

Expert Advice - Key questions to ask opposing expert witnesses

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Complex litigation often comes down to a battle of expert witnesses. When the facts are hard to understand, a judge, jury or arbitrator will be heavily influenced by anyone who can guide them through the fog.

If you are not careful, an opposing expert can sound like a dispassionate voice of wisdom that rises above the squabbling lawyers. All the more reason for you to cross-examine opposing experts in a calm, clear and thorough way that shows that they are merely mortal and that their opinions depend on faulty assumptions or a one-sided view of the evidence.

Expert witnesses, however, are often notoriously difficult to cross-examine because of their intelligence and experience. Indeed, successful experts may have more trial experience than you. They have developed good answers to the usual tough questions about their qualifications or compensation, and they have good instincts when it comes to giving ground or fighting back. You can't afford to wing it. To conduct a good cross-examination, you need a thorough deposition that establishes the weaknesses of the expert's opinions.

Don't let yourself be intimidated by the witness's expertise. Make sure that your own experts provide you with a tutorial — and don't be afraid to ask dumb questions. All of this preparation will also help your own experts later when they are explaining their opinions to the judge and jury.

Start with a little general reading to give yourself an introduction to the field, and then read whatever the opposing expert has written that relates to the opinion. Don't stop with the publications listed on his or her resume. Instead, search the Internet and elsewhere for other relevant statements or background data. Think of this as "profiling" expert witnesses in order to find out as much as possible about the way they think. That knowledge can be crucial when it comes to engaging the witness and obtaining admissions or other testimony helpful to your client's side of the case.

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