

Preparing For and Being Deposed as an Expert Witness

James Hitchner, CPA/ABV/CFF, ASA



All slides copyright 2012 Valuation Products and Services, LLC

James Hitchner, CPA/ABV/CFF, ASA

- Managing Director, Financial Valuation Advisors
- CEO, Valuation Products and Services
- President, Financial Consulting Group
- Editor in Chief, *Financial Valuation and Litigation Expert*
- 32 years in valuation services
- Inductee in the AICPA BV Hall of Fame
- Coauthored over 20 courses; taught over 60 courses
- Published over 80 articles; made over 180 presentations
- Former member of the AICPA task force on BV standards
- Editor and/or coauthor of the books:
 - *Financial Valuation: Applications and Models, 2011, 3rd edition*
 - *Financial Valuation Workbook, 2011, 3rd edition*
 - *Valuation for Financial Reporting: Fair Value, Business Combinations, Intangible Assets, Goodwill, and Impairment Analysis, 2011, 3rd edition*
 - *PPC's Guide to Business Valuations, 2012, 22nd edition*



Disclaimer

For discussion and educational purposes only. Some topics are presented to elicit interaction amongst participants and may not be relevant to every practice. They are also meant to be humorous and sometimes absurd. Valuation and litigation services are very much affected by specific facts and circumstances. As such, the views expressed in these written materials do not reflect the professional opinions or positions that the presenters would take in an assignment, or in providing valuation or litigation services in connection with an actual litigation matter. Every situation is unique, and differing facts and circumstances may result in variations of the information presented.



What You Need To Know And What To Do And Not To Do

- Always tell the truth, preferably in a simple and direct manner
- You will swear an oath to tell the truth, the whole truth and nothing but the truth
- The general purpose of a deposition is to learn what your opinions are and the support you have for those opinions
- The other reason for a deposition is to set you up for later challenges including possible impeachment



What You Need To Know And What To Do And Not To Do

- The biggest difference between a deposition and a trial is there is no Trier of Fact at the deposition
- You can not “win” a deposition – you only survive it
- You have the right to answer questions by reading from your report
- Anything you say to anyone at the deposition is discoverable including:
 - The attorney on your side of the case
 - Your staff
 - The client



What You Need To Know And What To Do And Not To Do

- You have the right to take as many breaks as you want, when you want, even when a question is asked and the answer is pending
- You have the right to answer a question as long as you want even when the attorney says to stop
- Do not waive your right to read and sign your deposition transcript
- You can correct your deposition transcript when the answer you gave is not what you believe is correct or is not what you meant to say



What You Need To Know And What To Do And Not To Do

- Make sure your curriculum vitae (CV) is accurate
- Go to your website and look at what it says
- You have the right to be treated with respect and without hostilities
- The opposing attorney may not raise his/her voice, yell, stand over you, belittle you or act unprofessionally
- Keep your cool even when the opposing attorney is misbehaving



What You Need To Know And What To Do And Not To Do

- If the opposing attorney is way out of line, tell the attorney on your side to tell the other attorney that if it continues you will leave
- Demand a check in advance for your deposition time
- Make sure your engagement letter contains language that your client will pay for the deposition time if the deposing attorney fails to do so
- If you do not understand a question, say so



What You Need To Know And What To Do And Not To Do

- If a question is asked that doesn't make sense, say that the question doesn't make sense and that you can not answer the question
- If the attorney tells you to "help me out here," answer that you are there to answer his/her questions, not give him/her questions to ask
- In a non-video deposition, take as long as you want before answering a question including the time to search your files



What You Need To Know And What To Do And Not To Do

- In a video deposition you can also take as long as you want but remember that long pauses on video do not look good
- If you need time, tell the attorney you want a break and will look at your files to refresh your memory and give an accurate answer
- If the attorney says just answer the question based on your memory, refuse to do so



What You Need To Know And What To Do And Not To Do

- If you are asked in the beginning of a deposition to agree to answer yes or no to each question, say no because a simple yes or no without proper explanation may mislead the court
- If you are not sure, say you are not sure
- Carefully read your assumptions and limiting conditions and certifications/representations
- Be up to speed on the standards and ethics of any organizations you belong to



What You Need To Know And What To Do And Not To Do

- Only answer the question being asked
- Do not think ahead and try to anticipate the next question(s)
- Make sure you know your files and that they are organized so that you can access anything you need quickly
- When asked about other experts do not get personal – just stick to the work performed



What You Need To Know And What To Do And Not To Do

- If the attorney is reading from something or you think he/she is reading from something, ask to see the entire document and then take the time to read the entire document if needed
- Be proud of your hourly rate – you worked hard to be able to charge whatever your rate is



Preparing For A Deposition

- See handout *SEAK Deposition Preparation Outline*
- Ask for a prep session with the attorney
 - Remember, you may be asked at the deposition what you talked about with the attorney prior to the deposition
 - The harder the prep session, the better you will do
- Read your report twice
- Read over the standards you must abide by
- Check your website
- Check your CV



Preparing For A Deposition

- Organize your files in a pyramid process
 - “Summary of Findings” binder
- Think about any soft spots, if any, in your analyses and opinions
- Think about what to say (the truth) when asked if there are any soft spots in your analysis
- Prepare to answer the question about why you do not have other organizations’ credentials
- Be prepared to answer questions about your writings and presentations



Preparing For A Deposition

- If staff prepared a lot of the work, be prepared to explain why you have the least amount of time
- Be ready to answer the question, “How much time do you spend testifying?”
- Be prepared to explain whether you perform the work differently in litigation vs. non-litigation engagements
- Be prepared to explain whether any of your testimony has been limited or excluded



Preparing For A Deposition

- Be prepared to explain your policy on workpaper retention and “draft” analyses and reports
 - Did you throw anything away?
 - Did you destroy any documents?
 - Where are your handwritten or typed notes?
 - Did the attorney review the report?
 - What changes were made?
 - Where are your draft reports?
 - What were your preliminary results?



Preparing For A Deposition

Other potential questions

- How accurate are you?
- How accurate is your opinion of value?
- Are there any mistakes in your analysis or report?
- Is there anything you wanted to do but could not?
- Were you asked to do anything that you refused to do?
- Are you a professional witness?



Let's Have Some Fun Mock Deposition