

Key Points in Selecting an Expert

Selecting an expert for prosecution or defense in complex litigation requires attention to three key points, explained further in this short article. These points are:

- Timing
- Experience
- Balance

Timing

A good expert can be most useful and may actually save your client money if the expert is brought in early in the proceedings. It is not only risky to wait until the last minute; it may cost more for an expert to get ready if he or she starts work just before discovery closes. By bringing your expert in early in the matter there will be familiarity with all the nuances of your strategy and probably some influence and guidance on what works and what will not. More importantly there will be time for doing an adequate job of research and preparing a well thought out and well documented report. Since Rule 26 requires the expert to have a report it is best to plan for it early in your work. Avoidance of Daubert challenges should be prepared for early in the process. Experts are helpful in depositions if they have experience and a thorough knowledge of your case. Thinking of questions to ask, for example, can be very useful. I have never not been allowed to sit in as an observer and aide in key depositions. Moreover, the avoidance of the last minute crunch is a good way to avoid overlooking something or making a mistake.

Experience

Everybody has to start somewhere and there is always something to learn no matter how much experience you have. But the experience of your expert is important to how the expert should be used. There are two types of experience to consider. For one thing there is experience in the expert's profession or area of expertise. Believe it or not, even though I have 46 years of experience in my profession as a CPA and expert, that is not as important in actual practice as my 23 years of experience with over 50 cases in trial matters. Knowing how to answer the question that was asked, not the one that should have been asked takes experience. Maintaining a cheerful and cooperative demeanor despite withering personal affronts takes resolve that only comes with experience. When the other side does not have the facts or the law they will get dirty. It takes experience to not let that affect your performance. Obviously, an expert must have command of the technology or specialty testified upon. Given adequate time to prepare this can be brought to bear on your case. A lifetime of practice in the profession helps.

Balance

There are many people who expertise from one point of view. We have all seen them, the expert who bounces from one matter to another all on the same side of the claims. Being just a plaintiff's expert and always playing the same tune does not impress juries. After awhile it gets to be less credible than if the expert is known for balance and independence of judgement. One way of looking at this issue is to observe how much the expert is on the side of plaintiffs versus the side of defendants. I have fortunately been able to maintain roughly a 50-50 ratio on my own cases history and this has given me the ability to look at matters from the opponent's point of view. After all, the expert is the servant of the court and owes the justice system a duty of

fairness and objectivity. Look for balance in selecting your experts and you will be rewarded with better minds.

Conclusion

I offer counsel the opportunity to discuss cases in confidence and without obligation so they can size up whether my qualifications, training and experience can help them. In the process sometimes interesting ideas and strategies can result. Look for experience of the right kind and balance....and start early for best results.