
Expert News

The Practice Building Newsletter for Expert Consultants July 2006

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**You *can* successfully market your expertise without
sacrificing your integrity.**

MARKETING BRIEF

Non-Refundable Retainers

In recent emails and articles I've written and in several of Meredith's recent blog postings (<http://www.expertcommunications.blogspot.com/>) we have been discussing the ins and outs of expert billing and collection practices. Judging from the amount of feedback we have received, this hits a button with many of you!

One expert shared a very on-point experience that illustrates some of the points we have addressed and was kind enough to let me share it with the rest of our readers.

"Rosalie -- I though I would share a recent experience I had regarding the "non-refundable retainer" clause that I have added to my standard fee agreement this last year. I should start by noting that I have been on the fence as far as a decision to make my retainer non-refundable for the last few years. After having the topic covered in a discussion of forensic experts last year, and hearing several pros and cons on the issue from my colleagues, I did decide to put the clause up-front in my fee agreement.

The reason I decided to make my retainer non-refundable is specifically so that I cannot be declared an expert witness, and my name cannot be used strictly for

leverage in the negotiations for settlement of a case, only to have the attorney ask for a refund of the retainer once the case has settled.

Just a few weeks ago, I was retained as an expert in a case for a plaintiff who lived very near a plaintiff I was retained for last year regarding the same incident, against the same defendant. I was referred to this client by my previous client because I had prepared extensive computer modeling of the incident and, with the assistance of my testimony, that client did win the case and a substantial jury award.

The trial date for the second case was to be only two weeks after my first contact with that second client. They did retain me and sent me a retainer check and a signed Fee Agreement within a few days. A week after being retained and a week before the trial was to begin, however, the client emailed me and notified me that the case had settled and that he wanted his retainer back.

Sensing that something smelled afoul, I made a few calls, both to the County Superior Court Clerk and the offices of the opposing attorney in that case. I found out that not only was I declared as an expert witness by Notice served to the opposing attorney several days before my Fee Agreement was signed, but also that the case was "very close to settlement," though not yet settled.

I immediately sent my new client a letter congratulating him for "settling the case" and reminded him that my retainer was non-refundable, as was explicitly stated in the fee agreement that he signed.

Out of kindness and feeling somewhat (but not real) bad, I did go on to offer him a discount against any future retention of my services on any future case. I haven't heard back from him yet, but doubt if I will.

I think I am going to keep my retainer non-refundable."

-- Regards, John Q. Expert

QUOTE

"A lawyer's performance in the courtroom is responsible for about 25 percent of the outcome; the remaining 75 percent depends on the facts."

-- Melvin Belli

TRAINING CENTER

How to Become a Dangerous Expert Witness

A dangerous expert witness is an expert witness who puts fear into opposing counsel. Opposing lawyers are concerned about the dangerous expert's expertise, his command of the facts, and his ability to communicate, teach and persuade the jury. Dangerous experts understand how to defeat opposing counsel's tactics and are capable of turning the tables on opposing counsel.

Dangerous experts are the most sought after of all experts witnesses. The mere disclosure of a dangerous expert to the opposing side can frequently increase the settlement value of a case. Accordingly, dangerous experts are selective regarding the types of cases they accept and they command premium fees. This book is designed to teach experienced experts how to become dangerous experts. You will learn:

- How to bulletproof yourself and your opinions
- What dangerous experts do when preparing to testify
- How to defeat opposing counsel's tactics
- How to answer trick and difficult questions

Features include:

- Hundreds of concise examples with explanations
- Executive summaries for quick "need to know" reviews

To order your copy for \$99.95 see <http://tinyurl.com/fzpbj> or call, fax or email using the contact information found at the end of this newsletter for additional info or assistance.

EXPERT EXCERPT

Take Notes Thoughtfully

The notes an expert witness takes are generally discoverable. This includes underlining of documents. Dangerous experts recognize that they are likely to be questioned closely on any and all notes and notations they make. They are careful not to create any notes that are inflammatory, show bias, or could be misconstrued and used against them.

Some experts routinely discard notes as part of their document retention policy. This is problematic for two reasons. First, this could be considered illegal if the notes are expected to be subpoenaed. This could result in the expert being barred from testifying or otherwise sanctioned by the court. Either result will not help the witness's career as an expert. Second, discarding notes can often be far more damaging to the expert than whatever was in the notes. As history has shown from Watergate to Enron to Martha Stewart, the cover up is usually much more damaging than the underlying behavior. Dangerous experts are completely transparent in all they do and are not afraid to answer any questions about their notes.

EXAMPLE - Notes on records

Q: Your handwritten notes on the incident report say what, sir?

A: "Not helpful. Discuss with counsel."

Q: Let's talk about what you mean by "not helpful" and what exactly you discussed with counsel.

Lesson: Dangerous experts recognize that any notes they make may result in questioning by opposing counsel. It will be difficult for the expert in the above example to "explain away" what he meant, especially if it conflicts with the opinions expressed in his report.

EXAMPLE - Destruction of records/notes

Q: You made field notes when you examined the distress at the Windsor House?

A: Yes, I did.

Q: These were made contemporaneously during your visit?

A: Yes.

Q: Where are these field notes?

A: I shredded them.

Q: Do you shred all your field notes or do you only do that in cases where you are going to testify?

Lesson: The expert in the above example is in the unenviable position of discussing how, when, and why he shredded his field notes. If counsel can prove or even imply he did so to avoid conflicts with his reports or opinions, the expert's credibility could be damaged. The jury may not understand geotechnical engineering concepts, but jurors do understand destruction of records.

-- Excerpted from *How to Become a Dangerous Expert Witness: Advanced Techniques and Strategies* by Steven Babitsky, Esq. and James J. Mangraviti, Jr., Esq. <http://tinyurl.com/fzpbj>

LEGAL LEVITY

Improper Question or Objection?

A lawyer cross-examined the adversary's main witness. "You claim to have stopped by Mrs. Edwards' house just after breakfast. Will you tell the jury what she said?"

"Objection, your honor," shouted the other lawyer.

There then followed a long argument between the lawyers as to whether the question was proper. Finally, after 45 minutes, the judge allowed it.

"So," the first lawyer continued, "Please answer the question: What did Mrs. Edwards say when you went to her house after breakfast on December 3rd?"

"Nothing," said the witness. "No one was home."

BONUS TIP

Ask for Referrals

Do you ask for referrals? Do you ask for referrals from all available sources - clients, past clients, colleagues, vendors, friends, etc.?

An expert I know in Houston who has retired from his lifetime career is now a part-time expert consultant trying to spend time traveling with his wife. He is still besieged with so many calls regarding cases that he turns down enough work to employ one or two other experts full-time. Younger, hungrier experts in his field should be taking him to lunch - frequently!

When you have finished a case, ask the attorney if he would be so kind as to refer you to other attorneys or give you names of other people he thinks you might assist. (This is also the time to request a letter stating that he or she is pleased with the services you performed)

-- Excerpted from *The Expert Witness Marketing Book* by Rosalie Hamilton, *The Expert's Expert*™ <http://tinyurl.com/dwr7k>

FINE PRINT

Expert Communications

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