

## **Eight Tips from the 'Expert Experts'**

by **Jane Pribek**

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### **1 Hire as early as possible.**

According to fire-origin expert Ted Pagels of Green Bay, "I always say, the warmer the scene the better. I'm often called to the scene when the fire department is still doing its work. It's very important to me from the standpoint of preserving evidence."

In civil cases, for example, without his guidance evidence can be unintentionally destroyed because someone is trying to recover Grandma's picture.

Moreover, sometimes a lot can be accomplished pre-suit, said CPA Paul Rodrigues of Chortek & Gottschalk LLP in Waukesha.

He notes that it's much easier for him to do a fraud examination early on, when the individuals in question are still employed by the company and they have a duty to talk to him as agents of the business, rather than after they've been terminated.

In addition, said Rodrigues, if you've brought your expert on board early, he or she can help with case evaluation, drafting and responding to discovery requests, and depositions.

### **2 Communicate their role and your expectations.**

Nurse/medical-legal consultant Nancy Nie, of Atempo LLC in DeForest, said attorneys that sometimes don't know up front whether they're hiring her as an expert witness (which means all communications are discoverable) or as a consultant (making communications non-discoverable).

So she errs on the side of caution and assumes she'll be an expert witness, until told otherwise.

Clear communication is critical, Nie said: Is she to address just one aspect of a client's injury and needs, or to come up with a detailed life care plan? Ideally, she likes expectations to be put in writing.

### **3 Take the time to organize the paperwork.**

"Don't bury me with paper," said Rodrigues. "Take the time to send just the relevant documents, and categorize the information, developing or maintaining a retrieval system for it and summarizing it for testimony. And to the extent that the information can be bates-stamped, the better."

You should also create a timeline of past events, if possible.

The most important step, he added, is to include a copy of the scheduling order or a writing of anticipated deadlines, and let the expert know if there are changes.

## **4 Establish communication ground rules.**

It's important to ask the expert if he or she is comfortable talking directly with the client.

For her part, Nie said she frequently meets with clients without their lawyers being present, depending upon her role in the case. But Rodrigues prefers to have the attorney present for both face-to-face and electronic communications, to avoid any miscommunication.

## **5 Don't try to finesse their work.**

It's important not to try to do your experts' work for them.

Pagels said, "Sometimes attorneys start out with, 'I don't mean to put words in your mouth, but...'"

I stop them right there."

Rodrigues agreed. "Really, they [attorneys] shouldn't be helping us with writing our reports.

Please don't."

For example, if you need medical bills reviewed, said Nie, in your cover letter write: "Please assess the reasonableness of these charges," instead of, "We really think the provider overcharged our client."

Along these lines, Nie said she's willing to share a preliminary report with the attorney and she's fine with the lawyer asking her to expand on certain points for the final version. But you shouldn't suggest deletions or revisions to the opinion.

## **6 Prepare them for a deposition or court appearance.**

Nie said she has handled cases where, because the lawyer didn't prep or even talk to her in advance, she thought she was walking into a deposition and it turned out to be a jury trial.

You may be saving the client money by skipping preparation time. But a rattled expert doesn't help the case.

Pagels said he likes to know in advance what the lawyer thinks are the potential landmines, and it's helpful to know if the witnesses will be sequestered at trial.

But there's such a thing as too much information, said Rodrigues. "I like to be prepared somewhat, but if there's too much prep, we know the other side will drill me on that."

## **7 Do your homework.**

Know the expert's area of expertise to the best of your ability. In Pagels' field, for example, that means having familiarized yourself with "NFP 921," published by the National Fire Protection Association. It's a guide for fire and explosion investigations, and it's often used as a treatise in court. It defines the standard of care and scientific method he follows.

## **8 Be responsive.**

Rodrigues said that there are always lawyers “who are hard to reach, and once we do talk, it usually seems like they need something tomorrow.”

For both your sake and the sake of your experts, don't be that lawyer, he advised.