

## **WORKING EFFECTIVELY WITH EXPERTS**

**By Lois Kadosh, MA**

As a real estate broker who has been deposed more than 100 times in the course of working with attorneys for 35 + years as an expert witness/consultant, I do have some thoughts on the subject.

Let's begin with the obvious! Usually, an attorney hires an expert because the opposing side plans to designate one. It is actually a good idea for the attorney to first consult with an expert to determine if there is truly a case at hand before accepting an engagement. Spending one hour with an expert to determine if there is a valid case may save time and money in the long run. Unfortunately, this is not customarily done.

So, how may an attorney work most effectively with an expert? When designating the expert, one should not overreach regarding the scope of the expert's testimony. It is smart to review the designation with the expert prior to submission.

All documents requested by the expert should be provided in a timely manner. An ethical expert will not accept summaries. On the contrary, the expert will insist on reading all depositions, exhibits and documents he/she feels are relevant to the case.

With respect to the expert's Fee Agreement, attorneys should not expect the agreement to be with their clients. Additionally, the expert should be paid in a timely manner as per the Agreement.

There should be no surprises on behalf of the attorney before as well as during the expert's testimony. The expert should be provided with the good, the bad and the ugly with respect to the case at hand.

Ideally, the expert should be hired early on to help the attorney determine the most effective approach. Here are some of the key questions to ask the expert:

1. After acquainting yourself with the case, what obstacles, if any, do you foresee?
2. What do you suggest should be included in discovery?
3. Should anyone else be included in the lawsuit?
4. What are the strengths and weaknesses of my case?

## 5. What approach do you recommend?

A well-done deposition serves as a blueprint for testimony at trial. Obviously, the expert's opinions should not differ at trial unless new facts come to light. Experts are prepared to testify with respect to the Standard of Care of individuals and their related professions and/or industries.

The expert may provide valuable information regarding the opposing expert. For example, is everything on the opposing expert's resume true? Additionally, by carefully scrutinizing that individual's deposition and exhibits, the attorney and the expert may determine if it is a valid interpretation of the facts within the parameters of the case.

Lastly, here is a glimpse of best practices for experts:

1. Be prudent in writing summaries and/or notes.
2. Carefully organize all correspondence, depositions, exhibits and expert generated documents. Provide them to all attorneys three days before the scheduled deposition.
3. Prepare a detailed timeline.
4. Be over-prepared.
5. Be truthful.
6. Testimony should be consistent

In conclusion, some attorneys will hire "advocates" instead of experts to bolster their cases. Competent and ethical experts will see through this ruse and not work for such attorneys. Additionally, the opposing side will argue, usually successfully, that advocates disguised as experts have no place in any litigation.

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