

Expert Tips for the Success of Your Expert Business

By Shelly Zambo, FRP

If you are reading this, you are an expert in your field, the top of your class, all-knowing in all things listed in your Curriculum Vitae. But does knowledge and expertise alone make the expert? The groundwork is laid, and you are ready to embark on your expert journey. But do you really know how to manage your business when it comes to retention agreements, deposition scheduling, document management, proper attorney-expert (and attorney staff-expert) communications? Are you sure you have included all required elements in your expert report, and are positive it will stand up in court? Do you have the properly trained staff to handle the daily volume and manage your billing? So many more questions, but so little space here to cover it all. What I can offer in this space are a few key points and lessons learned from other experts and through my own experience in the management of my expert clients' caseloads and billing.

Retainer Letters. Let's start with retainer letters. Of course, this step comes after you have done all of the appropriate conflict checks and confirmed they have cleared. Always set forth in detail your rates and terms of engagement. Be sure to include a signature line for the attorney retaining you, along with a line indicating the party they represent. Make sure to check for all information and a date before you agree to commence work. Set forth the obligations with respect to deposition payment regardless of whether it is by the retaining firm or the opposing firm. Your retainer letter could also state that your offer to serve as an expert is withdrawn if the attorney does not sign and return the retainer letter within a certain number of days. Diary a follow-up system if you have not heard from the potential client because as time slips by, you may get work that conflicts with the retention. Your transmission email stating that the offer to serve is null and void if not returned within a certain timeframe could help avoid the issue of incomplete retainers laying around which could create other problems for you. Experienced attorneys understand that experienced experts expect their deposition fees to be unequivocally articulated and agreed to thirty days prior to going into the deposition.

Seal the Deal. Speed is everything in terms of obtaining expert assignments. The faster the expert returns incoming inquiries, the higher the likelihood of being retained. Commerce moves faster every year and experts are expected to be in sync with the increasing speed of business. Being an expert witness is like any business: you are either rising or declining. There is no such thing as simply handling a case now and then. So be accessible. Respond to incoming inquiries. Respond to incoming requests from your retaining attorneys ASAP. Respond to incoming phone calls ASAP. Your cell phone should be glued to your body because you need to be available for your clients 24/7.

Educate Your Staff. When your potential client, or retained client, contacts someone in your office they should know their role and stay in their lane. I recently spoke to a medical expert's assistant to inquire as to fees and provide initial information to provide to the attorney for review. The assistant started asking questions which were outside of the purpose of our call, and it gave me cause for concern. She wanted to know why the plaintiff was suing our client for an injury that he caused himself (on our client's premises), whether we have researched the codes applicable to the gate, and other questions which had nothing to do with our retention of a medical expert. She went on to explain that the doctor has even researched codes for safety and other issues in the past to assist the defense. Needless to say, we did not hire this expert based on his assistant's veering from the purpose of retention which gave us cause for concern for our inevitable future communications throughout the course of the case.

Technology is Key. Either hire a paralegal that can handle all forms of multi-media and ways incoming documents are provided or learn it yourself. Retaining attorneys are quick to decipher whether a potential expert is behind the curve in terms of speed and technology. You do not want to be that person. Be sure you and your team can accept documents in any and every form provided (Sharefile, Dropbox, OneDrive, make sure you have at least two of these subscriptions – preferably the latter two). Meet all deadlines and when the attorney says you only have a few weeks to prepare the report - your response should be “in litigation, this amount of time is a luxury.” Remember to always ask the client whether or not they want a report and do not assume they do. Anything you write in draft can be discoverable.

Case Management. Maintaining a list of all documents as they are received is key for your case organization and eventually your report (if client requests one). In the beginning of the retention, the expert should obligate the retaining attorney and her staff to keep track of all documents provided and then to prepare the listing of documents reviewed at the time of an expert report. After all, the retaining attorney is in the best position to know and keep track of all such documents. However, be wary of relying on someone else to track your documents. You should also keep your own list (or have your paralegal handle) and before your deposition, compare to the retaining attorney’s list to ensure you have reviewed everything they listed and request anything missing from the list if found.

What is in Your File? Privileged documents sometimes accidentally leak into your possession. Sometimes inexperienced staff, or maybe overwhelmed staff, will provide you with documents which might fall into the category of privileged and/or confidential. Did you receive a letter from the hiring attorney to their insurance agent client describing their valuation of the case? Did you receive a confidential summary to a mediator? What if you find a letter from the attorney to their personal injury or corporate client? I did that – once – in my early years as a paralegal, but never ever again. The case evaluation letter to our client was one of the items I provided to our expert for review. After all, I thought, it was the best outline of the case and our defenses. Needless to say, that mistake almost got me fired. Be alert and aware of those sensitive documents and correspondence which could become part of your file because every piece of information will need to be produced to the opposing side at the time of the deposition. Although it is not your job to police every document and paper handed to you, it is important to be aware of items which appear to contain attorney-client or confidential information. Everything you say, type, email, write, or speak into voice recordings which turn into typed voicemail is subject to production to the opposing side.

Prepare for Deposition. Deposition preparation takes time. As all experts know, appearing for a deposition is much like being a pre-pinch hitter in the major leagues. The expert has been paid a fair amount of money up until that time and perhaps they have written an extensive report, but the proof of true expertise is their performance during the deposition. Given that, you should require two full days between the deposition preparation and giving your deposition. Many have found it extremely valuable to have a day between the deposition and the preparation day. In other words, arrange for preparation on day one, a day in between, and then give your deposition on day three. Invariably there are issues and concepts that come up during the prep session that are complex enough that you will need time to wrap your mind around the new issues you may not have thought about in connection with the case. The day in between gives you the time to do that.

Zoom depositions are becoming more common nowadays. Practice with Zoom and get used to using your screens. It may be helpful to simply put the entire screen off to the side or down in the lower

corner. You can also have on your screen any documents or notes, obviously within the rules - that you need to use. Two monitors are probably better than one. Dress professionally, have an uncluttered backdrop (or blur your background), invest in an HD camera to connect to your laptop and make sure there are no dogs barking or loud noises in the background.

You have the expertise, education, and knowledge to succeed in this expert witness business. Get out and market yourself through expert witness affiliations and associations. Educate yourself on the applicable state and federal rules. There is a whole expert world out there waiting for you to conquer!

Shelly Zambo, FRP is the Vice Chair of the Florida Bar's FRP Enrichment Committee and Chair of the Communications Subcommittee. She is the President of SZ Paralegal Services located in Miami and specializes in providing support to expert witnesses through document management, document and deposition summaries, billing, and other related expert witness support. Shelly's background spans over thirty years as a Litigation Paralegal working in Florida in both State and Federal Courts. Shelly has assisted attorneys in numerous trials in the areas of personal injury, race industry, resorts, cruise industry, insurance carriers, and other areas of defense and plaintiff work. For more information, contact Shelly at 786-521-1338, or szparalegal@gmail.com. Website: <https://www.szparalegal.com>