



Be prepared to meet your expert

Five steps to productive use of experts in depo and trial

BY MARTIN I. AARONS

Expert testimony is one of the singular most important aspects of trial. Experts determine whether or not our case holds water. Can we establish liability? What kind of damages are we putting on the board?

How well our expert holds up in deposition helps determine how scared the defendant might be of proceeding to trial. Our expert's deposition may convince a defendant to pay more money to settle the case.

Yet, far too often, we get caught in the daily grind of our practice so that we don't prepare our experts adequately. We assume they know what they are doing. We assume a five- to fifteen-minute meeting in their office before the deposition is sufficient. It is not.

We should never assume that our expert will care as much about our case as we do. We must prepare ourselves and our experts well in advance of designation, deposition, and trial.

Step 1. Begin with the end in mind

The end is a verdict at trial in your client's favor. How do we get there? First, we must know which jury instructions will be given. Second, we need to formulate our theme/theory of the case. Now we should have a better understanding of how the expert testimony fits into our case.

Step 2. Secure evidence and other information

Do we have all the necessary materials and information, especially evidence? From police reports to medical records, we are going to need them.

We should take the time to formulate our discovery plan. Take time to create summaries and timelines of the medical records and email exchanges; draft summaries of prior deposition testimony; visit the scene (if applicable) and take site photos and draw diagrams. The process of putting events into a timeline may

offer us a completely new perspective on the case. Finally, put down in writing our complete theory of our case.

When we put all these items together on our summaries and timelines we can communicate our theory of the case to our experts. The preparation work done by us to educate our experts means the experts won't need to spend as much time working up the case, which will save us money.

Step 3. Create visual aids

To the extent possible, now that we have gathered much of the evidence, it is time to put draft (not final) demonstrative exhibits together. There are innumerable types of demonstratives that can be created. If we have these together in advance of meeting with our expert, it will help us communicate what we want the expert's testimony to be about.

Step 4. First meeting with expert

Now it is time to reach out and confer with the expert. The first meeting with the expert sets the tone for the whole relationship. Don't be afraid to take charge. We know our case better than the expert. Explain what happened, our theory of the case, and how we see the expert fitting into it. This first discussion is usually on the phone. Explain to the expert all the information and evidence we will be forwarding to them. Explain to them what they should focus their attention on. During this first discussion we can find out if there are any obvious holes in our information that we must fill for the expert.

Give the expert a timetable. Ask when they will be ready to have a follow-up in-person meeting. I prefer to meet at the expert's office.

Step 5. Make sure your expert is on board

The second meeting is the time to make sure the expert is on board. If not, now is the time to drop that expert and find someone who better understands or can better present your case.

This second meeting must *NOT* be just before the day of the deposition. It should be before your experts must be designated. We have all fallen victim to hiring an expert at the last minute, getting the documents to the expert late, and then hearing what their opinions are going to be at the last minute. This is a surefire way to have our case explode in our face.

Go over what you expected them to find and see if it jibes with what they found. Ask if they need more information from you. Help the expert to formulate how the opinion is going to be delivered at deposition and at trial. Make sure the testimony fits with the theory of your case. If it doesn't, perhaps the expert didn't see all the information or missed something.

This is the time to help mold the expert's testimony so that it is cohesive and fits with our theory of the case. We can go over the draft demonstratives in this meeting so the expert understands the message/theory we want conveyed. This is also the time to make sure the expert can lay the foundation for those exhibits/demonstratives we must get into evidence.

The second meeting is all that may be necessary, but be prepared to meet with the expert in an efficient and useful manner as many times as necessary before their deposition. Making sure the expert is prepared for the deposition is our job as plaintiff attorneys.



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