

# Attorney versus Expert Witness

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# Initial Questions

## Why be an Expert Witness?

- Easy entry
- Easy exit
- Volatile schedule
- Stressful
- Loyalty/Conflicts



# Relationship

Engagement letter and billings

- Who is the client?
- What should the EL cover?



# Dispute Resolution

## Litigation process overview:

- Complaint and answer
- Amendments
- Motions
- Discovery
- Trial



# FRCivP as Standard

Your expert report:

- Rule 26 or not
- Know the parties; Who is damaged
- Reference your report to the work papers/exhibits
- Be consistently conservative
- Anticipate a Daubert challenge
  - Can your methodology be tested?
  - What is the known or potential error rate?
  - Methods subject to peer review?
  - Are there standards controlling the technique?
  - Is the method generally accepted?
- Other challenges



# Deposition Preparation

How to prepare for your deposition:

- Better sharp than smart
- Reference everything
- Demand practice with the attorney



# Deposition Behavior

How to conduct yourself during your deposition:

- Know the professional standards
- Be polite and respectful
- Know your scope boundaries
- Listen to the question and take a breath before answering
- Keep it simple
- Never guess
- Avoid toxic words
- Avoid answers that open another door
- Handle hypothetical questions carefully
- Planning starts with your report
- Avoid unethical or unqualified attorneys
- Use of re-direct questions



# Be Aware

The opposing attorney's goals:

- Disqualify or discredit you or your methodology
- Neutralize you
- Turn you into their witness





# Techniques

The opposing attorney's tactics:

- Identify conflicts of interest or lack of independence
- Expose any bias
- Confuse you
- Use hypotheticals to get you to change your conclusions
- Introduce conflicting theories
- Introduce conflicting source documents
- Identify material you did not consider
- Show that your conclusions are unreasonable



# CASE STUDY INFORMATION

You audited a GMP construction project and discovered irregularities in the support for material purchases. The Owner asked you to investigate further, and your investigation determined that the CM charged material costs to the job for material that was actually used by the CM on a different job.

- Investigated the issue
- Obtained and organized relevant documentation
- Quantified the over billing
- Prepared a report
- To be deposed by CM's counsel



# QUESTION FOCUS AREAS

- Background questions
- Standards you relied upon
- Assumptions
- Sources of data
- Methodology
- Alternative methodologies
- Hypotheticals
- Open ended questions about other opinions





## Attorney versus Expert Witness

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