

## EXPERT WITNESS WORK – 2 HOURS

- I. WHAT IS AN EXPERT? – 15 MINUTES**
- A. THE SIMPLE ANSWER IS YOU – THE APPRAISER**
- B. THE COMPLEX ANSWER – YOU, THE APPRAISER, BUT ONLY IN YOUR AREA OF EXPERTISE**
- 1. TO KNOW IF YOU ARE AN EXPERT**
    - a. IDENTIFY THE PROBLEM**
    - b. THINK HARD ABOUT WHAT IS NEEDED TO COMPLETE A CREDIBLE REPORT**
  - 2. IF YOU CAN MEET THE REQUIREMENT OF STANDARDS 1 & 2 WHICH INVOLVE:**
    - a. THE ABILITY TO NOT JUST IDENTIFY THE PROBLEM BUT ALSO TO ACCURATELY COMPLETE THE DEVELOPMENT PROCESS AND**
    - b. YOU HAVE THE ABILITY TO COMMUNICATE YOUR RESULTS AND PRODUCE A CREDIBLE REPORT YOU CAN CONCLUDE YOU HAVE THE EXPERTISE TO TAKE ON A LEGAL ASSIGNMENT**
- II. SO WHO IS YOUR CLIENT AND WHY DO YOU NEED TO KNOW?**
- 1. TO ESTABLISH CLIENT CONFIDENTIALITY**
  - 2. TO ENABLE APPROPRIATE COMMUNICATIONS**
  - 3. TO ASSURE YOURSELF THAT THE PERSON ORDERING THE REPORT HAS THE AUTHORITY TO DO SO**
- III. A. WHAT IS THE INTENDED USE OF THE REPORT – 15 MINUTES**
- 1. ASSISTS IN FOCUSING IN ON SCOPE OF WORK NECESSARY**
  - 2. ASSISTS IN IDENTIFYING EFFECTIVE DATE OF THE REPORT**
  - 3. ASSISTS IN UNDERSTANDING RELEVANT CHARACTERISTICS OF THE PROPERTY**
- B. WHAT ARE THE ASSIGNMENT CONDITIONS – ARE THERE ANY?**
- 1. ASSUMPTIONS**
    - a. EXTRAORDINARY**
    - b. HYPOTHETICAL**
  - 2. LAWS AND REGULATIONS THAT MAY APPLY**
  - 3. GUIDELINES THAT MAY APPLY**
  - 4. ANY JURISDICTIONAL EXCEPTIONS THAT MIGHT APPLY**

**IV. HOW COMPLETE SHOULD YOUR REPORT BE?**

**- 1 HOUR & 30 MINUTES**

**A. TWO THEORIES:**

- a. **PUT AS MUCH DETAIL IN AS POSSIBLE AND ANSWER QUESTIONS WHICH MAY ARISE BEFORE THEY ARE ASKED**
- b. **PUT AS LITTLE IN AS POSSIBLE SO THAT CHALLENGES TO YOUR OPINIONS ARE MODERATED BY YOUR PROFESSIONALISM ITSELF**
- c. **POSITIVES AND NEGATIVES OF BOTH APPROACHES**

**B. REGARDLESS OF YOUR METHOD OF PRESENTATION**

1. **IF YOU ARE DEPOSED (A DEPOSITION) YOU WILL BE EXPECTED TO BRING YOUR ENTIRE WORK FILE WHICH *DOES INCLUDE EMAILS***
2. **YOU MAY BE QUESTIONED ON YOUR WORK FILE, PAPER BY PAPER**
  - a. **IF AN INSURANCE COMPANY IS INVOLVED, EXPECT TO BE QUERIED IN DETAIL BECAUSE INSURERS HAVE THE RESOURCES TO QUERY EVERYTHING**
  - b. **THE OPPOSING ATTORNEYS OFTEN ASK THEIR WITNESSES TO PULL APART THE WORK FROM THE OTHER SIDE IN ORDER TO IDENTIFY LINES OF QUESTIONING FOR CROSS EXAMINATION**
3. **REGARDLESS OF YOUR DETERMINATION TO BE IMPARTIAL, THE OPPOSING ATTORNEY WILL CHALLENGE –**
  - a. **YOUR NEUTRALITY**
  - b. **YOUR EXPERTISE**
  - c. **YOUR CONCLUSIONS IF THEY ARE CONTRARY TO WHAT THEY WANT TO HEAR**
4. **SUBPEONAS WILL BE SERVED FOR BOTH DEPOSITIONS AND COURT APPEARANCES**

**C. WHAT KIND OF WITNESS ARE YOU BEING SUBPEONED AS?**

1. **EXPERT WITNESS**
  - a. **YOU ARE HIRED TO GIVE AN OPINION BECAUSE YOU ARE AN EXPERT**
  - b. **YOU ARE PAID EXPERT WITNESS FEES (YOU SET THE PRICE ON AN HOURLY BASIS)**
2. **PERCIPIENT WITNESS – *CALL THE ATTORNEY AND LET THEM KNOW THAT AS A PERCIPIENT WITNESS YOU WILL RENDER NO OPINIONS AND MAKE NO OBSERVATIONS OUTSIDE OF WHAT IS ALREADY IN YOUR REPORT, AND THAT YOU KNOW YOU ARE NOT REQUIRED TO BY THE COURT.***
  - a. **YOU ARE SUBPEONED BECAUSE YOU “KNOW SOMETHING ABOUT THE CASE” THAT HAS A MATERIAL BEARING ON THE CASE**

- b. YOU ARE PAID COURT MANDATED FEES WHICH ARE VERY VERY LOW (MAYBE \$25/DAY?)
- c. IF YOUR APPEARANCE IS AS A PERCIPIENT WITNESS YOU SHOULD NOT GIVE YOUR OPINION ON ANYTHING OTHER THAN YES, I DID THAT REPORT AND I WILL VERIFY WHAT I WROTE IN IT.
- d. IF THEY ASK FOR AN OPINION EXPLAIN THAT YOU ARE THERE AS A PERCIPIENT WITNESS NOT AS AN EXPERT AND THAT YOU WILL ONLY TESTIFY TO WHAT YOU DID - NOT TO YOUR OPINIONS, OBSERVATIONS, OUTSIDE OF THAT REPORT

**D. AS AN EXPERT WITNESS:**

- 1. LISTEN CAREFULLY – ATTORNEYS WANT TO MAKE WHAT YOU SAY SUPPORTS THEIR ADVOCACY POSITION
- 2. TAKE YOUR TIME BEFORE ANSWERING, REVIEW YOUR NOTES, AND ANSWER AS BRIEFLY AND TRUTHFULLY
- 3. IF THE ATTORNEY’S WORDING IS CONFUSING ASK FOR CLARIFICATION
- 4. IF THE ATTORNEY’S WORDING RESULTS IN A MISLEADING RESPONSE THEN ASK THE ATTORNEY TO RESTATE AND/OR RE-WORD THE QUESTION
- 5. IF THE ATTORNEY SAYS, “JUST ANSWER MY QUESTION – YES OR NO” AND THAT ISN’T POSSIBLE, STATE THAT THE USPAP PRECLUDES YOU FROM PROVIDING A MISLEADING REPORT. THE QUESTION CANNOT BE ANSWERED YES/NO. PLEASE REWORD IT
- 6. DON’T EVER HESITITATE TO SAY “I DON’T KNOW” OR “DIDN’T KNOW” THAT.

**F. BE PREPARED FOR THE GIVE AND TAKE OF TESTIMONY**

**V. DEPOSITIONS VS. COURT TESTIMONY**

**A. DEPOSITIONS HAPPEN MORE OFTEN; TESTIFYING IN COURT IS RELATIIVELY RARE**

**B. DEPOSITIONS ARE TO FIND OUT**

- 1. WHAT YOU ARE GOING TO SAY
- 2. HOW YOU ARE GOING TO SAY IT – YOUR CREDIBILITY
- 3. REMEMBER - GO SLOWLY IN CASE THE ATTORNEY YOU ARE WORKING FOR WANTS TO OBJECT TO A QUESTION

**C. COURT TESTIMONY MAY BE IN FRONT OF A JUDGE OR A JUDGE AND JURY**

- 1. COURT TESTIMONY IS FORMAL
- 2. ALWAYS OBEY THE JUDGE
- 3. AGAIN, GO SLOWLY IN CASE THE ATTORNEY YOU ARE WORKING FOR WANTS TO OBJECT TO A QUESTION

**V1. SO HOW WORTH WHILE IS EXPERT WITNESS WORK?**

- A. IT IS OFTEN INTERESTING AND CHALLENGING**
- B. THERE MAY BE A LOT OF EMOTION FROM THE LITIGANTS**
- C. EVEN THOUGH YOU KNOW YOU ARE NEUTRAL, YOU WILL BE PERCEIVED BY SOMEONE AS THE AGENT OF THE "ENEMY"**
- D. COURT DECISIONS AREN'T ALWAYS "FAIR" AND SOMEONE WILL BE UNHAPPY**
- E. DESPITE THESE ISSUES, THE ANALYTICAL DEMANDS ARE REWARDING WHEN YOU KNOW YOU'VE DONE A CAREFUL, AND DEFENSIBLE, JOB**