
- F. Will it be video recorded?

### CURRICULUM VITAE

- A. Is it accurate and complete?
- B. Any exaggerations or mistakes?
- C. Ever removed or changed anything? Why?
- D. Do you have any other versions of your CV?

### QUALIFICATIONS

- A. What are you and are you not an expert in?
- B. What schools have you attended?
- C. What were your major areas of study?
- D. What degrees did you obtain?
- E. What are the dates for your attendance and degrees?
- F. What additional training courses have you attended?
- G. What continuing education courses have you attended in the past ten years?
- H. Have you been the subject of any disciplinary actions?
- I. Have your licenses ever been suspended, denied or revoked?
- J. What were your grades?
- K. What did you do between any gaps in your education or experience?
- L. Has your expert testimony ever been limited or excluded?
- M. What is your practical real world experience in this field?

### 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?
- F. Did you take any notes? Have these been preserved and produced?
- G. What else would you have liked to have done but did not? Why wasn't this done?
- H. Who/what else did you rely on for help?
- I. What were you asked to do? What was the scope of your assignment?

### OPINIONS

- A. All 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 degrees of certainty and flexibility in the opinion.
- G. How the proposed opinion compares to answers previously given during discovery.
- H. The opinions you will not be testifying to.
- I. Agreement or disagreement with other experts in case. Reasons why?
- J. How would opinion change assuming new assumptions?
- K. Who and what did you rely on to form opinions?
- L. Are opinions full and final?
- M. What is your margin of error?

## METHODOLOGY

- A. Did you follow a protocol?
- B. Generally accepted? Who else is doing it this way?
- C. Peer reviewed? Where, specifically?
- D. Rule out other possibilities? How?
- E. Potential error rate?
- F. Has technique been tested?
- G. Standards and controls?
- H. Unjustified extrapolation?
- I. Research and protocol independent of litigation?
- J. Why choose this methodology?

## REPORT

- A. Accurate?
- B. Complete?
- C. Anyone help you write?
- D. Improper influence of counsel or others?
- E. Understand all terms used in report?
- F. Prior versions/drafts?

## INCONSISTENT PRIOR STATEMENTS

- A. Interrogatories.
- B. Prior written statements, publications and reports.
- C. Prior testimony, where, when, for whom?

## COMPENSATION

- A. How much paid to date/outstanding?
- B. Hourly rate?
- C. Percentage of income from legal work?
- D. Plaintiff v. Defense percentages?

## BIAS

- A. Always testify for one side?
- B. Personal or financial relationship with party or counsel?
- C. Professional witness?
- D. Ax to grind?

## 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?
- E. How did counsel find you?

## READING AND SIGNING

- A. Do not agree to waive reading and signing.

## PUBLICATIONS

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

## KEY DATES TO KNOW

- 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.

## TO EXCEL AT DEPOSITION

- A. Tell the truth.
- B. Do not argue with counsel.
- C. Do not exaggerate, speculate or guess.
- D. Actively listen to the entire question before responding.
- E. Listen carefully to objections that are made.
- F. Do not respond to pregnant pauses or statements. Wait for a question.
- G. Do not get involved in bickering between counsel.
- H. Choose your words very carefully.
- I. Leave yourself some wiggle room where appropriate.
- J. Don't give off the cuff opinions.
- K. Don't give opinions outside of your area of expertise.
- L. Correct misstatements as soon as possible.
- M. Do not be afraid to say that you do not know, do not recall, or do not understand the question.
- N. Keep cool, don't freeze.
- O. Exude confidence and make a good impression on camera.
- P. Be yourself, unless you're a jerk.
- Q. Know the facts and file cold, or know where to look them up when needed.
- R. Be prepared to articulate your thoughts.

## YOUR PREPARATION

- A. Locate all records and tests you have reviewed.
- B. Organize your file for easy reference.
- C. Review your report, file, opinion, CV and case weaknesses/strengths.
- D. Discuss case with client attorney and undergo a mock examination.
- 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.
- H. Have a past deposition transcript professionally reviewed and critiqued.
- I. Get professional help/one-on-one expert witness training to prepare.



**About the authors:** James J. Mangraviti, Jr., Esq. and Steven Babitsky, Esq., are frequently called upon by experts, their employers, and retaining counsel to train and prepare individual expert witnesses for upcoming testimony. They are former litigators who currently serve as Principals of the expert witness training company SEAK, Inc. Mr. Mangraviti and Mr. Babitsky are the co-authors of numerous texts on expert witnessing, including: *How to Prepare Your Expert Witness for Deposition*; *How to Become a Dangerous Expert Witness: Advanced Techniques and Strategies*; *The A-Z Guide to Expert Witnessing*; and *Writing and Defending Your Expert Report: The Step-by-Step Guide with Models* and are the co-founders of SEAK's Expert Witness Directory ([www.seakexperts.com](http://www.seakexperts.com)). For more information please visit [www.testifyingtraining.com](http://www.testifyingtraining.com) or call 508-457-1111.