

Taking the Deposition

General Topics to Cover

- Background, education, and qualifications.
- Previous deposition and trial testimony.
- Money earned from testimony (overall, but especially in work with this firm, and in this type of litigation).
- Opinions and basis therefore in report – question lack of balance, ambiguities, contradictions, and issues not addressed.
- If no report, ask for all opinions and basis for opinions.
- Cross-examine with selected previous writings and pronouncements on topics of interest. (**Note:** Consider saving some for trial.)
- Inquire and cross-examine on opinions on subjects in which the expert was not designated.
- Cross-examine on expert's action / inaction in circumstances similar to your client's.

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General Topics to Cover

- Establish Daubert/Robinson/Havner factors:
 - whether theory can be tested, whether theory has been tested
 - whether theory has been subjected to peer review and publication in reputable established journals
 - technique's or theory's known or potential rate of error
 - general acceptance of theory by the relevant scientific community
 - extent to which technique (theory) relies upon subjective interpretation of expert
 - non-judicial uses of theory independent of litigation

Ten Tips: Experts' Depositions

#1

- Make a list of indisputable facts favorable to your side, and commit the expert to either agree with or dispute them.

Ten Tips: Experts' Depositions

#2

- Make the expert look hypocritical for not taking action the expert claims your client should have taken.

Ten Tips: Experts' Depositions

#3

- Make sure the expert brings **originals** of all work product to the deposition.

[The Strange Case of Dr. G]

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#4

- Restrict the scope of the experts' testimony by committing them to all the areas pertinent to your case in which they would not hold themselves out to their peers as experts.

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#5

- Consider NOT marking or attaching opposing expert's CV as a deposition exhibit — you may not want to prove up the expert's background, education, and qualifications.

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#6

- Prepare your own trial exhibits to mark and attach as deposition exhibits.

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#7

- Look forward to / beware of well-known experts with big CVs that provided ample ammunition for cross examination.

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#8

- Commit experts to agree that their reports contain the opinions they intend to express in the case; DO NOT invite additional opinions by asking "Does the report contain all the opinions you intend to express in the case?"

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#9

- **DO NOT** repeat questions for which the expert has already given favorable responses to you or other questioning attorneys.

Ten Tips: Experts' Depositions

#10

- Be tenacious in your questioning — persist until the expert gives you a responsive answer !