

**Baker &  
O'Brien**



## **THE ENGINEER AS EXPERT WITNESS**

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# AGENDA

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# What is An Expert Witness?

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An expert witness is someone with specialized skills, knowledge or experience in a particular field, which enables them to provide reasoned and credible opinions in judicial proceedings.

The outcome of legal disputes in litigation or arbitration often hinges on the credibility of the testimony of such experts.



Matters at issue often require understanding of complex scientific and technical concepts that are typically beyond the scope of knowledge of a judge, a jury or a panel of arbitrators.

The training and experience of engineers often allows them to explain the intricate details of complex matters and bridge the gap between technical jargon and a layperson's comprehension.

# Typical Responsibilities of an Expert Witness

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- You must ensure you have all the evidence relevant to your brief, including everything submitted in the discovery phase
- Prepare a draft report for submission into evidence in the case
- Consult with your client and his attorney before finalizing and submitting the report
- Be intimately familiar with your conclusions and opinions, as well as the evidence that backs them up and the analysis you employed
- Make yourself available for a deposition, taken by the opposing party's attorney,
- Meet with your client and his attorney to prepare for trial. This may involve “dry-runs” with colleagues and/or attorneys, or even “mock” trials
- Testify at trial



# The Report

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- Make sure your report is clear and concise so someone unfamiliar with the case can still understand it
- Don't use technical "jargon" unless necessary, and if used, clearly explain what it means
- Include an Executive Summary that briefly explains the case issues and your conclusions.
- Write in your own words; not in those of your client or their attorneys.



# The Deposition

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- This is the opportunity for the opposition to ask questions about your report and understand what you will testify to.
- You should prepare in advance with your client and attorneys.
- Don't be intimidated by the opposition attorney and ask for a break whenever you need one.
- Only answer the question posed. Don't elaborate unless necessary. Ask for clarification if you don't understand the question.
- Don't be afraid to say, "I don't know," "I don't remember" or "That wasn't within my purview"

# Direct Presentation

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- This is your chance to concisely explain to the judge and jury what you did to arrive at your conclusions. Typically, your report is first offered into evidence and then the client's attorney asks you questions that lead you into explaining it.
- Typically, you will have already rehearsed your direct presentation several times.
- Where possible, you should use simple analogies that the layperson can relate to.
- You should use phrases such as "Based on my analysis," or "In my opinion, based on the facts presented to me,"

# Cross Examination at Trial

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- After the direct presentation, the opposition's attorneys may then cross examine you on your testimony and your report. Sometimes you may be asked, "What is your fee rate?" or "How much were you paid?" or "When did you start?" or "How much time did you spend?" Be prepared.
- You should know the opposing experts' opinions and be prepared to rebut them if they come up in the cross examination.
- You should answer only the question posed, and as briefly as possible unless you feel an explanation is required to provide the "whole truth." If you can't answer "Yes" or "No" explain why. Ask to have a question repeated if you need time to think.



# Do's and Don'ts for the Expert at Trial

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- Always tell the truth!
- Be polite—refer to the attorneys as “Sir” and the judge as “Your Honor”
- Dress conservatively and business-like
- Briefly pause after each question to compose your answer
- Beware of hypothetical questions with assumed facts that are not true
- If a document is cited, ask to see it before answering
- If a jury trial, make eye contact with and speak to the jury



- Don't lose your temper or argue with the opposing attorney
- Don't answer questions outside of your expertise
- Don't answer compound questions—break them down into parts
- Avoid absolutes like “always,” “never,” or “impossible”
- Be careful not to contradict something you said in your deposition
- Don't rely on “hearsay” evidence

## Some Case Examples

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- Alaskan Crude Oil Quality Bank
- MTBE vs. Ethanol Contamination Cases
- Canadian Refinery Processing Agreement
- Upper Midwest Refinery Valuation Dispute
- Gasoline “Shrinkage” Case
- Australian Refinery Upgrade Dispute

QUESTIONS?

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