

EXPERT WITNESS - Plaintiff or Defense?

By Michael Panish – Expert Witness & Consultant

The first two questions that I am often asked by attorneys during deposition or trial testimony are **“On what percentage of cases do you work for the Plaintiff?”** and **“On what percentage of cases do you work for the Defense?”**

It has been said that any expert that will work on either side of a case must have his own financial interest as his primary concern; the expert being considered an unreliable “Gun for Hire.” The motivation of that type of expert witness is solely money, and depending upon which side contacted him first, he will tailor his opinion to agree with that perspective view.

A truly professional and skilled expert will have developed an opinion about the case on which they are working providing valuable insight and evaluations of the case that may be beneficial to both sides. While it is possible that an unprofessional expert witness will tailor an opinion to match the needs of the paying party, the testimony given will appear contrived and bent to accommodate the needs of the case. I have read and evaluated many reports, been involved in depositions and hearings, and heard testimony of opposing expert witnesses that has been flawed, inaccurate, and easily discredited.

A few years ago, I was hired by a cabinetry manufacturer and installer to inspect and assess one of the company’s residential jobs that had gone bad. The owner of the house had become hostile toward the cabinet manufacturer, whom he barred from the site, and they were unable to resolve their differences. Upon arriving at the house for the inspection and meeting the homeowner, he informed me that he had previously spoken to me about his problem and had decided not to retain my services because of the expense involved. I told him that he was fortunate, as he would now have the benefit of my expert evaluation of the casework and problems that had arisen, even though he was not the party that paid to retain my services. We were able to resolve the dispute during that inspection, satisfying both parties in a civil and mutually agreeable way.

In this type of situation, it is possible that a good expert witness could be valuable to both sides of the claim. Both the plaintiff and defendant could seriously consider the services of the same expert, and achieve a resolution to their dispute. This does not compromise the integrity or skills of the expert, and seems that an unbiased opinion leads each side to discover the facts, break the dispute into practical components, and address the issue.

Perhaps this is another tool that can be made easily available for your clients: Find out if the expert witness works on both sides of a case, and is able to find the strengths and weaknesses of each claim. See if the expert can work effectively proposing a reasonable path of responsibility that leads to a fair and equitable solution for both sides.

In summary, a good forensic expert should be evaluated based upon his credentials, professional experience, and his ability to communicate his point effectively to both sides regardless of his previous case associations.

Michael Panish is an expert witness, forensic analyst, and consultant in the field of construction. He is licensed in the State of California as a General Building Contractor, Cabinet & Millwork Contractor, Door, Lock & Security Equipment Contractor, and Electrical Contractor. Mr. Panish has over 30 years of hands-on experience in the construction industry. Mr. Panish has provided testimony in construction defect, poor workmanship, product liability, and personal injury cases relating to most construction trades, doors, locks, automatic doors, cabinetry, and custom casework. Mr. Panish has offices in California and the New England area and is available for nationwide consultation, forensic analysis, inspection, report, and testimony. Michael Panish can be reached at (818) 992-1975 or (818) 429-1963. Please visit www.ConstructionWitness.com for more information.