



## Making the Most of a Technical Expert

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Cases with technical aspects require technical experts to conduct the investigation and present the findings in various legal situations. Selecting and utilizing the technical expert is an important component of the attorney's case.

### Select the Right Technical Expert

Other attorneys handling similar types of cases may be great resources for identifying competent technical experts in a specific field. Another resource may be professional associations, standard committees or certifying boards for the area needed. It is important to research and interview prospective technical experts. Select technical experts who:

- Are knowledgeable, credible (have appropriate degrees, licenses or certifications) and experienced in the field where you need expertise,
- Have demonstrated ability to clearly communicate their expertise through publications, speeches, instruction, or expert witness testimony,
- Have the time and resources to investigate the problem/condition for which you need the expertise,
- Base opinions on sound science, and
- Are well organized in their investigation, documentation, and manner of speech.

### Engage the Technical Expert in a Timely Manner

Bring the technical expert into the case as early as possible. Technical experts should personally view the site, view evidence, or collect samples to formulate their opinions. The expert may identify other potential parties or problems. They can identify and plan areas of investigation that help document, prove and direct the case. Technical experts are often not as effective if evidence is not collected or was destroyed so their opinion must be formulated on the basis of inspections or samples collected by others. This can limit your technical expert to results based on

potentially incorrect or inadequate investigations that may have insufficient documentation to understand the other investigator's thought processes, locations and manner of samples, and site conditions found. If your technical expert is to collect and analyze samples, there often are minimum time intervals for analyzing different types of samples; these typically cannot be rushed even if your discovery deadline is approaching. Besides, if you delay, the opposing counsel may engage the technical expert you were counting on and you may be forced to use your second (or lower ranking) choice.

### Communicate With the Technical Expert

As soon as it is apparent that a case may involve potential litigation, the technical expert should be apprised of the situation, as well as the nature of the different types of potential litigation involved: personal injury, product liability, design or installation issues, etc. Communicate to the technical expert the documentation expected from them during the various stages of the investigation. For example, depending on the jurisdiction of the case, and the preference of the attorney, many technical experts are asked not to produce written reports or findings.

Once the technical expert has had an opportunity to investigate, take the time to listen to the technical expert about their findings, whether their findings support continuation of the litigation, information on findings of opposing experts, if applicable, etc. The technical expert may also have insights that additional technical experts are needed; as may be the case if the findings involve a very specialized material or characteristic that the technical expert does not feel they can adequately support.

### Enable the Technical Expert to be Available and Prepared

It is important that the technical expert be made aware of estimated dates for investigations, discovery, reports, depositions, and trials, even though they are frequently subject to change. The earlier the technical expert can pencil in the date on the calendar, the better the technical expert can shield those dates from conflict and be prepared for meetings, depositions, or trial. Advise the technical expert, in advance, of any physical evidence the technical expert needs to

bring with them. Also discuss the way the technical expert plans to convey findings, etc—that is, what graphic representations, diagrams, or models they intend to use. Note that if your firm is delinquent in paying the technical expert, it may be more difficult for the technical expert to cancel scheduled work for other paying clients to be available for your meetings or conference calls.

### Effectively Utilize the Technical Expert

Prior to depositions, brief the technical expert on information or opinions about the style of the opposing attorney, what he is likely to ask, and information on the general demeanor of the case at that time. Also discuss with the technical expert what, if anything, you want him to do; for example, some attorneys only want the question answered, others want the entire case presented on the first question. The technical expert can also be a great resource to prepare you for deposing the opposing technical expert. Prior to trials, review and practice with the technical expert the questions you will ask, and communicate any news about the case that will better prepare the technical expert for cross examination. Performing mock trials are very helpful and will allow both parties (attorney and technical expert) to refine and improve the method of communication and jury reception.

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**If you need expert engineering, industrial hygiene consultation, chemical, or scientific analysis, call MDE. We can assist you with your needs.**