

WHAT TO LOOK FOR IN A LEGAL MALPRACTICE EXPERT

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Right, you have read at least ten articles which set out at least ten, sometimes fifteen to twenty things to look for in ANY EXPERT. I only know about experts in LEGAL MALPRACTICE and related fields of BREACH OF FIDUCIARY DUTY, ATTORNEY FEE DISPUTES and just about any ETHICAL VIOLATION. For twenty-two years I have testified as an expert in lawyer's professional negligence in state and federal courts throughout the U.S. and HAVE NEVER BEEN DISQUALIFIED and never failed to qualify. It's because my clients like me to follow the few, simple rules I'll share with you right now.

1. **HONESTY.** An expert who tells you what you want to hear is going to waste your time and money. Unlike most other areas of special knowledge, judges and your opposing counsel went to law school too! Unless your expert can pass the DAUBERT test and candidly explain all of his or her reasons in support of your client's position, the expert is not going to be believed no matter how emotionally loaded or logical the position may seem. If you know more than the expert, let your partner try the case and you be your client's expert. If not, you want your expert to tell you WHAT YOU NEED TO KNOW. It turns out that you and the jury or trier of fact, both need to know the same few things: a) What the expert's opinion is on STANDARD OF CARE. b) What the expert's opinion is on STANDARD OF CONDUCT. c) What the expert's opinion is on PROXIMATE CAUSE, LEGAL CAUSE, ACTUAL CAUSE, THE CASE WITHIN A CASE, AND THE UNDERLYING CASE; d) The expert's level of confidence in the opinion; and e) WHY the expert holds that opinion.

2. **INTEGRITY.** Most of us who have been around a bit, have quite a few transcripts and depositions behind us on both sides of the bar. Competent lawyers often research this material so if your expert is for your position today but was against it yesterday, that chameleon quality can boomerang your client in a manner most clients don't appreciate. Never be afraid to ask in plain talk whether the prospective expert can help you, whether he or she agrees totally with your analysis, your view of reality or your client's exemplary position and the adversaries poor position. The closer your expert is to being objective, the more likely he or she will demonstrate it to a jury or trier of fact.

3. **CREDIBILITY.** Credentials are obviously important, but most reasonably qualified experts in any field have quite a bit. That's why they are experts. Believability is mostly a function of getting an HONEST expert with full INTEGRITY. The expert's background, training, experience, education, publications, hands-on activities added to ability to get quickly up to speed on your problems and your issues is something that varies from case to case and litigator to litigator. The mistake many litigators seem to make is assuming that since they have spent months (sometimes years) on a matter their view of its impact on a trier of fact (pre-Focus group) is the most likely the jury or court will accept. In the complicated field of a lawyer's professional negligence the causation issue almost always is the critical one upon which outcomes turn. If the expert doesn't bring any

fresh insight to the issues, any different perspective then there are two possibilities:

a) You don't need an expert; or b) The prospective expert, though honest and sincere doesn't have the ability to help you persuade the jury.

SUMMARY: An OBJECTIVE expert is a bit different from an objective judge. The judge doesn't point out your weaknesses and try to help you overcome them. An objective expert helps you with all your "points", the strong and the weak, by being honest, having integrity and the background and skill to be credible.

Phillip Feldman BS, MBA, JD. Board Certified Legal Malpractice ABA, ABPLA,CA