

are in place is essential to a worthwhile expert search process.

For any expert, no matter who locates the individual, Oliver said she always makes certain the expert can withstand a scientific evidence challenge under *Daubert* or *Kumho Tire*. "I have to make sure that the areas in which the expert offers opinions are areas where he or she is qualified," she said.

#### On Your Own

In some instances, if enough time is available, some attorneys find it's easier to look for experts on their own.

"With medical experts, as opposed to using a doctor aligned with a specific referral service, I oftentimes will do a Medline search to look for articles written on my par-

ticular medical topic," suggested Middleton. "I will search out the authors of those articles to see who might be willing to review a matter and have expertise relevant to our analysis."

Middleton used this method for a case involving a class of anti-depressants called SSRIs and found two experts, one in Great Britain and one in Alabama, without spending any additional money.

Miller, who practices in Michigan, said he is part of a Listserv where lawyers often post when they need an expert and respond to each other with suggested experts they have used successfully.

Also, by looking at articles on the topic, Middleton said he has also had some luck finding experts in the field that have never

testified before.

"When 'professional witnesses' advertise in certain directories, it ... inevitably comes up ... in front of the jury and they start to seem like charlatans," he said. "I never want any jury sitting on one of my client's cases to have the perception I have gone out and hired someone who is nothing more than a professional witness. I want someone who is professional and only happens to be a witness."

That way, "they are completely untainted and when asked, 'Have you ever been called by lawyers or doctors?' and they say, 'No,' it makes it look like this is an extremely important case to them," said Middleton.

By Reni Gertner

## Let An Expert Find Your Experts *Specialists Help Lawyers Find The Perfect Witness*

Savannah, Ga., plaintiffs' attorney Richard Middleton was handling a racketeering case several years ago under ERISA and he knew he needed an expert on something very specific: "how third party administrators typically handle multi-employer benefit plans."

He also knew that Gerri Colton of Dana Point, Calif., was the right person to call.

"I called her and three hours later she not only had an expert, she also she had an ex-

### Litigation

employee of the defendant who left after a bitter dispute and had taken boxes of documents with him," said Middleton. "We got the largest racketeering judgment ever in the history of Georgia with that expert."

Eighteen years ago, Colton, a former paralegal, started her own company, Technical & Medical Advisers, to help attorneys locate expert witnesses in a wide range of specialties. She said her whole business is built on personal contacts and networking.

"I have built up a rapport with people over the years and I am continually expanding my database," she said.

Other lawyers have also benefited from using an "expert on experts" to scour the country so they can concentrate on all of the other aspects of their case.

Jami Oliver, a plaintiffs' attorney in Columbus, Ohio, said she has had good luck working with the Columbus office of Robson Forensic, Inc., to find everything from engineers and architects to "human factors" experts who can assess what a driver or eye-witness is likely to have seen, given alcohol intake, fatigue and other interactions with the physical environment.

"I have had incredible success with this company. I usually get a response to my inquiry the same day," she said.

However, Oliver cautioned that expert witness searches can be expensive, without always being fruitful, if you choose the wrong locator services and firms.

"Some of the larger services seem to focus more on billing you for their services than in providing you with quality experts in an efficient manner," she complained.



And the "wrong" one-person search firm can be equally rife with problems.

"I once paid a one-person search 'firm' \$500 to find an expert. I received a very nice list of medical experts from well-credentialed universities and hospitals," Oliver recalled. "However, most of them never even returned my calls and those who did, were too busy or not interested. I still had to pay the search fee and had no absolutely no success. If I ever use a service again, I will require a 'guarantee' of an expert or no fee."

#### Broader Expert Access

The primary advantage of using an expert locator is that they have connections to a wide range of the best people in the given field – and can find them quickly.

For example, Colton's company covers a whole spectrum of technical and medical experts, including experts in "wrongful termination, insurance bad faith, medical malpractice, engineering and spousal employability."

Sheldon Miller, an attorney in Southfield, Mich., has found Colton's long list of contacts extremely useful.

"Every so often you need someone [in a] strange [field of expertise]," said Miller.

Over time, Colton has learned which universities specialize in what areas, and developed contacts that make it more likely a professor will become involved in a case as an expert.

Julie Alban, who works at Robson Forensic, said her firm also has a wide range of expert access.

"It's just the depth of resources. We have experts in pretty much any discipline, from civil or biomechanical engineers to other scientists, architects, chemical engineers and human factor engineers," she said.

Some services specialize in a particular type of expert witness, such as MedQuest, Ltd. of New York City, which specializes in medical experts, though they also have expanded into other arenas, said CEO and founder Elliot Stone.

"There is the greatest need for medical experts to testify and they are the toughest group to find," he said, "because typically doctors don't like to testify against one another."

## How Fees Work

For a busy attorney, paying a service to locate an expert can be more cost effective than billing a client several hours for the attorney to do the same job himself.

But attorneys should be aware that different companies use a wide range of fee structures. Some common methods include:

- *An hourly fee, paid for by the attorney.*

In this arrangement, the attorney pays an hourly fee to the agency and the expert is paid a cut of that fee.

For example, TASA, the Technical Advisory Service for Attorneys, which is based in Pennsylvania, refers lawyers to experts, who are all independent contractors. The hourly rates they quote are a combination of the expert's fee and some amount on top of that, a flat "overhead factor" that they add on to an expert's rate. Some of their experts also charge daily rates.

Although the company's fees vary greatly because of the number of experts they recommend, Oliver said she has found their service too expensive for most cases she handles.

- *A flat fee, paid by the attorney.*

Colton's service charges a flat fee of \$1,000 to find an expert – thereby eliminating the incentive for an expert to put in a certain number of hours.

Another benefit of Colton's service is that her company provides attorneys with the curriculum vitae for a number of potential experts without any additional cost.

"We don't get paid per expert," she explained.

If the first expert doesn't work out, Colton provides another at no charge.

However, if the attorney needs two experts in different field, Colton does charge for the second expert at a reduced fee of \$700.

"If a lawyer uses someone we've provided in the past, or a CV we have given in the past, we just charge \$700 for repeat use," she said.

The fee structure is similar at Saponaro, Inc., which helps attorneys locate a wide spectrum of medical and nursing home experts.

"Whatever service we provide, the attorney pays \$400 for the referral of an expert. They deal with the expert directly and set fees to consult on the cases," said company

president Guy Saponaro.

In some cases, Saponaro, Inc. charges a partial fee for repeat use of an expert, and if the attorney isn't happy with the chosen expert, it provides another expert in the same specialty at no additional cost.



**"We make sure [the experts we refer] have done the procedures involved in the case and [check] whether they were in practice when the equipment or procedure involved was manufactured or being done," said Gerri Colton.**

- *Experts are hired as employees.*

Robson Forensic is set up a bit differently. "Our experts are our employees; we have about 250 full- and part-time experts and we pay them each a salary," said Alban.

One benefit is the company doesn't have to look very far to find an expert, and there is always more than one qualified expert looking at a given case.

"Another experienced expert in the firm reviews the final report to double check their engineering and also to make sure the expert won't put anything in a report that could damage the case later on," said Alban.

Robson charges an hourly rate for the use of its experts. The charge is \$275 per hour for most experts, but it costs \$350 per hour for an expert in New York. The expert's hourly fee comes out of that charge. Where necessary, Robson will also provide a less expensive "support professional" in a case where there are numerous documents to go through.

Oliver said that she finds Robson's experts to be worth the money because of their

quality and all of the services they provide. She said they are also honest from the start if they can't provide a favorable opinion.

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quality and all of the services they provide. She said they are also honest from the start if they can't provide a favorable opinion.

"Robson's experts review the discovery that has been exchanged and usually do a site investigation, if that is possible," said Oliver. "They are well-organized and they know how to document the evidence and preserve it for trial. Preparation for depositions is limited because these experts are familiar with the legal process and the standards required for expert testimony."

- *Expert pays to be listed.*

Still other services exist where the lawyer pays no money for the search itself, and then pays the expert directly once he or she is retained. The majority of website directories work this way.

Gerry Goldscholle, founder and CEO of expertpages.com in Sausalito, Calif., said they charge \$295 per expert per year for a basic listing. The attorney uses the site – which has more than 350 categories of experts – for free and, later, arranges an ap-

propriate payment rate directly with an expert they choose to hire.

Goldscholle said this is a common arrangement for website directories.

- *Lawyer pays for access to a web directory.*

Other website directories are subscription-based. The attorney pays a certain fee annually to gain access to the database, and the experts that are listed pay to post their C.V.

This is how the Expert Witness Network works.

"Basically, we have a database of expert witnesses. Each expert submits a C.V., we put the C.V. in our database and the whole database is searchable," said Rich Spies, who operates the site at www.witness.net. "The attorney can then search for the type of expert needed, sift through the [choices] and contact the expert directly."

The site has more than 2,000 expert listings. Attorneys pay \$99 per year to access the database, and each witness pays \$100 for a one-time posting of their C.V., which they can update any time they want.

An expert can also pay an additional \$99 to have a link to their website in the database – and attorneys can access that part of the site without paying for use.

## Hired Guns?

One of the biggest concerns attorneys have about using expert locators is that juries will perceive these important witnesses as hired guns. After all, in many of the arrangements, the experts are either formally on the payroll of the agency or rely heavily on the agency to get work.

Saponaro emphasized that the fee structure at his company is set up to make sure any doctor or other expert can't be painted as affiliated with a particular service.

"Some attorneys are concerned if they go through a service there may be some question when they use the doctor that the doctor is affiliated with a service," he said. "Because none of these experts are under contract with us, we can show there is no other relationship other than a case-by-case relationship."

A main feature of this arrangement is that the attorney contacts the expert directly to set up a working relationship.

"I send the C.V. of a recommended expert and the attorney contacts them directly," Saponaro said. Later, "if a question comes up, the witness can say the attorney contacted them directly."

At www.witness.net, where a lawyer pays a fee for access to the directory, the fee "is not linked to a choice of a specific expert, and the fees paid to the expert are not increased by using the company's services," said Spies.

However, Middleton said he likes the way Colton's service works because the experts she refers do not pay to be a part of a database at all. This reduces the chance that they will look like a "hired gun," he contends.

But Oliver said she hasn't had the credibility of her experts damaged in court because she used a locator service. She said that has been the case whether she uses independent contractors or experts from Robson, who are employees of the company.

"I have never really had that become an issue," she said. "Most experts explain that, whether they are employees or independent contractors, they have full discretion to render an opinion independently."

She noted that experts often support this testimony by talking about the cases that they have reviewed but didn't testify in be-

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cause they couldn't provide an opinion favorable to that lawyer's side of the case.

"They usually say that they have told hundreds of lawyers that they can't support their cases, and of course, they never end up testifying in those cases," Oliver said. "All we hear about are the ones that go to deposition or trial. We never hear the stories about the cases that are withdrawn or abandoned because the plaintiff's expert could not give the plaintiff a supportive opinion."

Even though Robson Forensic experts are employees of the company, Alban said the

company prides itself on handling cases on behalf of plaintiffs, defendants and insurance companies, so the experts can't be painted as always testifying for a certain side of a case. Another benefit is that – because the experts are their employees – the company remains involved and able to make sure things are running smoothly.

"Our experts tell the truth, and many times we have to tell our client they don't have a case," Alban added.

She emphasized that the company's credibility is "on the line every time one of our experts works on a case," such that they wouldn't have an expert who is simply willing to testify for whichever side of a case seeks his or her input.

"You try to tell the truth in the best light for the client maybe, but you have to tell the truth. We could never have been in this business this long and have the reputation we have otherwise," she said.

While Robson Forensic isn't a referral service, "even if a referral company got wind an expert they referred was a hired gun and would testify in any case, I think any ethical service would never refer such an expert again. That's the kiss of death in this industry," said Alban.

## Checking Credentials

It is also important for attorneys to assess how the expert service checks the qualifications of the experts they provide.

Goldscholle said that on his website many of the experts have been "credentialed" by his company.

"We offer the experts on our site an optional credentialing program," he said. "We verify their qualifications extensively. If a lawyer uses an expert with credentialing and they find [the expert isn't accurately assessed by us], we pay them a couple thousand dollars for the mistake."

Colton also checks the origin and background of the experts she recommends very carefully.

For example, "we make sure they've done the procedure involved in the case, and [check] whether they were in practice when the equipment or procedure involved was manufactured or being done," she said.

Stone said that at MedQuest, they check a variety of databases, such as directories from the American Medical Association, to confirm experts' qualifications and make sure they haven't "gotten into trouble."

For attorneys, making sure these checks