

AIATrust **Providing Fact Testimony**

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When a lawsuit is filed against an architecture firm for services it provided on a project, members of the firm having knowledge of relevant facts may be subpoenaed to testify on those facts in a deposition and possibly in a trial. The following suggested tips and guidelines are offered when providing fact testimony.

PREPARING FOR YOUR DEPOSITION – Most depositions are video recorded and may be played back to the jury, therefore your appearance should be professional. Your attorney will help you prepare for the deposition and help you understand the methodology used by the questioning attorney.

- Understand the theory of the case alleged against you, your sub-consultant, and in your defense of the claimant’s allegations
- Review the critical project communications and documents in chronological order to obtain a command of the facts and record
- Review and understand the key contractual provisions in your agreement for architectural services and your agreement with your sub-consultant and the contents of any written notice for your deposition. Review and understand your responses to written discovery, pleadings filed on your behalf, certificates of merit and expert reports critical of and favorable to yours and your sub-consultant’s services.
- Understand the applicable standard of care, any applicable building codes and industry standards, and any industry literature
- Review prior deposition transcripts of key witnesses. Rehearse questions and answers
- Do not review or rely upon privileged or confidential communications or documents in preparation for our deposition as the questioning attorney will be entitled to a copy of any documents you reviewed to prepare for your deposition. If you are uncertain, your attorney can identify the privileged or confidential communications or documents

YOUR DEPOSITION TESTIMONY – Your deposition will be recorded and published in transcript form. Counsel who requested your deposition will initially direct questions, and counsel for other parties will follow. All attorneys will have an opportunity to re-direct questions. Opposing counsel’s intent is to have you provide answers that will help plaintiff’s case. Your attorney’s preparation and guidance will help you understand and respond to plaintiff’s questions.

- Listen carefully to each question
- Answer only the question asked, and do not expound unless the question is unfairly and unreasonably taking facts or documents out of context
- Answer “yes” or “no” – no head shakes or uh-huhs
- Pause before answering to give your attorney a chance to react
- Never guess or assume
- Ask questions when you are unsure or don’t understand

- Ask to see and read documents that form the basis of a question to be sure you understand the language of the document and the context in which it appears before answering
- Be cognizant of your body language, particularly if the deposition is videotaped
- Always tell the truth, but do not be afraid to advocate for your position and articulate your answer in the light most favorable for your position; a lawsuit is part of the adversarial process of the civil justice system, so advocate in defense of your services
- Remember, you are testifying in a deposition as if you were testifying live in a court in front of a judge and jury, and your testimony can (and most likely will) be played or read in open court at trial or used to impeach (contradict) your live testimony during trial

YOUR TRIAL TESTIMONY – The same basic rules apply as with a deposition

- Dress appropriately to show respect to the court (business attire), but dress conservatively as jurors will judge you by your appearance as well as your words
- Be relaxed and professional on the witness stand
- Remain cognizant of body language
- Review the facts of the case one last time beforehand, including your deposition transcript
- Be consistent in your testimony
- Be courteous to the jury and the judge as well as the lawyer questioning you
- Answer the questions asked; tell the truth; do not argue, but articulate your answers in a way that advocates in defense of your services

AFTER THE CASE HAS SETTLED – Discuss your testimony with defense counsel and your project team. Make notes for future reference. Win or lose, your experience will be valuable for the next time around. Review documentation procedures and services to assist in managing risks on future projects.