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## Expert News

### The Practice Building Newsletter for Expert Consultants March 2006

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

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### **MARKETING BRIEF**

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#### **Experts -- Up Close and Personal**

I had the greatest time at our Marketing Clinic in Tampa. What a pleasure -- not only getting acquainted with experts in a variety of fields and from several states, but also getting to meet some of our consulting clients for the first time! Since we typically work by phone, fax, mail, and email, it's a rare treat to meet in person.

I'd like to share some impressions I came away with --

1. Experts need to mix and mingle with other experts more often. Several people thanked us for providing an opportunity for them to learn about what other experts do and how they handle situations, not only by providing time for them to get acquainted, but also through extensive question-and-answer as a group. Self-correction is easier when you have sounding boards.
2. Experts don't always realize how many different methods and pathways exist to market their services. We will continue spreading the word to the expert community, and working with individual experts and firms to develop or sharpen their strategy for client expansion.
3. Learning how attorneys work with experts and the attorneys' issues and perspectives makes experts more effective. I thoroughly enjoyed the presentation from our lunchtime speaker, Mr. Lee Gunn, a prominent plaintiff attorney who I'll bet is a formidable advocate. The experts expressed how helpful it was to hear his take on finding and working with experts.

4. Most expert consultants are still not being assertive enough about getting paid for their work and in a timely fashion, and sometimes end up having to be aggressive or else end up being victimized. We devoted most of the afternoon session to engagement documents, billing, and collection, and could have used even more time. (You can read an earlier, extensive debate and discussion on this topic at <http://www.expertcommunications.com/epd.htm> )

5. Our community of experts consists of a truly nice group of people -- bright, educated, articulate and friendly. And I admire them just for being gutsy enough to work in the legal arena, with all that the word "arena" implies!

I'm glad I choose to work with expert consultants, and it's personally very satisfying to Meredith and me to see how significantly our information, help, and dialogue impact your practice. Thank you for your continuing feedback.

Best of success to you,

Rosalie

(Comment on this article and other expert issues at Meredith's blog <http://www.expertcommunications.blogspot.com/> )

## QUOTE

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"The majority of men meet with failure because of their lack of persistence in creating new plans to take the place of those which fail." -- *Napolean Hill*

## TRAINING CENTER

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### Succeed As An Expert Witness

This third printing of *Succeeding as an Expert Witness* includes:

- Extensive new material on asserting your rights as an expert and how to handle abusive treatment -- essential advice every expert needs.
- Hundreds of "insider" tips for enhancing effective testimony.
- Ready-to-use, trial-tested checklists for expert preparation.
- An examination of ethical standards and a clear summary of Federal Rules of Evidence.

Author Harold A. Feder, Esq. was a trial lawyer with 35 years of trial experience with many of his cases involving the use of experts. Feder was a Fellow of the College of Law Practice Management and the American Academy of Forensic Sciences and past president of the Colorado Trial Lawyers Association. He wrote and lectured extensively on expert testimony, trial technique and practice management throughout the U.S. and Canada for over 20 years.

"Harold Feder has hit a home run with *Succeeding as an Expert Witness*...a practical guide for the forensic expert...The book walks the expert through the entire process, from a potential retainer through the conclusion of the case...I

certainly intend to buy some additional copies and send them to my experts." --  
Marc S. Klein, Former Editor, *Shepard's Expert and Scientific Evidence Quarterly*

To get your copy of ***Succeeding as an Expert Witness*** (358 pages) for \$39.95, you can visit <http://tinyurl.com/958fu> , or call or email Meredith at 727-467-0700 or [meredith@expertcommunications.com](mailto:meredith@expertcommunications.com) .

Your satisfaction is money-back guaranteed.

## **EXPERT EXCERPT**

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### **How the Best Prepare for Depositions**

The first step in any expert's deposition preparation process is to determine what type of deposition will occur. That is, will it be a discovery deposition called by opposing counsel to dig up dirt on and lock down the expert or a deposition called by retaining counsel to preserve the testimony of the expert? Dangerous experts understand the important differences between these two types of depositions.

#### **Depositions to Preserve the Testimony of the Expert**

Retaining counsel may decide to depose the expert to preserve the expert's testimony for trial. This is usually done where the expert may be unavailable for trial or where retaining counsel wants to save money by not having the expert personally appear at trial. Depositions to preserve the testimony of the expert closely resemble actual testimony at trial. Retaining counsel will directly examine the expert, followed by an aggressive cross-examination by opposing counsel.

#### **Discovery Depositions**

The most common type of deposition that experts will be involved with are discovery depositions (called by opposing counsel). In these depositions, opposing counsel will try to "discover" any information that is relevant to the claim and the expert's credibility. The ten major goals of opposing counsel in a discovery deposition are:

1. To learn and clarify the expert's opinions and the bases for these opinions.
2. To learn as much as possible about the expert's qualifications or lack thereof.
3. To lock-down the expert's testimony so that there will be no surprises at trial.
4. To evaluate the expert and how well she is likely to do in front of a jury.
5. Probe (some would say fish) for potential biases.
6. Determine the factual assumptions the expert's opinions are based on.
7. Gather as much information as possible.
8. Use the expert's opinions to help the other side's case.
9. Intimidate the expert.
10. Learn as much as possible about the other side's case.

Dangerous experts understand that, generally, during cross-examination at trial, competent counsel will not ask a question unless he already knows what the

expert's answer will be. One reason counsel knows what the answer will be is that the information was provided at deposition. Deposition is the venue where opposing counsel will (and is supposed to) ask all kinds of questions that he does not yet know the answer to. This is not dangerous to do because there is no jury present if the attorney receives an answer he doesn't like. Deposition is a key opportunity to discover information from the opposing expert and prepare the case for settlement or trial.

First and foremost, dangerous experts understand and appreciate the ground rules of depositions. These ground rules vary from jurisdiction to jurisdiction and according to the stipulations (agreements) of the parties, but, generally speaking, the following are true:

- During depositions, the Rules of Civil Procedure provide \*extremely wide latitude\* to opposing counsel in terms of the questions that can be asked. According to the Federal Rule of Civil Procedure 26(5)B(1), the information sought at the deposition need not be admissible at trial so long as "the discovery appears reasonably calculated to lead to the discovery of admissible evidence."
- The parties usually stipulate (agree) that counsel is only permitted to object where the question is improperly worded (i.e., objections to the form of the question, such as leading, misleading, compound, etc.).
- Counsel is generally only allowed to instruct the witness not to answer under very limited circumstances (for example, where the information sought is privileged, where the information sought would violate a court order, or to present a motion that the deposition is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress).

-- 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**

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### **Testimony Excerpt**

Actual testimony from a court transcript:

Question: Are you sexually active?

Answer: No, I just lie there.

-- Source Unknown

## BONUS TIP

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### Get Your Message Delivered

If you send a regular email out to your list, such as a monthly newsletter, be sure to run it through a spam content checker like the one below (free).

<http://www.lyris.com/resources/contentchecker/index.html>

This will identify any words, phrases, or design attributes that might trigger a spam filter and keep your message from reaching its intended recipients.

## FEEDBACK

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"I am doing very well. I am getting business from my web site, my listing, my ad, referrals, and my everyday marketing using one-on-one lunches, etc. with attorneys. Each month is better than the last. Credit goes to your book and consulting, the best money I ever spent." -- *Economist*

"You put me over the top! I implemented your recommendations and saw a real nice increase in my business from following your suggestions." -- *Civil Engineer*

**Editor's Note:** We are very aware of the sensitive nature of legal work and protect our clients' right to privacy and confidentiality at all times. For identified feedback, please contact us.

## FINE PRINT

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*Helping expert consultants market their services to attorneys safely and effectively to build their practices and get them more cases.*

Find additional resources for the expert consultant at [www.expertcommunications.com](http://www.expertcommunications.com)

[Sign up for Meredith's blog and hear her thoughts on the ins and outs of expert consultant practices - and post your own comments - at http://www.expertcommunications.blogspot.com/](http://www.expertcommunications.blogspot.com/)

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