

Expert Witness - A Valuable Asset

Are attorneys overlooking a valuable asset? Many indeed are. As in any field of expertise, there are good and bad expert witnesses. A slogan I once read said, "The right attorney can make the difference." So too can the right expert witness.

The right expert witness can be one of the most valuable assets an attorney can use to win his case. Although attorneys know the law, trial procedure, etc., they cannot realistically be expected to know the operations of every type of company. Utilizing an expert witness will provide the attorney the inside knowledge and explanation of corporate details that will help with facts surrounding a particular case. The expert explains strengths and weaknesses that will give attorneys the knowledge to best prepare the case.

A case in point, an attorney in New Jersey, had a case in which his client suggested utilizing an expert. The attorney indicated to his client that it was not necessary, citing cost as the major factor. At trial, the testimony of three of the attorney's key witnesses was rejected or restricted. The judge based his decision on the hearsay rule and restricted witnesses' testimony to only those reports, tests or documents they alone prepared.

In the end, the evidence the attorney was able to get on the record was so limited that the case he had intended to present was non-existent. Had the attorney hired an expert witness, the hearsay rule would not have applied and the attorney would have been able to present the case as he intended. Notwithstanding the validity or invalidity of the judge's ruling, he made the ruling at trial just the same. Now the case will go to the appellate division. In hindsight, the attorney's decision to not bring on an expert compromised his case, upset his client and will not save his client any money. What his decision did do was to put the outcome of his case in jeopardy.

As in any profession, there are good and bad experts. An attorney should always talk with a prospective expert to obtain a sense of his or her demeanor, character, and experience in their field of expertise. One of the most common questions faced by experts from opposing legal council is "Mr. Expert, have you ever personally performed or supervised this type of task?" The ideal response would be "Yes, I have." There are three types of experts -- those with book knowledge only, those with hands-on field experience only, and those with both. Those experts who possess both book knowledge and hands-on experience in their field of expertise are the most desirable and sought after because they can answer "Yes."

The most crucial component provided to the attorney is the expert's report. After days of hearing conflicting testimony during trial, it is in large part the expert's report that jurors will turn to for clarification. It must be neat, professional, properly formatted, grammatically correct, and organized. The report must present the facts of the case in a clear and concise manner and include a summary of the expert's opinion to which laypersons and jurors will relate.

Expert witnesses often will be required to be deposed and testify under oath at trial. The attorney should know in advance how the expert would appear and perform

under pressure. The expert should always be dressed in business formal attire, which sends a clear signal to the jurors the expert is respectable and professional.

The attorney should meet with the expert so he can observe the expert's composure and tone and how he carries himself in a mock deposition or trial testimony atmosphere. Even some of the very best experts can get somewhat flustered during a rigorous and demanding cross-examination. The attorney should educate the expert in the redirect process so he or she fully understands the process and its importance.

By incorporating the guidelines above, an attorney utilizing an expert witness will be better able to serve his client effectively.

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