

The Expert Witness in the Courtroom

The purpose of the workshop is to acquaint the potential expert with general civil litigation procedures, help the expert understand where he/she falls in the process and what is expected, and to understand how an expert may help or harm the process. It should be assumed that the audience will consist of engineers, urban/transportation planners, administrators and other non-lawyer attendees. It should be assumed that the audience's experience with litigation matters will run the entire spectrum. Audience participation should be integral to the workshop.

Session I – 1 ½ Hours in Duration

- I. Overcome your fear and anxiety regarding litigation by Understanding the Purpose and Process of litigation.
 - A. The purpose of litigation is for dispute resolution.
 - B. Disputes may arise from disagreements or from injury or death that has occurred.
 1. Disputes over public rights or needs regarding private property
 - a. condemnation
 - b. inverse condemnation
 - c. condemnation appeals
 - d. appellate jurisdiction and purpose
 - e. injunctions
 - f. mandamus
 2. Disputes over the function or safety of public infrastructures
 - a. tort liability
 - b. wrongful death
 - c. punitive damages
 3. Disputes over the Engineer's role and liability
 - a. adherence to "generally accepted practices"
 - b. personal and professional liability
 - c. licensure and state regulatory boards

Duration: 30 Minutes

Break, Duration 10 Minutes

- II. Understand where, as an expert, you may be "slotted into" the process of litigation and understand what your role is at each step in this process.
 - A. Pre-Litigation
 1. Understand how disputes arise and some common causes.
 - a. difference of opinion between professionals
 - b. breakdown in communication
 - c. emotionality
 - d. desire for a "payday"
 2. Understand how disputes may be resolved.
 - a. settlement
 - b. withdrawal of complaint

- c. alternative dispute resolution (mediation, arbitration, etc.)
- d. litigation
- 3. Your duty as an expert is, at this stage, is to EDUCATE your legal counsel, and others involved in the process.
 - a. make sure you understand WHAT happened, WHEN it happened, HOW it happened, and, to the best of your ability, WHY it happened.

(What decisions were made? Who made the decision, was the decision reviewed? Why (on what basis) was that decision made? What effect did that decision have on the outcome?)

Duration: 20 Minutes

B. Discovery Phase

- 1. Interrogatories
- 2. Requests For Production
- 3. Certification – What is it and what does it mean to sign one?

Duration: 30 Minutes

Session Break 30 Minutes

Session II – 1 ½ Hours in Duration

C. Depositions

- 1. What does it mean to give a “sworn statement”?
- 2. What is a deposition and how might it be used later?
- 3. Tricks and techniques that opposing counsel may use.
- 4. Stupid Expert Tricks

Duration: 20 Minutes

D. On the Witness Stand

- 1. Direct Testimony (Your roles and responsibilities as an expert, as opposed to a fact, witness)
- 2. Cross Examination – Distinct from direct examination
 - a. how should your strategy as an expert change?
 - b. Tricks and techniques that opposing counsel may use
 - c. Stupid Expert Tricks
- 3. Re-direct Examination

Duration: 40 Minutes

Break, Duration 10 Minutes

III. Tips for the Expert Witness – Audience participation

Duration 20 Minutes