

Tips for Expert Witnesses

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As construction practices evolve and projects become more complex, expert testimony is becoming increasingly necessary in construction defect litigation. At the same time, courts are continuing to scrutinize both the methodology and opinions of potential expert witnesses as judges carry out their roles as evidentiary gatekeepers. Structural engineers called on to act in an expert witness capacity in construction litigation should prepare carefully to avoid disqualification or rejection of their opinions and testimony.

Stick To Your Area of Expertise

As an expert witness in litigation, it is crucial to stay within your area of expertise. Many times in depositions or trials, an expert becomes too comfortable and strays into areas where his or her qualifications may be lacking. Just because you have some familiarity or general knowledge in another area, such as electrical engineering, does not mean that you are an expert in that area. Stepping beyond your strengths can lead to being discredited in a manner that can hurt strong opinions and testimony in your area of speciality.

Many times attorneys get too caught up in the various tasks for which they are responsible in litigation, and communication with individual experts can suffer. It is important that you understand what other experts will testify and their areas of specialty. Discussions with the attorney with whom you are working will help you understand the parameters of your role and when you should defer to others. Also, make sure that your opinions do not overlap into another expert's area, even if you are qualified in that area. Conflicting opinions from experts on the same team must be avoided.

Be Active and Maintain Good Credentials

For experts, there is no such thing as too many credentials. Construction litigation is often a battle of competing experts. As an architect or engineer, additional credentials from organizations such as the Construction Specifications Institute, the American Society of Safety Engineers, and the Human Factors and Ergonomics Society give experts increased credibility in the eyes of a jury.

When looking to enhance your credentials, however, prioritize organizations that require

testing, rather than those that simply require the payment of dues to join. In previous depositions, we have seen experts discredited by opposing counsel using such credentials as an exhibit. In one case, an organization was listed on the *curriculum vitae* (C.V.) of the expert and cited by the expert in his testimony. Opposing counsel noted that the organization only required a fee to be denoted as a "member". The expert looked a bit foolish for bragging about his membership.

To avoid an embarrassing situation like this, remember that it is okay to omit activities from your C.V. Stick to important organizations, credentials, publications, etc. Overselling can make it easy for the opposing counsel or opposing expert to poke holes in C.V. entries and, consequently, your credibility.

While it is important to be a member of the trade associations within your profession, it is more important to be active in those trade associations. An expert who is an officer or committee participant has a leg up on another expert who is simply a member of the association.

Jurors are very impressed by anyone who has spoken at seminars or published articles. One of the primary fears of most people is speaking in public. Writing and having something published is considered by jurors to be a difficult task. In addition to recognition and credibility, writing and speaking requires research and helps further develop your knowledge.

Get Qualified as an Expert

Discuss jurisdictional qualifications with the attorney with whom you are working. Expert standards vary from state to state, and also are different in state and federal courts. For years, the standard in the Federal Courts was established by *Daubert*, a seminal case that confirmed the role of the trial judge as the gatekeeper of the evidence admitted at trial and set forth criteria for judging admissible expert testimony. More recently, many jurisdictions, especially the various state courts, are adopting their own standards. For example, prior court qualification as an expert may be very persuasive to some judges.

Concentrate on Facts and Examples

Like all of us, jurors understand opinions and testimony better when they can see problems or standards, as well as hear them. On-site field documentation, such as photographs, measurements, and physical evidence, reinforces expert opinions for the jury. In addition to demonstrative exhibits, specific references to standards or codes impress jurors and are much more difficult to discredit. Every opinion needs an accompanying reference to an authority. Specific building codes, industry standards, and academic treatises need to be used and referenced as often as possible.

If engineering opinions are based on calculations, building code research, or verifiable standards, accuracy is critical. Serious damage can be done to an expert's credibility if mistakes are identified by opposing counsel in front of a jury. When an expert's file is produced during discovery, keep in mind that opposing experts will likely go through the technical content with a fine-toothed comb. A technical review of calculations and written opinions should be performed before the file is produced. A simple calculation error or the omission of a single word such as "not" could be devastating.

Conclusion

The key to providing good expert testimony is communication with the attorney with whom you are working to ensure that you properly understand your role. If you stick to your area of expertise and employ these other tips, you should be able to qualify as an expert witness and provide strong opinions and testimony for your client. ■

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