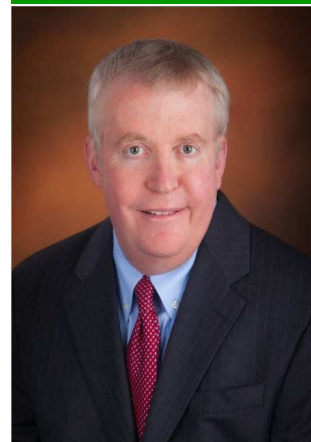


Maximize your Deposition Effectiveness by Knowing Your Aims . . . and Opposing Counsel's!

by Kevin Quinley CPCU, AIC, ARM, ARE, RPA



Deposition testimony is a type of performance art. The more you do it, the better you get. Knowing your aims — and those of questioning counsel — will arm you better as you prepare for your day in the spotlight.

Depositions are key parts of expert witnessing. Professionals who successfully navigate the deposition minefield add value to their engagement terms and the premium they can command.

With fewer cases going to trial, depositions often *are* the trial. For the expert witness, optimizing deposition performance separates you from the pack. Peak performance comes, in part, from knowing your aims and the goals of opposing counsel. Let's sharpen our focus on both sides of this lens, starting with the aims of opposing counsel in deposing you. Their objectives:

1. **Probe your qualifications and bona fides.** What is your hands-on operational experience in this insurance niche? What specialized training, if any, have you received? Do your credentials certify expertise? Have you written books or articles on the topic? Have you presented at conferences? What organizations do you belong to and what insurance publications do you read?

2. **Challenge the bases for your opinions.** What assumptions or facts underlie your opinions? Expect counsel to play devil's advocate toward the opinions you advance in a disclosure or Rule 26 report.

3. **Probe for weaknesses.** Does your opinion contradict your views in other cases or in other sections of your own report? For example, I had a recent case where a bad faith expert criticized an adjuster for denying coverage based on a "four corners" coverage review and then later, in the same report, noted that many states endorse the "four corners" approach in assessing coverage.

4. **Imply bias.** Questions here often include: "How many times have you been hired by XYZ law firm?" "How often have you been hired to opine for XYZ insurance company?" "What is your caseload

(continued on page 24)

***Maximize your Deposition Effectiveness by Knowing Your Aims . . .
and Opposing Counsel's! (continued)***

split between plaintiff and defense-related work?" "What percentage of your income comes from billings related to work from XYZ law firm or XYZ insurance company?"

5. **Lay foundations for impeachment.** Expect counsel to commit you to certain "principles," then later raise facts or opinions which clash with those principles. Expect questions that begin, "Would you agree..." Another basis for impeachment is comparing prior testimony or reports to your opinions on the instant case. Another tact: exhuming your prior articles and claiming they contradict opinions you are now offering. Prior testimony, reports and articles are fair game for impeachment.

6. **Assess your appearance, poise under pressure and communication skill.** These are self-explanatory.

7. **Put you in a box,** setting parameters of where you will and will not testify so that, if you stray at trial, the opposing side can object to you offering a "previously undisclosed opinion." Often, questioning counsel aims to determine what you will and will not testify on at trial to limit where you can go in trial testimony.

To be at maximum effectiveness in your deposition, know *your* objectives. Think about what you want to accomplish. Here are six goals:

1. **Observe the Hippocratic oath.** "First, do no harm." Avoid giving testimony that damages the case or undercuts your opinion. Your answers should align with what you know to be true, with your report, and be consistent with opinions on other cases.

2. **Answer questions honestly and concisely.** Remember, you are not there to advocate for the side that hired you! This is a seductive trap. You want to be a Team Player. You want to help the side that retained you. Many of us are "people-pleasers." An effective expert witness gives his or her opinion. If that supports the position of the litigant who hired us, fine. Your role is not advocacy for the plaintiff or for defendant. Your role is advocacy *for your opinion*. If that helps the side that retained you, you have nothing for which to apologize.

(continued on page 25)

***Maximize your Deposition Effectiveness
by Knowing Your Aims . . . and Opposing
Counsel's! (continued)***

3. Yield ground where you must. Every case has strong and weak points. When there are weaknesses in the claim file, underwriting decision, brokerage placement, the structuring of the insurance coverage, etc. yield ground where you must. Make this clear to retaining counsel beforehand. By yielding ground where you must, facing unfavorable facts, you boost your credibility. You lose it by trying to defend the indefensible.

4. Keep your cool. Questioning counsel is sizing you up as a witness, not just in the conference room or before a court reporter. A good questioning attorney is asking himself or herself during and after the deposition, "Will the jury like this person?" You want the answer to be a resounding, "Yes!" Opposing counsel may see if he or she can "push your buttons," make you lose your cool or be flustered. Maintain emotional self-control, regardless of the provocation.

5. Show command of the facts and the bases for your opinions. Sometimes opposing counsel will take you through a litany of terms and names and ask you to identify them. They are probing for the depth of knowledge on the case. These data points are the building blocks of your deposition preparation. You cannot memorize every single key date or aspect of the case. At some point, tell counsel that your memory is not photographic, but if they would like to refresh it by sharing a document with you, feel free to do so. If you show a command of the basic facts of the case and the bases for each opinion, you project a strong image and make it likelier that the case will settle either at a premium (if you're retained by the plaintiff) or at a deep discount (if you're retained by the defense).

6. Make a good appearance. This includes not just the substance of your answers, but "externals": attire, demeanor, behavior during breaks, poise, eye contact, nonverbal gestures, voice intonation and pitch, vocabulary. Consider all of these on the day of the deposition, because you are on stage.

(continued on page 26)

*Maximize your Deposition Effectiveness by Knowing Your Aims . . .
and Opposing Counsel's! (continued)*

7. **Play effective defense.** Realize that the deposition is not the forum for you to make your case. You are answering questions. It's easy to feel frustrated at a deposition's end, thinking "I never really got around to making the points I wanted to." If the opposing questioner is doing his or her job, you will not get that opportunity. That opportunity comes at trial, on direct examination. If you realize that before the deposition, you avoid frustration. Your role is to answer questions accurately, concisely and give the opposing side minimal content to work with, without being evasive.



Deposition testimony is a type of performance art. The more you do it, the better you get. Knowing your aims — and those of questioning counsel — will arm you better as you prepare for your day in the spotlight. Knowing these aims positions you to navigate the testimonial minefield and adds substantive value to your work as an expert witness.

Raise your right hand, take a deep breath, go out there and crush it!

About the Author

Kevin Quinley CPCU, ARM, AIC, AIM, Are, RPA is President of Quinley Risk Associates in the Richmond, VA area. A CLEW IG member, he maintains an active nationwide expert witness and claim consulting practice on issues of claim-handling, bad faith, extracontractual liability and adjuster standard of care. You can reach him at kevin@kevinquinley.com.