



What Attorneys Look for When Seeking CPA Experts

By Thomas A. French, JD

Properly qualified expert CPA witnesses have become an essential feature in today's complex commercial trials. This article addresses what it takes for a CPA to be successful in such a role and what attorneys look for when retaining experts.

Seeking the Right Expert

A well-prepared, well-supported CPA expert can be decisive in proving or disproving claims made in civil litigation, but the selection of an expert witness is subjective for each attorney. The choice may be dependent upon variables such as the complexity of the case, if the testimony is a required element of proof – as in a professional malpractice case – whether the expert will serve as a consultant or offer testimony at time of trial, or whether communication skills or technical proficiency are more important. Financial considerations and the value of the case are also important.

When attorneys begin their search for CPA experts they usually start with existing relationships or word-of-mouth referral. An attorney may also explore trade associations or membership in professional organizations and committees to find the right expert for his or her particular case.

If an accountant feels he or she possesses the necessary qualifications to be an expert, a first step in making this known might be through partners or associates who have connections to commercial litigation attorneys. Another route to becoming known in the field is by writing articles for legal journals. Any article, however, must be thoroughly researched and written in a man-

ner that exhibits the author's proficiency in his or her field of expertise as well as an ability to communicate technical facts in an understandable manner.

A potential accounting expert who would like to make his or her availability known can also arrange to speak at Bar Association functions and professional education sessions. Many attorneys and their associates search for possible experts via the Internet, so a well-developed Web site could be a source of introduction to attorneys seeking an accounting expert.

Expert Qualifications - What Really Matters

There are many factors that are important to an attorney when selecting a CPA expert. Below are 10 important attributes that many attorneys will consider.

Necessary credentials to qualify as an expert: According to the federal and Pennsylvania rules of evidence, admissibility of expert testimony is determined by whether "the scientific, technical, or specialized knowledge [of the expert is] beyond that possessed by a lay person [and] will assist the trier of fact." Although a minimum of qualifications are acceptable, attorneys usually look for relevant degrees, professional licenses, certifications, memberships, and lectures and professional writings of the individual.

Experience that is meaningful to the fact finder: Having appropriate credentials alone is not enough to be a valuable litigation team member. A background full of interesting experiences is important. Testifying about work for a prestigious local business,

work on a notorious case, or interesting government work can convince a jury that the CPA must be very good to have gotten such important assignments.

Experience in the relevant industry: If a witness is to offer opinion on a given field, he or she should have experience in that industry. For instance, if the CPA is to testify on proof of operating results or projections, the expert must know the relevant market, competition, unique business methods, and other esoteric aspects of the industry being examined.

Ability to handle cross examination and to help a jury understand complex issues: To be effective in pretestimony or as a consulting witness, the expert must teach the lawyer to the point that counsel knows as much as the expert about this one area of the expert's profession. In essence, the expert must make counsel an expert. On the stand, counsel and witness must be able to anticipate what the other is thinking, which requires thorough preparation.

Virtually all cases require a written report and answers to specific, detailed questions. The rules require an expert to state his or her opinion – facts and methods used – and all matters considered. Experts may not testify beyond the fair scope of their report, and this report must be direct, clear, and concise. It must be complete – but not so detailed that it can be used as a blueprint for effective cross examination by the adversary.

Face-to-face meetings with an expert allow counsel to evaluate

the expert as a communicator. An engaging personality, the ability to connect on a personal level through eye contact, and smiling at appropriate times is important. The expert must be able to connect with the many types of people who will sit on the jury. Handling pressure, adequate preparation, and an ability to quickly bring information together to handle cross examination are essential in an expert. If an expert witness does not possess these characteristics, he or she should not be called to the witness stand.

Able to litigate: All experts should be familiar with the litigation process. CPAs can use their expertise to assist counsel with theory development, discovery, setting up cross examination of the opposition's expert, and suggesting order or methods of proof to set up the expert's testimony.

Knowledge of litigation process pitfalls: Knowledge of what is or is not discoverable is essential to preserve the confidentiality of the expert's analysis until the time that the expert report is released or testimony is given. Under the Federal Rules of Civil Procedure, "anything considered by an expert" may be produced to the opposition, including all communications between expert and counsel or clients. Drafts of reports can be discoverable. It is essential to discuss opinions with counsel first, to ensure there are no misunderstandings.

Detail oriented: A lead CPA witness must know the details of the work done by others, prepare a detailed "audit plan," receive periodic reports from the field, review copies of key documents as they are discovered, and make changes to the plan as needed. Testimony about the field investigation is crucial to credibility.

The senior expert should write the report himself or herself, and testify persuasively as to his or her opinions.

Advanced computer skills: There are three reasons for this requirement: An expert's team must understand information accounting systems to retrieve stored information; the expert may be called upon to write a program to sort complex data; and the witness must be able to use courtroom technology as an aid to presentation. Federal courts are in the process of becoming electronic courtrooms, and current technology and software allows the presentation of computer-published evidence, the demonstrative use of charts and graphs, and instant access to voluminous information which was not previously available to counsel or his or her expert.

Independence: Objectivity, integrity, and the avoidance of conflicts of interest are essential. Any appearance of conflict can be harmful to a case, so an expert witness must disclose to the attorney any potential conflicts so the attorney can evaluate the impact on cross examination and credibility. Even if the expert CPA concludes objectivity will not be impaired, counsel must be alerted to any potential conflict.

Know the rules for admissibility of expert testimony: In Pennsylvania, the state's Rules of Evidence govern the admissibility of expert testimony for nonscientific opinions. A witness qualified as an expert by knowledge, experience, or education "may testify thereto" in the form of an opinion. He or she need only give the reasons for the opinion and the facts and data relied upon. In federal cases, the court makes an initial determination of reliability based upon methodology, the facts relied upon, and the application of those facts in the expert's analysis.

Conclusion

Lawyers will always want an expert CPA witness who possesses the wisdom of Alan Greenspan, the litigating skills of Clarence Darrow, the charisma of John F. Kennedy, and the technical skills of Bill Gates. But short of that ideal, this list of 10 attributes is a good place to start if you wish to hone your skills as an expert witness. ■

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