

The Ins and Outs of Expert Witness Work



Talk #1: Introduction to Expert Witness Work

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Introduction to Expert Witness Work

- My Work History
 - In the Industry for 34 years
 - 5 years as an employee, 29 years as a consultant
 - Specialty is Storage and Storage Interfaces
 - Flash Memory, DVD, CD; USB, SCSI, Serial ATA
 - Participated in over 50 Conferences
 - Speaker, Session Chair, Conference Chair
 - PATCA member since 1980
 - IEEE-CNSV member since 1998
 - Board Chair: 2006 and 2007; currently a Board Director
 - Expert Witness work since 1994

Introduction to Expert Witness Work

- Applicability of my background to EW work
 - hands-on technical experience
 - > most important requirement for a technical expert
 - > It gives you perspective and credibility
 - conference work
 - > helps in being able to speak to an audience
 - writing skills
 - > important in writing reports and declarations

Introduction to Expert Witness Work

■ *What is an Expert?*

- Someone who can explain a topic or issue to a judge and jury
 - Ability to explain a complex topic to a lay person in a credible fashion

■ *What is your objective as an Expert?*

- To convey truth; to not be an advocate

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- What are the basic requirements?
 - Excellent writing, speaking and people skills
 - Professionalism
 - Detail-oriented
 - Wade through potentially massive amounts of information
 - Determine relevant details
 - Form a cogent opinion
 - Resiliency to being demeaned and criticized unmercifully by opposing attorneys

Introduction to Expert Witness Work

- **Becoming an Expert Witness**
 - Many start out as an *Expert Consultant*
 - > assist attorneys with your technical perspective
 - > behind-the-scenes investigative work
 - > may do preparatory work prior to filing a case
 - > Determine if certain products appear to infringe a patent
 - The identify of an *Expert Consultant* is usually not revealed to the other side
 - I regularly work both as an EC and an EW

Introduction to Expert Witness Work

- Primary roles of an Expert Witness
 - Form an opinion (opine) on an issue or topic
 - Fact witnesses provide facts
 - EWs provide an opinion
 - Provide written testimony based on your opinions
 - Write Expert Reports and/or declarations
 - Provide verbal testimony
 - Defend your opinion during a deposition
 - Present your opinion at trial
 - Direct examination: provide your opinion
 - Cross examination: defend your opinion

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- Expert Consultants are often hired before a case is filed
 - If there is a case, you may be hired as an Expert Witness
- For a filed case, you will work for either the prosecution or the defense
 - a neutral technical expert is sometimes used by a judge
- During an interview, the first questions determine if you are free of conflicts for working on a case
- Technical experts more often work on civil cases
- Disk forensic issues are often critical to a case

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- Examples of the types of cases
 - Patent
 - Infringement (plaintiff)
 - Non-infringement, invalidity (defendant)
 - Trade secret
 - Compare products to see if trade secrets were stolen
 - Source code or unique design
 - Contract dispute
 - Was a product delivered per the requirements?
 - Criminal or civil case involving email or a document
 - Disk forensic examination of deleted files and metadata

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- What does an Expert Witness do over the course of a case? (pt. 1)
 - (these percentages reflect my “typical” patent case)
 - Explain topics and issues to attorneys (5%)
 - Perform detailed analysis (75%)
 - Source code, design documents, schematics
 - Product operation: bus analyzer, oscilloscope
 - Disk data: emails, deleted files, metadata

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- What does an Expert Witness do? (pt. 2)
 - Write reports and declarations (20%)
 - Provide verbal testimony (~1%)
 - Deposition based on your Expert Report
 - On the stand in court (most cases settle before trial)

A good Expert Report, and a successful defense of your report's opinions during deposition, can lead to a good settlement in the case

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- Getting paid
 - Contracts are often a retention letter
 - I have a one-page boilerplate letter
 - Those provided by law firms are often 2-3 pages
 - Ask for 30-day payment terms
 - Often expect 45+ days
 - Expert witness: strictly hourly
 - Expert consultant: usually hourly

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■ Upsides

- deep understanding of products and technologies
- interesting venues
- learn about legal side
- could be in the news
- potential ego boost
- pay can be excellent

■ Downsides

- can be demanding
- can be unpredictable
 - work load can go from zero to 200% to zero
- can be very boring
- can be technically stale
- work may not be used
- depositions, trial work and being skewered are stressful

Introduction to Expert Witness Work

- You are an independent expert
 - form your own opinions
 - look to attorneys for guidance re: the law
 - don't be forced to have an opinion with which you do not agree

Introduction to Expert Witness Work

■ Conclusion

- EW work could be considered what you “graduate” to as a consultant
 - can be a real test of your technical and social skills
- EW work can be:
 - very stressful
 - very interesting
- A mix of expert and non-expert work is the best way to stay current with the industry, and to be a good expert