



ATTORNEY'S REPORT

EXPERT WITNESSES: **Use Your CPA Wisely**

Today more than ever, cases are won or lost on the testimony of an expert witness. In matters where critical analysis of financial data and transactions is central to the case, attorneys often retain accounting experts.

An experienced accounting professional can prepare expert reports, provide testimony and rebut opposing experts. One of the keys to effectively using an accounting expert is deciding upfront how he or she will be designated.

Will your accounting professional be a “testifying expert,” the classic expert witness who renders an opinion before a trier of fact? Or will your case be better served by using a “consulting expert,” a non-testifying advisor who may become an expert witness at a later date?

Testifying Expert or Consulting Expert

The designation of your expert carries with it a significant impact. If you retain an accounting professional as a testifying expert, he or she must be disclosed to opposing counsel under Rule 26 of the Federal Rule of Civil Procedure and/or your particular state's equivalent.

Any work product that your expert witness produces is then subject to discovery. In essence, everything your expert sees, reads, hears and thinks is potentially open to review by opposing counsel.

Assume, for example, that your expert is engaged and disclosed as a testifying expert. If your expert subsequently forms an opinion that is contrary to your client's case, the opinion could not be suppressed and may be disclosed on cross-examination.

Consulting experts, by definition, are not going to testify at trial and thus do not generally need to be disclosed. The information shared with them may be kept confidential through nondisclosure. And if the expert forms an opinion contrary to the client's position, the opinion may be kept confidential and cannot be used against the client at trial.

With this in mind, attorneys can engage an accounting professional first as a consulting expert. After learning the expert's opinion, they can then convert the consulting expert to a testifying expert and make any necessary disclosure.

Four Things to Watch

An accounting professional with litigation-support experience should certainly adhere to applicable rules and laws, and exercise due care. But you'll need to do your part in properly managing the engagement. Noted family law attorney Miles Mason, Sr. provides some excellent guidance in his book, *The Forensic Accounting Deskbook: A Practical Guide to Financial Investigation and Analysis for Family Lawyers*:

1. Watch what you share. Mason notes that if there is a confidential fact or theory that must stay confidential, carefully consider whether or not to share it with a testifying expert. If the information is relevant to the testimony, it may need to be disclosed.
2. Watch your client. Clients have a tendency to tell everyone on the team everything. If something must remain confidential, Mason advises attorneys to caution clients about discussing it with the expert at the risk of it being discovered by opposing counsel.
3. Watch the engagement letter. Provide your accounting expert with a written agreement that defines precisely the terms of the arrangement and describes the legal purpose of the accounting services. By directly engaging the CPA, the attorney can protect the work product privilege. The letter should state that all communications among the attorney, client and accountant are to remain confidential and that all CPA work papers are the attorney's property.
4. Watch the invoice. Finally, the law firm, not the client, should pay the CPA. Note that CPAs are prohibited under Professional Rules of Conduct from working for a contingent fee.

Use Your CPA Wisely, Cont'd.

Why a CPA?

CPAs are considered the foremost authorities on financial and economic issues. They are distinguished from other practitioners by strict licensing requirements. In fact, the American Institute of CPAs (AICPA) has even introduced its own business valuation credential, ABV, which stands for "Accredited in Business Valuation."

Attorneys relying on hired consultants for complicated issues have found that CPAs can often bring value to cases by:

- Assisting in case preparation.
- Helping attorneys in litigation situations by analyzing financial data and developing damage studies or business valuations.
- Serving as expert witnesses.

Retaining a qualified and experienced CPA can increase your chances of litigation success. Contact your Mueller Prost advisor today at 314-862-2070 to learn more about our litigation support services.

LEVERAGING YOUR NAME

Create a Bio That the Internet Will Love

Attorney bios are the hot draw on law firm websites. In fact, they are typically the most visited section. Visitors often skip over the corporate "Who We Are" and "What We Do" sections and head straight to the details on individual lawyers.

SEO Your Bio

To capitalize on this prime opportunity, your biography — like all other web pages — should be search engine optimized. Obviously, your bio information should be engaging, informative and up to date. But consider these additional key elements for keeping your bio on page one of search results:

- **Your name** – Make sure your name is prominently featured in the headings as well as in the body of your bio. Your name should also be part of the page's title (if done correctly, your name should appear on the very top of the browser bar, next to the browser logo). Likewise, any photos in your bio should also include your name, both in the "alt" and the "title" attributes of the image tag (you'll know it's done correctly if your name appears as a little pop up when you mouse over your photo). The alt tag will also ensure that your name appears when users search on mobile devices.
- **Your URL** – Since page URLs are the first thing

a search engine catalogs, you'll want to make sure your bio page URL is optimized. First and foremost, the URL should contain your name (e.g., www.yourfirm.com/attorney-stephen-jones.htm.) Often, a website pulls from a database and simply generates a number as the URL for each attorney bio page, corresponding to the location in the database (e.g., www.yourlawfirm.com/attorney-028.asp). A sophisticated content management system (CMS) will allow you to assign a unique text URL to each page in your site.

Also be sure to pay attention to the formatting of your name in the URL. By using a dash rather than an underscore between words, you are telling the search engine that these are separate words — an important distinction when you consider that someone searching for "Stephen Jones attorney" would probably not enter the search term as "stephenjonesattorney" or "Stephen_jones_attorney".

- **Your e-mail signature** – Instead of simply using the general firm website address in your email signature, consider linking it directly to your bio.

Creating a Bio That the Internet Will Love, Cont'd

A Word About Links

Search engines love links — both links on other pages that point to your bio (inbound links) and links on your bio page that take readers to other pages (outbound links). So look for opportunities to create both inbound and outbound links.

For example, link your bio to your law school or college alumni page. If you are active in the community or are on the board of a noteworthy nonprofit, request that a link be established to your bio page (often, all it takes is a simple e-mail to the organization). Show some good “netiquette” by reciprocating with a link out to their website as well. When you create a link, add a “title” tag and name the link with intuitive key words. For example, use “for Stephen Jones bio, click here” instead of simply “click here.”

Another good source of outbound links? Articles you have

authored, as well as any alerts and press releases that include your name. Note that this should include PDFs, as most search engines now scan PDFs as long as the document is not locked. Just make sure that your name is live-linked back to your bio.

And be sure to mine the rest of your firm's website for linking opportunities. Wherever your name appears on the site, consider linking it back to your bio page.

Today's clients are no longer just searching the Yellow Pages for an attorney.

Making It Rain with Great Content

Well-written and informative content has always been one of the best ways for a law firm to establish and maintain a solid professional reputation.

With an integrated content marketing program, firms can get reputation-enhancing material in the hands of clients, prospects, referral sources and the media. Here are three steps to get started:

1. Think outside the white paper. Don't get intimidated by the term “content.” Content applies to an almost limitless array of reputation-enhancing material — from white papers and e-books to press releases, client alerts and blog posts. In a way, even attorney biographies (profiles) are content.

Content also includes non-written material such as:

- Ad campaigns
- Courtroom graphics
- PowerPoint presentations
- Photos of employees at a charity event
- Online surveys and survey results
- Audio or video recordings of a presentation
- Seminars or webinars

2. Distribute far and wide. Properly posted, your keyword-rich content will be indexed by Google and other search engines. This will enhance results for searches on terms like your name, your law firm's name, your geographic area and the relevant subject area. Channels for distributing your content include:

- Your firm's website (including a mobile-optimized version)
- Social media sites like LinkedIn, Facebook, Twitter and YouTube
- Content syndication sites like JD Supra, LegalOnRamp and Scribd
- Client extranet sites or blogs
- E-mail or traditional print newsletters

3. Crank up the analytics. To continuously improve your content marketing efforts, you'll need to turn to more than Google Analytics. You'll want to see not only who visited the page, but whether they read the article and/or downloaded a copy. An e-mail analytics program will let you know who opens an e-mail and clicks on the link. Other analytics programs will indicate how your article fares in the blogosphere or how often it's shared or re-tweeted on social media and content syndication sites.

Of Hurricanes and Hard Drives

An attorney's obligation to safeguard client property and maintain client confidentiality and communication is not waived following a disaster. In fact, a body of literature in the wake of Hurricane Katrina suggests that attorneys who fail to prepare for disasters could find themselves in violation of the Model Rules of Professional Conduct — and even exposed to civil liability for failure to protect property and interests.

The ABA Committee on Disaster Response and Preparedness commissioned a planning guide to assist law firms in creating a viable business continuity plan. The 42-page Lawyers Guide to Disaster Planning contains in-depth checklists, flowcharts and even model plans covering everything from evacuation and alternative facilities operation to records management and continuity communications.

Some technology best practices covered in the guide include:

- Maintaining geo-redundant backups
- Creating written instructions for restoring and regularly conducting test restores
- Keeping all software license numbers and installation discs
- Creating images for computers and file servers
- Keeping a local copy of cloud data
- Considering how data created on mobile devices is backed up
- Having a current and accurate network diagram

This guide and other resources are available at <http://www.americanbar.org/disaster>.

The ABA urges all lawyers to regularly assess their practice environment to identify and address risks that may arise from any natural or manmade disaster. With the devastation from Hurricane Sandy and the Oklahoma tornadoes still fresh in mind, now may be a good time to revisit your plans to protect, preserve and, in extreme cases, reconstruct client property.

Contact us today at 314-862-2070 to discuss your firm's disaster preparedness

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The firm offers a full range of professional tax, audit, accounting and management advisory services and collaborates with bankers and commercial lenders to meet client needs.

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