

How Attorneys and Expert Witnesses Can Effectively Manage Each Other in Domestic Violence Cases

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By **Daniel Pollack and Toby Kleinman** | February 01, 2019 at 02:30 PM



Witness stand/Photo: BigStock

It's a slogan we all know: Customer satisfaction is priority number one. No different than a customer-salesperson relationship, a client embroiled in a domestic violence

case who hires an attorney is looking for a positive result. Nonetheless, the attorney needs to manage the client's expectations by properly informing the client of the intricacies and unpredictability of the legal process, and the client

needs to understand the realistic potential outcomes.

If the lawsuit necessitates that an expert be retained, the attorney and expert need to have a relationship built on trust. This is particularly important so they can each manage the other's expectations. How can this be accomplished? Generally, managing is a proactive, continuous effort that will change depending upon new information and developments in the case. While the attorney and client need to be on the same page regarding the client's expectations – which may change over time – the expert is not an advocate for the client. The expert is like an umpire calling balls and strikes, without regard to which side wins.

Attorney-Expert Managing Guidelines

Before retaining an expert for the first time, an attorney should

interview the expert about prior cases, prior findings by the court on their work, any bias they may have, as well as the education and training of the expert in the area of expertise being contemplated. Even after interviewing a potential expert there are pitfalls. An expert may tout themselves as having a specialty category based upon insufficient criteria, so the attorney must actually be familiar with the specialty guidelines and ethics in the expert's field. Failure to do so may result in having the expert being disqualified later on.

In domestic violence cases, a psychologist must not only have been involved in these kinds of cases, especially where child custody is involved, but they must also have specialized training in the field. For example, domestic violence against an adult may involve allegations of abuse against a child. An expert must have the training to be able to opine on the risks to a child. Experience absent

training is insufficient. While an expert must have a working knowledge of the legal process, the expert should have practical experience, not just academic or trial-support experience.

Attorneys must let the expert know their expectations at the outset.

Does the expert have trauma expertise? Is it for both adult and child trauma? The specific parameters of the retention must be discussed and agreed upon. If an attorney wants an opinion on an issue that may not be feasible for the expert to address, they must discuss the parameters of what is possible. For example, the expert may be asked to opine on whether a particular act of domestic violence occurred versus being asked to opine if the plaintiff is a victim of domestic violence as a battered spouse. The standards for opining on whether any particular incident occurred may be impossible for the expert, while the expert may be able to provide a battered spouse's

evaluation and opine on the impact of the abuse. The attorney needs to affirmatively let the expert know what specific expectations they have. In turn, the expert must be forthcoming as to what they can ethically do if an evaluation shows the plaintiff to be battered.

If a report is based upon a review of documents the attorney must let the expert know they will not be allowed to do an actual evaluation and must inquire as to the limits on opinions based solely upon review of documents. Likewise, it must be clear how the expert will proceed – if at all – if the expert's findings do not meet the initial expectations of the attorney. Generally, no report will be written as all written reports may be discoverable.

Expert-Attorney Managing Guidelines

While it is common for the attorney to ask lots of questions of a prospective expert, it is equally important that the expert know

precisely what questions the attorney wants answered. Does the attorney want the expert to opine on domestic violence in general and/or domestic violence in this particular case? Is the expert expected to offer opinions regarding the effects of domestic violence on children? Assuredly, prospective experts must be interviewers as well as interviewees.

Experts must find out if the attorney will be able to provide them with the pertinent information to enable the expert to apply their unique insight into the contours of that aspect of the case that is their expertise.

As information and depositions are reviewed, it is important for the expert not to rely solely on prior discussions with the attorney, but rather on the materials reviewed. Experts must request that the attorney apprise them of changes in circumstances of the case as they occur. This enables them to identify what additional information may be

needed in order to provide a more comprehensive report.

If the attorney becomes frustrated, the expert must be able to articulate that the expert's role has not changed. Emotional, financial, and interpersonal pressures are ever-present in domestic violence cases. The expert must nevertheless be steadfast. The goals that the attorney and expert agreed to initially are the ones in force unless they are changed by consent and based only on sound, rational reasons. To impulsively change goals midstream because of attorney – or client – frustration will not help the case and may be asking the expert to compromise their ethics.

The credibility of experts will be enhanced if they can show thoroughness and true expertise. As in any business, experts should never make commitments that they cannot honor. The age-old adage

“Under-promise and over-deliver” holds very true for expert witnesses in domestic violence cases.

In a nutshell: Before being retained, and thereafter, attorneys and experts must be unwavering in their dedication to be transparent and forthright with each other.

Ultimately, open and detailed communication between the attorney and expert is not just desirable but essential to successfully litigate a domestic violence case.

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