



Expert Dave Johnson hanging around Pretty Penny stables with "Who's That" owned by Katie Rosenzweig.

counselors' counsel

experts speak their minds

Arizona Attorney surveyed legal experts statewide to see the lawyer–expert relationship from the expert side. We focused on how lawyers can assess and select experts, and how time-strapped lawyers can improve their relationship with experts so that the attorneys get the most effective result from those they retain. Here, we set out some of our questions and some of the experts’ responses.

What steps should a lawyer take to determine whether he or she needs an expert in a case?

The lawyer should network with fellow practitioners in order to find the most qualified expert individual.

— *David D. Johnson,*
North American Equine Services
LLC (horse-related litigation consulting and horse appraisals)

Each case should be examined legally, factually and logically. If a lawyer feels even slightly ill-equipped to fully analyze, understand and utilize all the facts (contested and otherwise), ... he or she should consult with an expert.

— *Scott Tidemann,*
PinnacleOne (project/construction management, owner’s representative, dispute resolution representation, defective construction)

The lawyer should determine if there is valid proof of the value of the item in question without testimony of the expert.

— *Karolyn L. Weber,*
Appraisal Service Ltd. (appraisal in art, antiques, silver, china, crystal and ordinary personal property items)

We provide attorneys with a mechanism that can greatly assist them in evaluating the merits of a case and in determining whether to hire an expert or not: We call it the “free-

bie,” a free initial consultation. There are lots of times we advise that the merits aren’t in their favor, or perhaps they need a bio-mechanics or a structural expert rather than a reconstructionist. It’s like having a friend in the business.

— *Andrew Bianca,*
Amber Forensics (traffic accident reconstruction)

What questions should a lawyer ask you to determine whether you can aid the case?

[After the expert’s initial review of the case,] the lawyer can ask: “What can you prove for me in this case?” The expert can then give the lawyer a shopping list of probable items and the relative costs for doing the work to perform those tests. The lawyer can decide which things give the bang for the buck.

— *Andrew Bianca*

The lawyer must be a “detective” to determine if the expert has the specific knowledge to aid in the case.

— *David Johnson*

Ask about the amount of experience the expert has as an expert witness in various courts.

— *Karolyn Weber*

Prior to disclosing facts about the case, ask the potential expert to review the names of

the parties to determine if there exists a conflict of interest.

Has the expert ever: been disqualified as an expert, had actions taken against them that may impeach them, prepared and used demonstrative evidence?

Does the expert have to be licensed as a practicing professional in the state in which the testimony will be heard?

What questions do lawyers fail to ask you that they should ask?

“Are you aware of any legal-related ‘causes’ embraced by associations of which you are a member? Have you checked recently to see if you are still listed with past associations?”

— *Dale M. Cole,*
D²M² LLC (corporate business processes)

“Do you have staff available to do the tasks not needing a higher billing rate? Have you worked primarily with plaintiff or defense attorneys? What percent of your work week is devoted to expert witness issues?”

— *John Gorman,*
Gorman Litigation Support Services LLC (financial and accounting matters, valuations, forensic accounting)

They fail to ask about the strengths and weaknesses of the opposing expert.

— *Karolyn Weber*

TRIAL TEAM PARTNERS

BY TIM EIGO

Can experts go beyond their traditional role of file review and testimony? In some cases, yes.

One example of such a firm is R&G Medical Consultants, Inc. This Peoria firm does legal nurse consulting nationwide, and its founder and president, Rosie Oldham, is a booster of the legal nurse consultant (LNC) as a valued part of medical case litigation.

How do LNCs go further? Oldham's staff can join litigation teams in medical case settlement hearings and in the courtroom; in fact, Oldham says that R & G is the first firm in the nation to do so. Some of her staff can help lawyers develop opening statements, and, when certified, they can educate juries on the merits of all relevant medical aspects of a case. Other staff are trained to consult behind the scenes in file review and assessment.

Pleased at the increase in the number of

wired courtrooms in Arizona and nationwide, the firm uses cutting-edge software developed in Arizona for its presentations in court and in settlement meetings. And, says Oldham, when the opposing side sees the skilled technological presentation to be used in the courtroom, more cases are settled.

Oldham, a former hospital director of nursing who also has experience in hospital risk management, grew her business in response to lawyers' needs: "If you let your business drive you, and attorneys verbalize specific needs, and you can provide those needs, there's no reason why you shouldn't." She is also the author of the 674-page *Medical Legal Internet Directory*, a clearing-

house of Web sites in the two fields (Lawyers & Judges Pub. Co., 2000).

She says that many lawyers ask for help on everything from finding a complementary expert to creating graphic courtroom displays. With her medical and case experience, Oldham is pleased to say, "I can intuitively know what they need before they even need it."

One lawyer who recently worked with R&G concurs: "Rosie's real conscientious," says Jeffrey McKee of the Phoenix firm Davis, McKee & Forshey PC. "She will go the extra mile. She's most concerned about doing a good job."

One thing lawyers sometimes need, says Oldham, is an LNC's help in aiding a physician who is sent a case for review. The LNC can prepare a chronology for the doctor—expert that "cuts the [expert's billed] time in half." And in a legal case, that can result in impressive savings.



ROSIE OLDHAM

Once I've done the technical work, I like to have a conversation about what the lawyer's needs are for presentation.

— *Andrew Bianca*

“What range of fees will be required to do the engagement?”

— *Quent Augspurger,*
P.E., Augspurger Komm Engineering
Inc. (engineering: product liability,
construction quality, vehicle analysis,
fire cause and origin)

“What are your fees?” Also, lawyers should ask for a job cost estimate.

— *Rosie Oldham,*
RN, BS, LNCC,
R & G Medical Consultants Inc.

Lawyers frequently fail to ask experts to get involved in the earliest stages of the litigation.

In selecting an expert, how important is the expert's experience in a given field?

The experience is very important, but you have to take a good look at what type of experience the expert has. Attorneys should carefully review the expert's curriculum vitae with an eye toward assessing where their power lies.

— *Andrew Bianca*

It is critical. Jurors always perceive experience as very meaningful when examining the testimony.

— *Rosie Oldham*

In selecting an expert, how important is the expert's experience in litigation?

Very important. Many inexperienced experts can get intimidated, and their failure to communicate can affect the trial's outcome.

— *John Gorman*

Very. It is also important that the attorney determine that the expert can give balanced and calm testimony.

— *Karolyn Weber*

The attorney should look at the expert's technical experience more heavily than the expert's litigation experience.

— *Andrew Bianca*

Experience is an advantage but not necessarily required. Acting as an expert witness may be a new undertaking for someone, but they may prove to be extremely articulate and experienced in their field.

— *Dale Cole*

How do you determine whether you can be of aid to a lawyer's case?

I listen carefully to the facts of a case. ... Believe it or not, I use little Matchbox cars to walk through the pre and post collision events. ... [I can use] AutoCAD maps and some calculations to nail down the case. I

can make poster-sized maps for courtroom presentation or a PowerPoint presentation.

— *Andrew Bianca*

What tasks do you perform to educate the lawyer in your area of expertise and to make him or her confident in your**abilities?**

First and foremost, I explain that my integrity is paramount.

— *Dale Cole*

What mistakes do lawyers make in their relationships with experts?

Lawyers treat experts as if they were caviar: It's great for special occasions, but not for every day. That's too bad.

— *Andrew Bianca*

By feeling that the legal angle is more important than the factual and logical angles.

— *W. Scott Tidemann*

Some lawyers fail to provide the expert with all the necessary information, feeling that some parts of the case do not have to be disclosed.

— *David Johnson*

Lawyers who do not meet with their experts may mistakenly think the initial verbal opinion is enough. However, many experts may need to be viewed in person to assess their appearance, attitude, jury teaching/relating skills.

— *Rosie Oldham*

At the time of employment, not understanding the mission of the



Expert Karolyn Weber sorts out information on this turn-of-the-century chair by perusing one of her many reference books on the patio of her original adobe home in downtown Phoenix.

expert, and not having a pretrial conference with the expert.

— *Karolyn Weber*

Lawyers can underestimate the expert's understanding of the legal system.

— *Dale Cole*

They need to thoroughly review drafts of work product and budget adequate time and money for the expert to do the job professionally.

— *John Gorman*

Lawyers sometimes fail to control communication between consulting experts and testifying experts.

In any given area of expertise, what distinguishes competent experts from superlative experts?

The superlative expert: is always on time with the filing of opinions, appraisals or other necessary documents; is a master of both written and spoken communication; presents only first-rate and informative documents with no mistakes or typos.

— *David Johnson*

The value of an expert is not in their testimony but in their logical (often unique) analysis, interpretation and presentation of the irrefutable facts and information.

— *Scott Tidemann*

Their in-depth knowledge of the field, their knowledge of the case, their writing and communication skills, and their ability to present credible information during depositions and jury trial.

— *Dale Cole*

A competent appraiser merely covers the subject. A superlative appraiser not only is knowledgeable in his/her subject but is also able to be creative in getting or arriving at values for a given object, and creative in the obtaining of comparables for items where there is no definite or exact replacement value. A superlative expert also studies areas related to but not directly in his/her field, such as art law, arbitration and ethics.

— *Karolyn Weber*

Passion about the opinion in the case makes the difference. Finding superlative experts is like finding a diamond. They are worth a karat in the courtroom!

— *Rosie Oldham* ▲