

Expert Advice

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One of the things I learned as a young lawyer was just how important an expert is to your case. I was working on a products liability case with an expert who “came with” the file. He had already been selected by the carrier I was working for. He was slick and appeared to have all the answers. However, at trial, it became clear that he was a bumbling idiot. This was confirmed when the judge commented to me in chambers that my expert was probably the worst he had observed in all his time on the bench. Somehow, we managed to survive and prevailed anyway. However, I will never forget the sinking feeling I had in the courtroom and vowing never to be put through that experience again.

Here are some of the things I have learned from this case and others:

1. Always check out your experts. This applies even when they are already on the file when you receive it. If you have not worked with your expert before, find someone who has. If necessary, ask the expert for references. When checking references, ask not only about qualifications, but if the expert bills fairly. This will keep you out of trouble with your client.
2. Make sure your expert has the right expertise. This is more obvious today with *Daubert* Issues.
3. No matter how great an expert’s credentials, do not hire them if they have a history of not returning phone calls. There is nothing more frustrating than working with an expert you cannot contact. Your level of frustration will only grow as trial nears. There is no good excuse for an expert’s failure to either return calls or have someone else call to say when you will hear from the expert.
4. Hire experts who not only have good credentials, but also are good communicators. If they are brilliant, but cannot tell the story so ordinary people (like me) can understand it, they have no value.
5. Hire experts who are respected in your local community. You want defense counsel to tell his or her client that your expert is good at what they do. You want your expert to help sell your case, not hurt it.
6. Hire experts who enjoy their work. I like working with experts who enjoy figuring out what happened. They are less likely to be detoured by roadblocks. They are also fun to be around.

As I read what I have written, it appears to have a negative tone on experts. That is not my intention. I truly enjoy working with experts on my cases. I respect their various fields and their knowledge. I look forward to engaging with them to solve some difficult puzzles. I could also repeat stories of sitting in depositions with my experts who made absolute fools of defense counsel. However, all it takes is one bad experience to make you wary. We all need to be wary at the beginning of our cases and take steps to move to another expert when necessary.

My rule for experts is really the same as my rule for employees in my office. You are hired to help me do my job. I look to you not to do the bare minimum, but to help me see what other tasks you can do (or I should do) to further our goals. You are there to make my life easier. When you cannot, or will not, serve that function, there is no longer a need for the relationship.

We also need to keep our experts happy. They deserve to be given all the information they need to do their jobs. We should not put them in a bad position by failing to let them do what is necessary to support their opinions. The goal is to build an effective team. When it works, the process and the outcome can be very satisfying.