

Four things an attorney should know about retaining an expert witness

The decision to retain an expert witness is an important factor in any litigation. Strategic selection and communication with the expert can have a substantial impact on the case, from settlement options to court room testimony. The opposite is also true -- the wrong choice of an expert witness can result in poor or negative results. I have compiled four recommendations for attorneys from an expert witness perspective.

1. Take Action Early

Many cases do not require an expert at all. However, once the use of an expert becomes foreseeable through fact evidence or because your adversary has declared he or she is utilizing an expert witness, you should retain and get your expert up to speed on the case as soon as possible.

Many attorneys wait too long. There is a distinct benefit to retaining an expert early in the case. The expert can advise on both the strengths and vulnerabilities you may be faced with specific to the area of his area of expertise, pointing out what you may not have considered.

If you wait to retain an expert until the last minute, you may not be able to retain the best candidate for your case. This is particularly true in specialties within an area of expertise. In these narrow disciplines attorneys have to act quickly in order to engage the best expert before opposing counsel has done so. Attorneys have also lost out on the best expert by waiting and then requesting a review of volumes of data and evidence in an unrealistic time frame, leaving the expert insufficient time to properly prepare, and he has to decline.

2. Interview the Expert

Interview the expert yourself; do not delegate this task. You understand your client and your case better than any of your assistants or paralegals. It is crucial that you hire an expert with whom you can work skillfully. You must have a clear understanding of the expert's qualifications, ethics, communication skills, persuasiveness and personality. After all, it is you who will need to ensure your client that the expert witness on their case will conduct himself in a manner that you, the judge and the jury respect.

3. Exercise Caution in Your Selection

Be skeptical of the expert who claims expertise in too broad an area. Make sure your expert has first-hand knowledge related to the issues in your case. Familiarize yourself with industry terms and language and listen for them during the interview. Be wary of

retaining the intellectual who has no practical application of his expertise in the real world. There is no substitute for experience.

4. Do Not Withhold Information

What your expert witness does not know can and likely will hurt your case. Just as an accomplished attorney does not ask a question for which he or she does not already know the answer, withholding from the expert facts or materials that you think are not relevant is a recipe for disaster. In deposition or at trial your expert is likely to be surprised or embarrassed and could possibly lose all credibility with the judge and/or jury and his or her opinions and conclusions be regarded as insignificant.

A legitimate expert is not interested in reviewing data for the purposes of running up unnecessary bills for time. He or she is concerned about having all required information that may affect his or her opinions and conclusions. Allow the expert to determine whether a particular piece of information or evidence is relevant.

Therefore, ongoing communication is a critical component of the attorney-expert relationship. It is imperative the attorney continues an open dialogue and forwards new data or evidence to the expert witness as it may become available through the discovery process. One of the worst things that can happen after an expert has issued his or her expert report or testified at deposition or in trial is for the expert to be trapped by opposing counsel and made to look incompetent and less than credible due to insufficient information.

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