

Expert Witness Testimony

Qualifications to become an expert witness.

While there are no specific requirements to become an expert witness, a judge must qualify you as an expert witness. This decision will be made after the judge has reviewed the case and your credentials.

Preparation.

1. Review your report thoroughly prior to taking the witness stand. Revisit every aspect and be as familiar with it as the day you finished writing it.
2. Know the reason for every conclusion and be able to support it. Rule 703 of the Federal Rules of Evidence states:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Although your supporting information will not necessarily be submitted to the court, a sharp attorney can easily discredit a good appraiser if the appraiser has been negligent in keeping good documentation to support his or her opinion.

3. Write down the questions for your attorney to ask you and instruct him to ask only those. Attorneys are often unfamiliar with business appraisal and they could unknowingly ask you questions that give the opposing attorney ammunition to attack your testimony.
4. Try to anticipate the questions that the opposing attorney will ask you and prepare your answers in advance. Appraisers are forced to come to subjective conclusions. Focus on these and find as much research as possible to support your claims
5. Mentally and physically rehearse the court scene. You may be unaware of your body language, posture, gestures, and habits if you have never seen yourself on film. Visualize the persona you want to portray and work to become that character.

The deposition.

1. Be extremely careful about what you keep in your files. Your records will be subpoenaed prior to the deposition. The opposing attorney will want to discredit you or something in your report. The smallest note can be used to attack your credibility, even if it has nothing to do with the final value.
2. Keep your answers brief and avoid volunteering information. Because the setting often appears rather informal, it is easy to say more than necessary or respond to questions without thinking. Allowing the opposing attorney to think you will be unconvincing in court can be helpful later at trial, and you will have the opportunity in court to elaborate.

3. Obtain a transcript of the deposition from your attorney and study it thoroughly prior to the trial. The opposing attorney will have access to it along with transcripts of all of your previous court testimonies, and he may confront you about even small discrepancies.
4. Attend the opposing expert's deposition to determine any weaknesses and to help plan your presentation. Keep good notes and discuss them afterward with your attorney to determine the best way to attack the other appraiser's testimony in court.
5. Pay careful attention to the opposing attorney's questions during both depositions. You can often determine his view of the important aspects of the opinion of value and detect the types of questions he will ask you in court.
6. Behave professionally. Avoid arrogance and maintain courtesy at all times. You should appear confident and composed, regardless of the situation.
7. Carefully frame all of your answers. Take your time and never answer a question you do not fully understand. Ask the attorney to rephrase the question as many times as you need and consult your file as necessary.

Court testimony.

1. Dress conservatively and professionally. Many of the larger law firms will even send a representative to check your appearance beforehand. It may seem trivial to you, but it can significantly affect the way your testimony is perceived.
2. Bring your files, notes, and presentation material with you on the witness stand. You will be allowed to reference them throughout your testimony, but remember that these must be submitted to the opposing attorney prior to trial.
3. Instruct your attorney to conclude his examination by asking you how you arrived at your opinion. Take this opportunity to explain your valuation in common parlance. Explain the methodology in general terms and use relatable analogies.
4. Try to structure your testimony to follow the logical steps in your appraisal. A well-constructed testimony might be arranged as follows:
 - a. Explain your qualifications. Relate any pertinent experience, education, training, or credentials that will identify you as an expert in your field.
 - b. Describe the assignment. Identify the date and nature of the evaluation along with the company name and the individual or entity that ordered the appraisal.
 - c. Explain the concept of "value" and describe what is included in the evaluation.
 - d. State the value that you determined in your appraisal.

- e. Summarize the steps taken to arrive at that value. Include the following elements:
 - i. The company data you collected and reviewed. This often includes site visits, interviews, and financial documentation.
 - ii. Your research and any pertinent findings. Describe the economic climate of the company's industry and trade area and how it applies to the appraisal, particularly in regards to forecasting.
 - iii. Your analysis and adjustments. List any steps you took to better reflect fair market value and true earning potential and explain why they were necessary.
 - iv. The various methods you used to arrive at your value, and why you chose the methods you felt were most appropriate for this type of company.
- f. State your value conclusion in general language and explain what it represents (perhaps the value of the company's assets combined with approximately one year's net profit to the owner).

Cross examination.

1. Remember that it is the opposing attorney's job is to discredit you as an expert. His questions may be complicated and are often designed to create a negative impression of you or your report.
2. Maintain your composure at all times. Cross examination can be frustrating, but never answer sarcastically or rudely. Your professionalism will convince the court of your integrity, and it can counteract much of the opposing attorney's effort to discredit you.
3. Direct your answers and presentations to the judge. You are there to educate the court. This can frustrate the attorney, and he may even complain. You can reasonably answer any complaints by politely explaining that you believe your job is to inform the court.
4. Ask the opposing attorney to rephrase his questions as many times as you need.
5. If necessary, ask to clarify your answers. If this is not allowed, you can begin your answer by rephrasing the question as you understand it and then answering as you wish.
6. Try to foresee any traps. Attorneys will often pursue a line of questions that initially seems reasonable, but is actually intended to guide you into contradicting yourself.
7. Brief your attorney on questions to which he may reasonably object during cross examination.