

## Are You Waiting Too Long To Hire An Expert?

Once the need for an expert becomes inevitable through fact pattern or because your adversary has made the choice for you by their strategy to use an expert, you should retain and consult with your expert as soon as possible. The earlier the expert is involved in the case the faster they become thoroughly familiar with significant facts. This advantage will often expose elements of your case that you may not have considered initially. Your expert should be able to give you an objective and detailed analysis of both the strengths and vulnerabilities that may be faced, specific to the areas of his or her expertise.

Waiting to choose an expert until later in the process runs the risk of being unable to retain the best candidate for your particular litigation. The most frustrating situation you can put your expert witness in is with a request to review extensive materials in an unrealistic timeline and often where experts on the other side have been in place for some time and thus have a distinct advantage.

What an expert does not know can and likely will hurt your case. It is widely accepted knowledge that a good lawyer never asks a question to which they don't already know the answer; so it is with an expert. By withholding facts or materials that you think are not relevant or may not enhance your case, you run the risk of allowing your expert to be ambushed, surprised and/or embarrassed. Expert witness testimony is invaluable and can be summed up in one word -- credibility. You are better served by providing the expert everything.

The experienced and ethical expert is not interested in running up unnecessary bills to the client. They are concerned about having all the information, being kept informed about developments, and having access to the attorney or attorneys on the case. An open line of communication builds confidence for both the expert and the client and enables your expert to reach out to you with new ideas, discoveries and materials that provide for the best possible performance at depositions and trial. New technologies such as online meetings improve collaboration and reduce cost for travel.

Today, more than at any other time, many cases are settled, won or lost based on the testimony of the expert witness. The real difference between an expert who will help make or break your case is the depth and range of the expert's experience within the industry involved in the litigation.

I am often asked in an initial interview "How many times have you testified at trial?" I have been involved in many cases. I am proud to say, however, that very few have gone to trial, but instead have been settled in my client's favor, commonly after submitting my expert report, supplementary expert report or rebuttal reports. The point is that the right expert is not necessarily the one who has gone to court the most. No expert can turn a case without warrant into a success, but the right expert can highlight the strong parts of your case with enough credibility to produce a beneficial outcome.

If you feel you have a marginal case, an expert can assist you in framing the issues and facts. A qualified expert will possess the industry experience to instantly spot where industry standards and practices have been violated and can explain why these

departures are important for your case. The expert has likely also seen and participated in similar cases so he can translate evidence into causation. You may lose this very valuable assistance if an expert is retained late in the process.

Another detrimental aspect of retaining the expert too late is retaining him or her after the discovery period is closed. A qualified expert can tell you exactly where to look for potentially damaging evidence on your adversary, which may support your position. What may not seem important or relevant may in fact be the smoking gun you are looking for. Attorneys know the law and are experts in the law. They often do not know the intricacies, nuances, and particulars of specific industries such as heavy or site-work construction methods, means and industry standards that apply to them.

An expert who knows the industry and the acronyms, lingo, and generic terms associated with that industry can be a valuable asset in preparing deposition questions for your adversary. Taking your expert to adversary depositions can be extremely helpful. Many times, the person being deposed will say something that to the attorney may sound logical and reasonable; however, the answer may have contained industry terminology that camouflages the truth. An expert who is thoroughly familiar with the vernacular of the trade can recommend questions exposing restrictive or misleading language. The ability to query cautiously worded answers can change the impression intended to be conveyed by your adversary.

Provide the expert with enough advance notice that you require his or her services. A well- rationalized, logical opinion and conclusion must take into account a large number of factors. I have worked on many of the cases where, on simply reviewing and reflecting back on the facts and evidence, I realized and discovered additional evidence, which solidified and confirmed my opinions and conclusions.

Finally, there is the all important expert report. A logical, detailed, well-structured and well- written report can promote settlement. On the other hand, a hurried expert analysis is frequently flawed, inconsistent and poorly written, allowing an opposing attorney to have a field day questioning as to inaccuracies and conflicting statements and challenging the credibility of the expert. Allowing the expert sufficient time to make sure his or her thoughts are clear and all the pertinent facts along with opinion, conclusions and supporting evidence are presented in an easy to read and understandable fashion is essential.

Experts must be objective. The expert's goal is to search for facts, expose the truth and provide opinion and conclusion based on them. Selecting the right expert for your needs is not always easy. The diligent, experienced trial counsel will engage and retain the expert early in the litigation process, which pays invaluable dividends.

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