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Expert Witnesses

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Often an expert is blamed for losing a case. Who is ultimately responsible if an expert is not prepared, was unqualified, lacks integrity or performs poorly under cross-examination? It is not the expert's job to win the case or persuade the jury. The expert should offer credible opinions and let the attorney's dispute claims.

Choosing an Expert

It is the responsibility of the attorney to choose the right expert. No matter how skilled the attorney, a poorly qualified expert can harm a case. Properly deposing and providing critical data to the expert is also crucial for proper trial preparation. Further, the expert obviously should know more than the attorney in his or her area of qualification, but it is not the expert's place to take the lead in representing the client and case. If the burden of trial preparation is shifted to the expert, the outcome is almost certain failure.

Guidelines for Utilizing Expert Services

- Seek recommendations from other attorneys and get the best experts you can find.
- Get references and find out how well experts have performed at deposition or trial.
- Never allow experts to stray even slightly out of their areas of expertise.
- Have experts slightly understate your position; it will help convince the jury of your experts' fairness.
- Establish expectations and costs.
- Make sure your experts know the rules of discovery.
- If your experts can prepare demonstrative evidence, have them do so. Computer animations are particularly powerful in facilitating pre-trial settlements or demonstrating information to jurors.

- Establish if any testing must be performed.
- In deposition do not reveal all of your experts' cards and do not completely demolish the opposing counsel's experts. You want to be able to reveal weaknesses of the opposing counsel's experts in trial.
- Do not hold facts back from your experts; clearly state your theories of liability and the claimed defenses.
- Down-to-earth experts speaking in "plain language" are more likely to be respected and credible than those who try to impress with vast amounts of knowledge and a pompous tone.
- Higher fees do not always equal better performance at trial.

Expectations for your Expert

Your expert should allow you to get to know him or her very well. This will allow you to gain confidence in your expert's qualifications so that you can convince a jury of your claims. An expert should assist in preparing and developing a case. A good expert will come up with questions and theories that you are unlikely to establish on your own or without exhaustive research.

We once met with an attorney who wanted to retain us as forensic engineers and possibly as expert witnesses. Our first impression of this lawyer was that he was slightly flashy and arrogant. Expert witnesses can have their own style of arrogance. The wrong character and demeanor will sabotage your case.

Knowledge and Qualities in your Expert

- Experts who have provided services for both plaintiffs and defendants tend to be

seen as more credible.

- Experts should develop opinions based on the facts.
- Make sure your experts fully understand questions before answering them.
- Experts should be concise and complete without offering information or rambling.
- Experts should not be argumentative and should defend opinions without being defensive.
- Instruct your experts that they are not to be cut off and should answer all questions fully.
- Experts should strive to be persuasive and liked more than striving to impress.
- Experts should not be afraid to say "I do not know" or "I do not recall" when they do not.
- Experts should be wary of being led astray by opposing counsel.
- If possible, experts should speak in definite terms, avoiding the use of "in my opinion" or "I believe."
- A good expert is authoritative, wise, a leader, credible, correct, articulate, unflappable, sincere and displays common sense.

Being thorough in selecting and preparing an expert can pay huge dividends during deposition and trial for a diligent attorney.

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