



National Tile and Stone Authority

NTSA Forensic Principles Series

An Expert's Duty Is to the Truth, Not to the Client

Why Independence Makes an Expert More Useful to Counsel

We have been retained in matters where the technical conclusion best supported by the evidence did not help the party who hired us.

In one matter, the retaining theory treated widespread tile distress as the result of a single installation defect. The inspection confirmed a real deficiency. It also documented a different distress pattern, an incomplete chronology, and conditions that did not fit the proposed cause.

The assignment asked whether that single defect explained the broader condition.

The evidence supported a narrower answer.

An expert can explain why a client's theory is technically plausible. The expert cannot turn plausibility into proof because the conclusion would be useful.

The retaining party pays for the expert's time, experience, testing, and judgment.

It does not purchase the judgment itself.

That distinction supports the final principle in this series:

An expert's duty is to the truth, not to the client.

Truth Means Fidelity to the Evidence

The phrase is a professional principle, not a claim that an expert possesses absolute truth or decides the case. In this context, truth means fidelity to the evidence, appropriate methods, and the limits of the investigation. The expert states the technical conclusion the evidence supports, qualifies the opinion when necessary, or explains that the issue remains unresolved.

Retention Does Not Purchase an Opinion

Expert work is not valuable because it confirms the position of the person who retained the expert. It is valuable because it subjects that position to independent technical analysis.

A favorable conclusion may be correct. An unfavorable conclusion may also be correct. The identity of the retaining party does not change the physical assembly, the test result, the applicable requirement, or the limits of the evidence.

Professional fees compensate the expert for the work performed, not for a favorable result.

Retaining counsel is entitled to diligent analysis, clear communication, and opinions that accurately reflect the evidence and its limitations. The engagement does not purchase a predetermined result.

Independence does not make the expert an adversary of the retaining party. The expert must respect the authorized scope, applicable confidentiality obligations, and counsel's role in the engagement. None of those obligations determines the technical result.

Scope Defines the Question, Not the Answer

Counsel may define whether the assignment concerns compliance, causation, repair, or another expert's analysis, and may initially limit the work to documents, photographs, a visual inspection, or selected testing. Those decisions define the questions and scope. They do not determine the answer.

If the authorized scope cannot support the requested conclusion, the expert should say so. If an important alternative cannot be evaluated, the limitation should be identified. If the question assumes a fact that has not been established, the assumption should be separated from the analysis.

A limited assignment can support a limited opinion. It cannot support a broader opinion merely because the broader answer would be strategically useful.

Independence Must Shape the Investigation

Bias does not begin when the report is written. It can begin with the way the investigation is framed.

Pleadings, allegations, and case theories are useful because they identify disputed issues. They are not evidence that the technical theory is correct.

If the expert relies on a limited record set chosen to support the client's theory without identifying that limitation, selects test locations solely to produce confirming results without a defensible sampling rationale, or treats the opposing explanation as something to defeat rather than evaluate, the analysis may be compromised before the first conclusion is stated.

A defensible investigation asks what findings would support the proposed explanation, what findings would weigh against it, and which reasonable alternatives require evaluation.

Sampling, testing, and document review should answer the technical question, not merely produce support for one side. A conflicting record does not become irrelevant because it came from the opposing party.

When access, budget, preservation concerns, or the authorized scope prevent meaningful evaluation, the expert should identify the limitation before offering an unqualified opinion.

Independence is not an attitude added at the end. It is built into the investigative method.

Counsel May Test the Analysis, Not Control It

Good attorneys test expert opinions before opposing counsel does.

They ask whether the facts are accurate, whether an assumption is supported, whether a standard applies, whether a sentence overstates the evidence, and whether another explanation has been addressed.

Counsel may identify a missing record, point out an incorrect date, or ask the expert to explain technical reasoning more clearly. The expert may revise the report when better information or better analysis justifies the change.

The expert's independence is compromised when a requested revision changes the substance only because the original opinion is inconvenient.

Changing "the evidence does not establish" to "the evidence proves" is not wordsmithing. Deleting a material limitation does not make the limitation disappear. Describing a possible contributor as the cause does not strengthen the analysis.

The final technical opinion must remain the expert's. Counsel may challenge it. The evidence must control it.

Unfavorable Findings Still Serve the Client

An expert sometimes discovers that the strongest evidence supports the opposing position, narrows the client's theory, or leaves a central question unresolved.

Early candor allows counsel to reconsider allegations, authorize additional investigation, narrow a repair position, evaluate settlement, or avoid relying on an opinion that will not survive scrutiny.

An expert does not serve the client by delaying an unfavorable finding or burying a material fact in technical language because it complicates the case.

The expert should explain what the evidence establishes, what it does not establish, and whether further work could materially change the analysis.

The client may not welcome the answer. The client is still better served by learning it from the retained expert than from opposing counsel.

Objectivity Does Not Require False Balance

Independence does not mean splitting every issue down the middle. It does not require equal weight for explanations that are not equally supported.

Some installations clearly depart from applicable requirements. Some failure mechanisms are well preserved. Some opposing opinions cannot be reconciled with the physical evidence.

Objectivity concerns how the conclusion was reached, not whether the conclusion happens to favor one side.

An independent expert can disagree firmly with another expert, identify serious workmanship deficiencies, or conclude that a particular event caused the reported damage.

The obligation is to use the same evidentiary standard when the conclusion helps the client and when it does not.

Restraint where the evidence is limited and clarity where it is strong are parts of the same discipline. Where evidence is missing, changed, or conflicting, independence requires the expert to state what remains unknown rather than fill the gaps with confidence.

A firm opinion, a qualified opinion, or no reliable conclusion may each be appropriate. An incomplete answer is not disloyal to the client. An unsupported answer is.

The Standard Must Not Change With the Side

A useful self-test is to ask whether the analysis would change if the opposing party had made the call first.

Would the same requirement be treated as applicable, and would the same test result be described in the same way?

Would the same missing record be called a limitation, and would the same alternative explanation receive meaningful consideration?

Would the same present condition be used to reconstruct the past with the same degree of confidence?

The facts available and the authorized scope may differ from one engagement to another, so the final opinions may differ. The standard applied to the evidence should not.

Consistency does not require identical language in every case. It requires a methodology that is not relaxed for the client and tightened for the opponent.

That consistency is one of the strongest answers to the suggestion that an expert is simply a hired advocate.

Change the Opinion When the Evidence Changes

Additional removal may expose a different interface. A later-produced photograph may alter the chronology. A product record may show that the assumed material was not used. Laboratory testing may fail to support the preliminary theory.

The expert should evaluate the new evidence and change the opinion when the analysis requires it.

Counsel should be told promptly what changed, why it matters, what remains supported, and whether additional work could resolve the issue.

Preserving an earlier opinion to avoid embarrassment or disruption does not protect the case. It leaves the expert defending a conclusion the expert no longer believes is supported.

Changing a position for a documented technical reason can demonstrate independence. Refusing to change it because the client has already relied on it can demonstrate the opposite.

The Report and Testimony Must Remain the Expert's

A report may be edited for clarity, organization, grammar, and accuracy. Counsel may suggest questions the report should answer or identify language that could be misunderstood.

Those exchanges do not make the opinion improper. The vulnerability arises when the report no longer reflects the expert's actual reasoning.

The expert should be able to explain every material conclusion, identify the evidence supporting it, acknowledge assumptions and limitations, and describe why meaningful alternatives were accepted or rejected.

A sentence should not remain in the report merely because counsel prefers it if the expert cannot defend it in the expert's own words.

The signature represents more than approval of the document's appearance. It represents ownership of the technical analysis.

Opposing counsel may ask:

You were retained by the plaintiff, correct?

You are being paid for your time?

You discussed your opinions with counsel?

Counsel reviewed drafts of your report?

Did you identify evidence that does not support your client's position?

Would you apply the same methodology if the other side retained you?

Retention, payment, and communication do not establish bias by themselves. The relevant questions are whether the expert used a reliable method, considered material contrary evidence, stated limitations, and reached opinions independent of the client's desired outcome.

An expert who has preserved that independence does not need to deny the relationship. The client retained the expert to perform the work. The client did not determine the result.

Final Thoughts

A retained expert should provide competent, diligent work, respect applicable confidentiality obligations, communicate clearly, and explain the evidence honestly. Those responsibilities are fulfilled by testing the client's theory, not by agreeing with it.

Sometimes the evidence confirms the retaining position. Sometimes it narrows it, supports another explanation, or leaves a question unresolved. The expert's responsibility does not change.

Start with questions. Remember that what you see is not always what happened. Match certainty to the evidence. Challenge the opinion. Separate observation from interpretation. Separate deficiency from causation. State the limitations.

Then give the client the conclusion the evidence supports, not the conclusion the client hoped to receive.

The client retains the expert. The evidence controls the opinion.

Gil Chotam, CTC, CSI, CDT

Principal Forensic Consultant
and

Greg Andrews, CTC

Principal Forensic Consultant
National Tile and Stone Authority