

## **Finding the Cream of the Crop: Hiring an Expert Witness**

There are multiple ways to locate the expert you need, such as referral agencies, online and print directories, and searching by keyword on the Internet. When you find an expert who at first glance seems to be what you are looking for, contact them and delve deeper into his or her qualifications. The responsibility to verify that the expert is qualified and will meet your case needs is yours. Be sure to investigate the background of the expert, and ask for references. Once you have located several names by any of the above methods and have performed your due diligence, how do you decide which expert is really what you are looking for, the right one for you and your particular case?

### **Interviewing the Expert**

It is practically impossible to meet every potential expert personally, so most interviews are conducted over the telephone. Initiate your conversation by disclosing the names of the key players such as your client's name, the names of your adversary and their client, your firm and contact information and the jurisdiction of the case. Describe the pertinent facts and circumstances of the case so the expert can check for conflicts of interest and advise if he or she feels the matter falls within their area of expertise.

Assuming the expert does not have a conflict of interest, believes he or she is qualified to opine and is available to be retained by you, there are important questions you should ask prior to retaining the expert, such as:

1. How long has the expert been in practice?
2. How many times has the expert been retained?
3. How many times has the expert testified in court and/or been deposed?
4. What percentage of testimony has been for the plaintiff/defense?
5. Has the expert ever been disqualified as an expert?
6. Does the expert maintain files on opposing experts?
7. Will the expert assist you in preparing what discovery items will be important to him or her?
8. Will the expert suggest deposition questions you need to ask?
9. Has the expert worked on a similar case to yours?
10. Has the expert published any articles or books?
11. If the field requires licensing does the expert have a current license?
12. Does the expert have a client list of references he or she can provide?

### **Hiring the Expert**

Once you are confident you have found a suitable expert, it is advisable to retain them as soon as possible. Top qualified experts, like attorneys, place a high value on their time. I cannot stress enough how important it is to promptly send the expert's signed retainer agreement and payment (if requested). Top experts are in high demand and may be contacted by multiple parties in a case. The mere fact that you spoke to the expert does not mean that they cannot accept a retainer from another party if you have not formally retained them. There have been cases where experts have been retained and then never been sent any discovery evidence, or asked to compile an expert report

or formally form an opinion or conclusion. This is sometimes referred to a “Blocking out.” As you know, once an expert has been officially and legally retained he or she cannot take another assignment on the same case. This tactic, (which some people consider unethical) prevents opposing attorneys in a case from retaining the highly qualified experts.

### **Dealing with the Expert**

Providing all information available to your expert as soon as possible is of vital importance. Giving your expert ample time to review all the discovery evidence and perform the necessary research will best serve you and your client. It takes time to prepare meaningful deposition questions, if it is required, and to compose a comprehensive expert report.

Sometimes attorneys do not completely understand the relevance of questions the expert will want asked. It is important to ask the questions even if you do not understand the reason for them being asked. Many times attorneys overlook the importance of having the expert interview the client. Experienced experts will ask your permission to interview your client, with you on the call. Hearing the client’s story directly can reveal minor details that mean little to a layman but can be significant to the expert.

Keep your expert informed. No expert wants to receive discovery evidence or copies of depositions a week before trial or deposition. No expert wants to be asked at trial if they have reviewed a deposition only to realize the deposition was never given to them. When this happens, the opposing counsel will say to the expert and the jury, “So, Mr. Expert, you did not review all the evidence. You formed opinions and conclusions without knowing all the facts in this case. Isn’t that true?” Your adversary has just placed doubt in the jurors’ mind as to the credibility of your expert’s report and testimony.

Be sure you know what the expert wants you to ask for in discovery. Experienced, qualified experts will have no difficulty providing a list of items they feel they need to properly address the issues in your case.

Don’t provide the expert with hundreds of pages of medical reports, unless the expert you retained is a medical expert. No expert, aside from those testifying to physical injury, needs hundreds of pages of medical records.

Know what the retainer agreement requires of you financially and honor those terms. All that experts sell are their time and their expertise. You will find it difficult to have an effective relationship with an expert who has not been paid on a timely basis.

The right expert can play a significant role in the success of your case. Experienced litigators already practice these principles, and up-and-coming attorneys can benefit from using them in choosing and dealing with their experts.

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