

## How to Use Financial Experts More Effectively or How to Avoid CPA Rage

by

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The monetary cost of litigation is great. A significant component of expense is the financial expert. Depending on the geographic area hourly rates range from between \$250 to \$1,250 or more for a highly qualified financial guru who can assist as a consultant or render an opinion and testify at trial. This article identifies a handful of approaches to make better use of such an expert, keep costs contained and develop a rapport with the expert to achieve better results.

The five most important aspects of using a financial expert are:

- 1) Find the best your case can afford.
- 2) Make sure the person you choose really has the expertise in the area and issue addressed.
- 3) Retain the expert as early as possible in the process.
- 4) Use your expert to analyze the opposing expert's findings.
- 5) If possible, hire another expert as a consultant to review your testifying expert's work to try to make it as error free as possible.

Find the best your case can afford. Put yourself in the client's shoes. Would you not demand the best possible professional to do the job? Usually the cost differential between a pedestrian expert and a very good one is not that great; however, the quality the very good expert brings is far superior. Not only is such an expert more knowledgeable of the substantive area of the analysis but has the savvy and experience to anticipate issues and knows how to handle depositions, the courtroom and opposing counsel.

On the other hand the "run of the mill" expert who is less than careful and has not had much experience will cause you frustration, anxiety and extra time to make him or her capable enough to get the job done. Make it easier on yourself; find a very good expert who will add and not detract from your own effectiveness.

Make sure your expert is really an expert in the area addressed. It is not uncommon for an expert to exaggerate experience and assume broader knowledge than he or she actually has. "Puffery" may be an acceptable salesperson's practice but when used by a potential expert is a loud warning signal to move on to another candidate. Litigation is too serious a business to bring in neophytes or charlatans who may have expertise of sorts in an area but not the exact area in which you need help.

Ways to find the right expert:

- ✓ talk to other litigators who try similar types of cases.
- ✓ review reporting services that comment on verdicts, rulings and comment on testimony of the experts.
- ✓ read opinions of reported cases and identify the experts that testified credibly.
- ✓ talk to judges not affiliated with your case and find out who they respect.
- ✓ visit internet blogs and do internet searches.
- ✓ contact associations and organizations and ask for experts in that field.
- ✓ interview at least three candidates and ask if you were the judge or a juror “Does this person make sense?” Then, make your final assessment.

Retain the expert as early as possible in the process. The sooner the better is the correct approach. Let the expert “learn” the case with you and help you develop theories and approaches that make sense. He or she can help you craft appropriate and relevant discovery requests, interrogatories, decide whom to subpoena and determine the appropriate questions to ask in deposition. This involvement gives your expert ample opportunity to have in-depth understanding of the case, its nuances, the opposing expert as well as the opposing counsel. On the other hand, delaying too long to bring in an expert increases the risk of lack of understanding of the case, failure to meet deadlines, errors in assumptions and calculations, unconvincing report and plain old, lousy testimony.

Use your expert to analyze the opposing expert’s findings. The adversarial approach mandates that for “justice” to result from trial, each side present a vigorous case and that testimony be subject to the scrutiny of cross-examination. You miss a golden opportunity to carry out “the ends of justice” if your expert is not expected to fully read, review and critique his opposite’s position and opinion. Engage your expert to identify the other’s weaknesses such as inappropriate assumptions, faulty logic, irrelevant data, antiquated and obsolete approaches, failure to learn and understand new trends and techniques and the like.

As important as the analysis, is your expert’s ability to clearly communicate to you in an understandable fashion. If you have a difficult time understanding what the expert tells you, so will the judge or jury. I recall a case some years ago where the opposing expert was greatly impressed with his own education and experience. His presentation and language were aggrandized to the point that it was extremely difficult to understand what he was really saying. In effect he was talking down to everyone in the courtroom including the judge, giving the impression he was too important to make understandable what should have been an understandable subject.

Strongly consider retaining, in addition to your testifying expert, a consulting expert. No expert is perfect, and financial experts are no exception. In this era of electronic spreadsheets, computer programs that calculate business values, and other “labor saving” devices used by accountants it is extremely easy for mistakes to be made resulting in

erroneous calculations, opinions and reports. The days when accountants would tabulate using adding machines with tape are long gone and so, to an extent, is the meticulousness for which they were once known.

With another set of trained “eyes” overlooking the work there is much greater likelihood that the testifying expert’s work will withstand the adversarial scrutiny. It is natural that the author of such a report will be more careful knowing that a peer is going to carefully check each calculation, assumption and word. There is nothing finer than presenting to the court a well thought out, carefully done and convincing expert report. On the other hand, there is nothing as devastating as having your expert get clobbered in court after cross-examination exposes errors in simple arithmetic and conclusions.

Let me sum up all of this in a few words. Do yourself, your client and your financial expert a huge favor by following these simple rules. All will be more satisfied with the results and provide entrée to you, and your financial expert, with more referrals and success.

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