

## **ERP Failure #12: What is an Expert's Role in Litigation? Selecting the Right Expert**

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### **What is the role of the expert?**

The expert witness educates the judge and the jury about the complicated systems development processes, technologies, interfaces, and requirements. Developing a strategy for simplifying and presenting complex points to the jury is a critical service the best experts provide.

Another function is explaining the fact pattern: putting together a simple, persuasive narrative so the jury can understand what really happened.

The expert will opine on the issues described in the complaint, explaining in an independent manner what this set of circumstances means in terms of the contract, in terms of acceptable performance, the flexibility of the system, portability or maintainability or fault tolerance, or whatever the issues are. The expert offers his opinion to try to help the jury understand from his independent vantage point and professional experience what happened and what a reasoned conclusion of who is at fault might be.

Finally, the expert will assist the attorneys on technical issues and indicate questions which need to be asked to provide the proper factual basis upon which the expert can render his or her opinion.

Experts should share the strengths and weaknesses of the case to enable the attorney to give his or her client proper advice about their case. Competent experts recommend settling or dropping a lawsuit when the facts do not support the case from the expert's technical, systems, management, or business points of view and should also have the courage to resign if pressure is put upon them to "spin" the facts or shave their testimony.

It is vital that the expert carry out his or her role with independence. The expert's credibility and ability to assist the trier of fact will suffer if he or she becomes an advocate, or appears to be so. To retain that independence, experts are retained by the attorneys representing the clients and not by the clients themselves. Furthermore, they are paid before they render their opinions so that their fees are not contingent on what they say or how they perform during testimony.

### **What should an attorney look for in an expert?**

Attorneys should look for experts that they can work with since the litigation will have short deadlines at times. Information is often revealed incrementally and in a manner that affects the expert opinion. Look for people that can come to preliminary conclusions quickly based on incomplete information and thrive in that environment. Look for someone who has been through it before: i.e., from a technical standpoint, and from the legal process.

Make sure the expert is: articulate; empathetic; loves to teach; can establish rapport with a jury (and judge); is credible; knows what he/she is talking about; is detailed; can simplify the complex; and can put words together into pictures (word pictures and graphics). Don't be lazy, check references!

Open communications are crucial. The attorney needs to make and keep his needs known to the expert and vice-versa. As more information becomes available, the expert must be informed to ensure that the expert opinion is grounded in the full knowledge of all facts. The expert must be allowed to

disagree and challenge the attorney's points of view where the technology, project, or industry records warrant.

Hopefully these insights will help you select the best expert for the litigation you are facing. You will rarely have enough time or patience to select the wrong expert and have to start over again.

We are here to help. More information about WSR Consulting Group, LLC, is available at

<http://wsrcg.com>

Questions or comments?

Please reach out to WSR Consulting Group, LLC:

By phone: 818-986-8842 or

E-mail Warren S. Reid at [wsreid@wsrcg.com](mailto:wsreid@wsrcg.com)