

Taking a Stand

The expert witness process and tips for providing ethical input

By Dave Briglio, P.E.

Most people have a sense of duty and ethical responsibility in their personal lives as well as on the job. When we are at home or with friends, the emotional ties to people who are important to us remind us of that responsibility. When we are on the job, there are company policies and professional regulations that remind us; however, things can become less structured when professional engineers are asked to provide statements and opinions in the courtroom.

In the courtroom, there is a true need for professional opinions when

sufficient technical evidence, clear facts or knowledgeable interpretations are not available to provide a basis for a ruling or decision. Experts are brought to courtrooms to fill the information gaps and provide opinions and explanations of existing information. In such cases, experts must provide their opinions on issues where many data gaps still exist.

Under such circumstances, assumptions may have to be made quickly and without the aid of peer review or the opportunity to test and revise opinions. Those preparing to state professional opinions in court

need to remain centered on the goal of providing a service, knowing that doing so will serve their client well—much easier said outside of the courtroom than done on the stand.

Client Satisfaction

As consulting engineers and other storm water professionals, we are in business for profit, with our services generally paid for by clients. Nevertheless, before stepping into the courtroom, it is important we recognize that winning is not necessarily defined by a decision that favors the client. Rather, winning is being able to present clearly and honestly the evidence that will help these individuals resume their lives quickly and without question or regret.

Only one side can win, and offering false hope often leads to a longer and more painful fight without changing the outcome. Most clients are satisfied when they feel that their positions have been strongly and honestly presented and they have received the best advice for their situation.

Services for Hire

Engineers should never be paid to give specific testimony (i.e., to state a predetermined position put forth



Providing clarity, not advocacy, is the primary responsibility of an expert witness.

by the client or the client's attorney). Clients are paying for our time that we or our employer would otherwise have used on a traditional project. Accepting the fee, however, in no way dictates our testimony.

Advocates & Experts

An advocate is defined as one who speaks on behalf of another person, especially in a legal context; an expert witness can be defined as someone

who is believed to have knowledge in a particular subject beyond that of the average person—sufficient that others may rely on his or her specialized opinion.

As expert witnesses, we are not allowed to be advocates when testifying in court; that is the right and privilege of the plaintiffs and defendants, as well as the responsibility of their attorneys. The expert's opinions should have nothing to do with passion for clients

or their causes but everything to do with bringing clarity to technical issues, benefiting both plaintiffs and defendants (and their legal staffs) by bringing the discussion or lawsuit to a just conclusion.

Drawing the Line

The line between serving the client and winning in court is not always obvious; it is clearest outside the courtroom, when thoughts are well-organized and unchallenged. When in court, there is a constant debate in progress. If one becomes personally engaged in debate as an expert, that line may become less visible and the individual may unknowingly step over into advocacy. For this reason alone, many engineers and other professionals may not want to be expert witnesses, thereby avoiding this potential conflict.

When in court or a situation that may lead to legal proceedings, get fully engaged. Serving and providing a solution fuels thoughts and enables one to recognize what he or she needs to do to fulfill the responsibility to the client and profession.

Too much fuel on the fire can be disastrous, so it is critical that when providing testimony, one takes a moment to center himself or herself in order to maintain objectivity. In doing so, the professional can avoid focusing on beating the opponent and concentrate more on bringing clarity to the issues on which the court is seeking opinions. If successful in doing that, the client and all other parties will be served well and the individual on the stand can step down without regrets. **SWS**

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