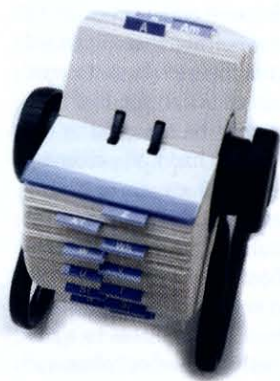


# 12th Annual Guide to **Expert Witnesses**

By Chris Hamilton

## An Expert's Job Does Not Begin in Court



The phrase "expert witness" evokes a mental picture of an individual testifying on the stand. That image has been reinforced over the years by glamorous movie portrayals of experts as well as television coverage of high-profile criminal cases. Although the effectiveness of an expert witness's testimony is crucial in court, an expert has the potential to be most valuable to a case before trial.

The effective use of an expert should affect discovery, pretrial testimony, preparation for trial, and trial testimony if necessary. The best experts are those who can be a catalyst for settlement and therefore help avoid the cost and uncertainty of a trial.

The unique ability of an expert to assist a lawyer effectively when compiling a list of documents to be requested during the discovery process may save hours of research and aggravation. The expert should be able to suggest a course of documentation strategy that satisfies the lawyer's overall intent. If the intent is to shut down a case or force a quick settlement, an experienced expert will be able to propose a course of discovery and inquiry that will yield the data relevant to that goal. Consider the example of a nonmoneyed spouse who filed a family law case. Due to financial restrictions, the goal of the nonmoneyed spouse was to avoid an expensive trial if possible. With the assistance of a financial expert, evidence was obtained that the moneyed spouse had filed conflicting income disclosures on tax returns, loan applications, and court-related income and expense declarations. When confronted with the prospect of being prosecuted for loan fraud, tax fraud, and perjury, the moneyed spouse became highly motivated to settle quickly. The goal had been reached through effective use of an expert.

Because technology continues to progress, the courts are increasingly cognizant of the fact that relevant evidence may include a backup of computerized data. An expert can be used to go into a business or other entity and identify which electronic records are relevant. Using such expertise saves time in sorting through volumes of often confusing and conflicting information to arrive at the relevant facts of a case.

Once the requested documents have been received, the adept expert can analyze the data. Ultimately, the goal of an expert is to convert boxes full of evidence into a solid opinion backed up by relevant data, presented in a clear, concise, and understandable manner. To bring the expert witness into the process after discovery is inefficient and handicaps the expert's effectiveness.

Throughout the course of a case, complex and highly specific issues often arise that only an expert could understand without considerable research. In these instances, an expert can help the lawyer to understand what the intricate facts mean and represent. This allows the lawyer to spend time in deposition discovering evidence rather than trying to grasp and understand complicated information. This process is more advantageous than waiting until the deposition to ascertain the facts since, in deposition, the teaching comes from a hostile witness.

In many multifaceted cases, the individual who is most likely to identify holes and problems in the opposing case is the lawyer's own expert. Therefore, many experts are asked to assist with the development of interrogatories and lines of questioning for the cross-examination of the opposing expert. The expert knows common errors, loopholes, and areas frequently questioned by judges. Concepts and ideas introduced by the expert are helpful when trying to locate weaknesses and potential faults in the opposition's case.

An expert can also provide additional insight and ideas when analyzing the deposition and testimony of an opposing expert. Certain gaps in the opposition's deposition and testimony are more apparent to an expert who frequently deals with those issues. The expert's assistance might spare an attorney from researching pages of testimony and could possibly highlight points that may have been overlooked.

Many added benefits such as increased litigation efficiency, effectiveness, and higher success rates are possible with the support of an expert. However, in order to achieve these desired results, it is important to remember that an expert's job does not begin when he or she steps on the stand. An effective litigator realizes that the services of an expert should be used early on in the case to discover, teach, and guide. ■

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