

Cross-Examination Questions (and Answers) About Your Advertising

Some experts are understandably wary of advertising. I see some forensic advertising that I consider objectionable, advertising that a skilled attorney could use to impeach an expert witness. On the other hand, the mere fact that one advertises is not objectionable. Advertising, in and of itself, is not the basis of being viewed as a “hired gun.” That results, instead, from the prostituting of oneself by manipulating the facts and opinions to provide a desired conclusion.

If you are concerned about how you will look when answering questions about marketing your expert services, remember that the attorney grilling you is probably listed in local, state, and national bar association publications; Martindale-Hubbell(c) attorney directory; local, state, and national legal magazines and newspapers; the Yellow Pages; and his child’s athletic booster directory. As was the judge when he practiced law as an attorney!

Do ***not*** take the questioning personally. Your responses to the questions, rather than the questions themselves, will determine the attitude of jurors and even judges toward you. Practice maintaining your poise and responses to emotion-loaded questions.

Successful experts say they let questions about their advertising “bother them all the way to the bank.” They have found that questions regarding advertising comprise only one of many issues on the cross-examination list and are not a problem when answered simply and truthfully.

Some time ago, I received the following inquiry regarding this issue:

"When lawyers start to beat up on me about the advertising, I'd like to have a few graceful and effective responses to defuse the issue. I realize that the expert's manner and tone in responding to questions of this type are critical and I have no problem in that sphere. I'm at a bit of a loss in terms of artfully phrasing the responses. Form is fine--could use some help with content. Could you advise?"

I am sharing my reply with you, our readers, because I think it addresses concerns common to many of you in expert consultant practices:

- ⑩ Answer questions honestly, and do not elaborate, except to further defuse the question.
- ⑩ As with all deposition and courtroom questions, respond only to questions, not to statements; be comfortable with the silence and wait for a question.
- ⑩ Don't answer compound questions, or at least divide your response, with one answer to the first part of the question and a clearly separate answer to the second part.
- ⑩ Don't give credence to a line of questioning by trying to justify what doesn't need to be justified. Your restraint will make the attorney look foolish to the jury.

Here are a few examples of questions you might encounter and suggestions of possible answers (Note: This is not a consecutive line of questioning):

Q: Do you advertise your expert witness services?

A: Yes, I do.

Q: Doesn't that mean that you're a hired gun?

A: No. (Don't elaborate; make them explain, by your silence, what they mean by a hired gun. This you can then defuse. If the attorney continues that line of questioning, you can define "hired gun" for him as 'one who is willing to mold his opinion according to request,' which is not what you do).

Q: You're available to testify for pay, and are willing to say whatever the attorney asks you to say; isn't that correct? (compound question)

A: I am paid for my time and expertise in reviewing the case and to testify, if necessary, in deposition or court. What I say is my own opinion based on the facts of the case.

Q: I have a list of directories in which you advertise your services as an expert witness. You are hiring yourself out to testify for various attorneys, correct?

A: I list my services in directories so that attorneys know I am available for record review and testimony.

Q: You "promote" your expert witness services, isn't that correct?

A: My resume and contact information are listed so that attorneys know I am available.

Q: Retaining counsel found you on one of these "directories," isn't that correct?

A: I don't know.

Q: Your opinion is for sale, isn't that so?

A: No, I base my opinion on the facts of the case and am paid for my time in reviewing the case and testifying about that opinion.

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