



How to Make the Most of Expert Witnesses

Divorce. Fraud. Business disputes. When issues of value end up in court, accountants often end up in court, too — as expert witnesses. Attorneys for both sides call on CPAs to offer their professional opinions about the value of whatever is in dispute.

While attorneys are advocates for their clients, experts must be objective. They are retained to assist the “trier of fact” — the judge or jury — by providing information that can facilitate an informed decision. A biased expert has no credibility. His or her testimony will be easily attacked by opposing counsel.

In order to make the most of hired experts, consider the following tips:

Look for specific experience. On the witness stand, experts must “prove” their expert status by sharing their background, educational history and experience. Be sure you hire someone who is properly credentialed, and who has an impeccable track record of integrity. Otherwise, his or her testimony will be easily dismissed. The worst outcome would be to have the expert’s testimony excluded due to a successful Daubert-type challenge shortly before the trial is scheduled to start.

Also, because testifying requires a certain amount of confidence, look for someone with experience withstanding the pressure of the courtroom. Ask for references from other attorneys for whom the CPA has served as an expert witness.

Check on conflicts of interest. Before engaging an expert, be sure to conduct an exhaustive check on conflicts of interest. If the CPA works in a large firm, ask about clients represented by others at the firm. Provide a complete list of parties involved in the case so the potential expert can circulate the names among his or her partners — and family members.

Decide on the deliverables. Federal courts generally require the expert to deliver a written report following strict evidence guidelines. State and county courts are typically more relaxed. Be sure you and your expert agree on what is required — and when.

Determine the standard of value. Will the standard of value be fair market value, fair value, liquidation value or some other standard? It's the attorney's job to determine the appropriate standard, and the expert's job to apply it. Attorneys should also be familiar with case law relevant to the issues involved.

Provide all the information. Surprises can quickly negate valid testimony. Attorneys should provide all the information the expert may find useful, including that which may or may not support his or her opinion. It is much better to know early on what opposing issues might be raised, rather than be surprised by them on the witness stand.

Prepare carefully for deposition and trial. While coaching the expert witness is not appropriate, it is important to spend time preparing him or her for the types of questions that may be asked by the opposing counsel at deposition, or under direct and cross examination at trial. If the case is weak, it's even more crucial to invest in preparation time so that the expert can attempt to shore up his or her position.

Discuss costs up front. Experts cannot accept contingent fee arrangements and are typically paid by the hour. Ask for an engagement letter from the expert, outlining the scope of work, fee structure and billing schedule.

Remember, an expert witness can make or break a case. Most accountants agree that engaging them early in the process is best. They may even be helpful to the attorney in determining case strategy, ultimately enhancing the outcome of the trial or settlement discussions.