

The "DO's" of Effectively Managing Experts in your Case

By Hugh Selby - Barrister

Many things can go wrong when lawyers are dealing with experts. To minimise the likelihood of this happening, here are some 'Do's' to follow:

Do make inquiries before you engage an expert. Those inquiries will be about what are the issues with which the expert might help your case, and about finding an expert who is competent, communicates well, and has a good reputation.

Do fashion a [letter of instruction](#) to your expert. It is a good idea to chat with an expert before sending a letter of instruction. That chat can avoid a tell-tale written history of the expert 'educating' you as to what are the issues. Such a history might later be used in cross-examination to suggest that your expert is not sufficiently independent.

Do send your expert a copy of the UCPR guidelines for experts. This must be done before they start work. Whether or not the particular court or tribunal applies those guidelines it is important that the expert knows about them, and follows them so that your client gets value for their investment.

Do check that any report from an expert follows those guidelines with respect to disclosure of data, missing data, choice of method, and reasoning process. There must be a CV that shows any reader that your expert is the right expert, along with a glossary of technical terms. That glossary must explain those terms in a manner that is readily understandable by a lay person such as you, your client, your opponent and the fact finder.

Do discuss the expert's findings with the expert and your client before you send the report to your opponent. If there are gaps in the report that detract from its persuasiveness then consider whether these can be fixed or whether the best outcome for your client is a strategic withdrawal.

Do prepare your expert for a court appearance by a conference with the advocate that goes through the best way to adduce the expert evidence and prepares them for likely cross-examination. If your expert has little or no prior experience as a witness then be sure to take them into court before their appearance and have them practice being a witness. Remember that your expert gets only one chance to persuade the fact finder to accept them and their opinion. Coaching is forbidden, but familiarisation with process is good preparation.

Do perform well in your examination-in-chief of your expert. Be alert to object when your opponent oversteps the mark when cross-examining your expert. Be focused and strategic in cross-examining your opponent's expert, and in drawing out the winning value of your expert and their opinion in your closing address.

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