Practice Tip Corner

Ten Common Expert Witnes Mitakes...and How to Avoid Them

By Kevin Quinley, CPCU, AIC, ARM

"What got you here won't get you there." The title of that 2007 book, by one of my favorite management authors, Marshall Goldsmith, inspired this month's topic. It encapsulates a truism about running a successful expert witness practice.

The skill sets that make you an expert witness do not necessarily arm you with the tools to run a successful expert witness consulting practice. Qualities such as subject matter expertise comprise the price of admission. In addition, qualified experts possess credentials, education, operational experience in their field of expertise, publications, and presentations at industry forums. These are all positive qualities that qualify one as an expert.

But, they do not necessarily translate into running a successful expert witness or consulting practice. Instead, a modicum of business skills is needed to successfully transition from a "specialist" to a successful business operator. Expert witnesses are susceptible to mistakes that can hamstring their ability to successfully launch and sustain a profitable and solvent business. Let's examine ten common mistakes and strategies for experts to sidestep potential pitfalls.

#1. Committing to an opinion based on nothing more than a phone call. Some law firms may want your opinion before they retain you, based solely on a phone call. That is a red flag. No true expert will really know what his or her opinion without reviewing the relevant materials. You can always give a general impression, with the clear caveat that you don't know what your opinion would be until you have the materials. Any firm that wants to know what you're going to say before they pay you – that's a red flag. Back away!

#2. Lack of clarity on the work product required. Are you unsure whether the client will require a full report, as in a federal court setting? Do they need a general description of your opinions? A detailed point-by-point disclosure? Are they retaining you as a consulting expert, behind the scenes, or as a testifying expert, expected to give a deposition and trial testimony? Confirm that and ensure you're clear about what work product the client needs and its due date.

#3. Failure to codify retention terms through an engagement letter. The latter protects not just you but the client. Always use an engagement letter. No pun intended, but this sets the "rules of engagement" regarding your hiring. This includes describing the engagement's scope, billing procedures, hourly rates, and disclaimers regarding case outcomes, among other details. Even if you have worked with a lawyer before, have a written engagement letter and get one on each case.

#4. Driving "outside your lane." Stay within your core area of expertise! No matter how tempting it may be to say "yes" and get a new case, if you're winging it and don't have subject matter knowledge in a particular area, opposing counsel will expose you at deposition or trial. This can not only be embarrassing, but it can also quickly derail your expert witness career. Be careful not to accept cases that are at or beyond the periphery of your expertise. Stay in your lane!

#5. Ignoring Dirty Harry's advice. Clint Eastwood's character in the classic police movies often said, "A man's gotta' know his limitations." Good advice for expert witnesses, too. This is a resource issue, especially the resource of time. Unless you have figured out the secret to cloning, you're just one person. When new opportunities for new assignments arise, carefully evaluate those against the backdrop of all your other commitments. These include other pending cases, imminent deadlines, business development commitments, continuing education, personal travel, and vacation, among others. While it is agonizing to decline new business, it is even more painful to get deeply involved in a case and realize you're out of your depth, about to be questioned closely at deposition or trial. Resist the temptation to take on more work than you can handle in a quality manner. It takes but one half-baked effort to nuke your reputation.

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#6. Neglecting business development. Feed the pipeline! This is a recurring challenge. When you are busy working cases, it's seductive to believe that you cannot make time to develop business. Business is great, right? On the other hand, if you wait for a business lull before marketing, it may take a long time before you get another case. You can't just turn it on like a faucet or pull a new case from the shelf, once you are no longer busy. Business development is a discipline that you must stick with, through busy and lean times. Every day, do something to develop business. Make that phone call. Send the e-mail. Tweak your website. Reach out to a new contact. In business development, years can pass between planting the seed and harvesting the fruit. Plant seeds every day!

#7. Skimping on professional development. You're so busy working cases and earning money that you don't have time to attend continuing education conferences, read publications and white papers concerning your discipline or acquire professional credentials. This is a mistake. You need to keep current on developments within your niche. Don't view continuing education as an expense, even though there is an opportunity cost in that you may be spending time or days attending conferences that you otherwise spend working and billing. However, conferences offer valuable networking opportunities, fostering relationships that may ultimately lead to referrals. Also, it becomes tougher for opposing counsel to paint you as an out-of-touch "liar for hire" if you were still actively engaged in your industry through continuing education, conference attendance, speaking, reading articles, and publishing.

#8. Ignoring aged receivables. Watch these like a hawk. Ensure the engagement letter clearly states the timeframe within which clients must pay you. Reserve the right to stop working on a case whenever payments fall in arrears. Don't be shy about following up in a friendly way to see if the client or the bill-payer needs more information to process your invoice. Stay on top of aged accounts receivable to avoid a cash crunch. Consider pulling the plug or pressing the "PAUSE" button where you suspect you have a slow-pay client.

#9. Not reinvesting in your business. This reinvestment can take the form of computer hardware or software that helps your business run faster and more efficiently. It may come in the form of continuing education to amass further credentials. Is your professional resource library fully stocked? Is your printer, scanner, webcam, and monitor optimized? Are there some reference texts that could be handy? Reinvest a percentage of your business income in tools and activities that help your business function faster, smoother, or deepen your expertise.

#10. Failure to periodically reassess rates. Avoid being the lowest or highest end of the market. In time, you can get a feel for what other experts charge, if only because opposing counsel will disclose the CV and rates of the opposing expert. Review that person's background, credentials, and experience in relation to their hourly rate. Compare it with yours as a benchmark. Are you in the same ballpark? Objectively speaking, do their rates suggest that you are under- or over-pricing? Has it been over a year since you adjusted your rate? Over time, everything costs more. Periodically reassess rates to determine whether you are shortchanging yourself. You may decide after such a review to hold your rates firm. That's okay. The point is to periodically gauge the adequacy of your rates to make sure that they are neither too low or too high.

So, the skills that make one an expert are not the same skills that enable you to operate a solvent, profitable, and sustainable expert witness practice. Minefields and pitfalls abound. With the blend of subject-matter expertise and business savvy, though, you can combine the best of both worlds and take your expert witness practice to the next level!

Kevin Quinley, CPCU, AIC, ARM, is the Founder of Quinley Risk Associates LLC. With 47 years of claims experience, he is a nationwide expert retained in 160 cases and has testified at 50 depositions and 15 trials in state and federal courts. He helps clients through expert evaluation and testimony in high-stakes insurance claim disputes. Kevin has written over 770 published articles and ten books on claims, litigation, and risk management.