

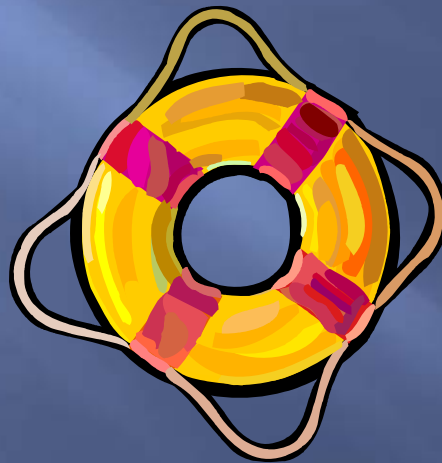
EXPERT WITNESSES

Presented by
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Lewis Brisbois Bisgaard & Smith LLP

Expert Retention

Why do we need you?



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A. Technical Aspects of Care

1. Help attorney understand issues to aid in legal work.
2. Evaluate client conduct.
3. Prepare for deposition of opposing parties' experts.

B. Evidence Code Section 801

1. If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such opinion as is :
 - (a) Related to a subject that is sufficiently beyond common experience that such opinion would assist the trier of fact and...

(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relate, unless an expert is precluded by law from using such matter as a basis for his opinion.

B. Common Uses

1. Professional standard of care

Selection

What do we look for?



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A. Experience

1. Education
2. Practical

B. Presentation

1. Command of issues / process
2. Ability to communicate same to attorney; trier of fact.

C. Ability to handle assignment

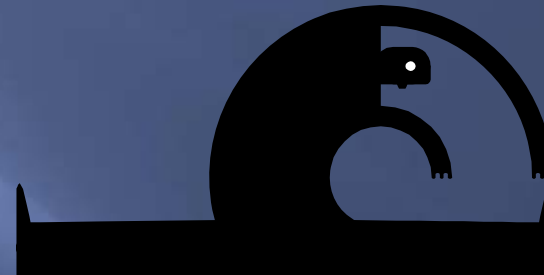
1. Conflicts
2. Calendaring issues

Preliminary Opinions

Just the facts, please!



or



Do we need you to be flexible in your opinion?

A. Some cases are better than others

1. Straight shooter

a. Does my client have a problem in their case ?

2. After we know it is a case adverse to client

a. Can we articulate that to our principal ?

b. Can we use your knowledge to minimize the damages ?

c. Can we act brave ?

B. Some experts are “flexible”

1. We need your help to attack them on behalf of our client

Our Designation

Statutory requirements and purpose



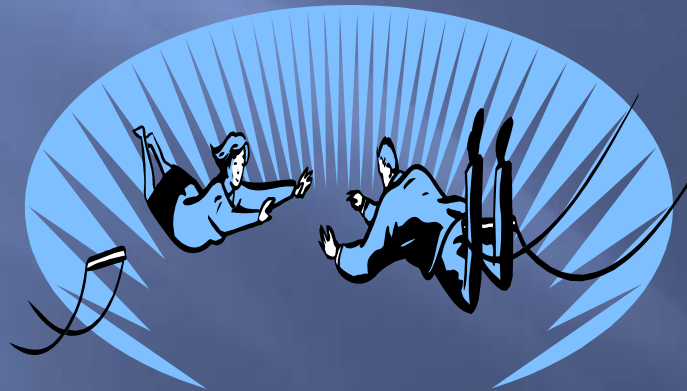
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A. Timeline

1. Demand to exchange expert information 70 DBT
2. Exchange expert info 50 DBT
 - a. Name & Address
 - b. Narrative statement of qualifications
 - c. Representation that expert has agreed to testify at trial.
 - d. Representation that expert will be sufficiently familiar with action to submit to a meaningful deposition concerning the specific testimony including any opinion and its basis that the expert is expected to give at trial.

Your Deposition

The Moment of Truth



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- A. 1. Be prepared to set forth all opinion and all factual bases for opinion.
- 2. If we need you to testify on the subject at trial, you need to address it in your deposition
- B. 1. Helping us prepare for opposing expert's depositions

Trial Testimony

- ▣ Jury Instructions
- ▣ Helpful Hints



Jury Instructions

1. Expert Witness Testimony

“During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert’s opinion. As with any other witness, it is up to you to decide whether you believe the expert’s testimony and choose to use it as a basis for your decision. You may believe all, part or none of an expert’s testimony. In deciding whether to believe an expert’s testimony, you should consider:

- .The expert’s training and experience;
- .The facts the expert relied on; and
- .The reasons for the expert’s opinion.”

2. Conflicting Expert Testimony

“If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the expert’s qualifications.”

Helpful Hints

1. Be user friendly
2. Know your audience
3. Command of the material, depositions, discovery requests, etc