



Toxicology Section – 2007

K36 The Role of the Forensic Expert in the Discovery Deposition: Communication is Key

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The goals of this presentation are to review rules of evidence and procedure essential to quashing abusive discovery requests, develop the ability to actively listen to questions, recognize unclear questions, and practice asking for clarification.

This presentation will impact the forensic community and/or humanity by empowering forensic experts with information about how to prepare for a deposition, and providing instruction on the importance of listening to every word in a question before answering.

The “Discovery” phase of litigation is designed for each party to inquire about various positions of the other side and request production of important documents. After documents have been exchanged, experts may be asked to prepare a report memorializing their findings and opinions. The parties exchange expert reports and in jurisdictions where expert depositions are allowed, each party may elect to take the deposition of one or more of the opposing experts. A deposition is sworn testimony outside the presence of a judge and jury. Any fact witness or expert who has been disclosed (designated to be called as a witness at trial) may be asked to submit to a deposition. If you are to be deposed, you will probably receive a subpoena *duces tecum* asking you to bring certain documents to your deposition. Responding to the subpoena requires collaboration between the deponent and the attorney who retained him/her in order to determine the propriety of the requested documents.

Testifying as an expert in toxicology, or preparing your client for his/her deposition involves not only a thorough review of the facts of the case, but the ability to report one’s findings in an oral question and answer format. To be an effective witness, the deponent (individual being deposed) must be able to wade his/her way through the confrontational mine field of rhetoric and subterfuge that pervades much “lawyer-talk,” learn to recognize, and respond to trick questions. While experts have spent decades becoming proficient in their areas of specialty, attorneys have spent years learning how to phrase questions designed to elicit admissions and concessions, or to make you look foolish or unqualified.

This presentation is designed to teach you to develop “Active Listening” skills you can use to recognize improper or poorly framed questions, and to empower you with insights into the deposition process that will permit you to avoid providing an even worse response to a poorly phrased question. The seminar will begin with a review of the roles an expert can play in the legal system and continue with a brief review of the rules of evidence and civil procedure which control discovery requests, subpoenas, and provide for limiting and quashing abusive discovery requests.

The workshop will proceed to examine the objectives of a deposition and what types of questions to anticipate. Examples of good and bad deposition testimony and a review of an excellent deposition instruction provided by one attorney to a deponent will be presented.

Responding to Subpoenas, Preparing for Your Deposition, Developing Active Listening Skills