



## **THIRTEEN DEADLY SINS ON EXPERT RETENTION AND USE**

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No. 1 -- **Not allowing enough time to select and initially vet the expert candidates.**

Allow at least two weeks to interview and qualify expert candidates to end up with 2 or 3 finalists. Don't wait until a day or two before your designation date to identify your expert. You run the risk of designating the wrong expert for your case.

No. 2 -- **Not vetting properly.** The rule simply is: Vet as your opposing counsel will do prior to your expert's deposition. This means investigating their credentials, confirming work experience, validating professional designations/licenses and checking to see if any complaints or suspensions have been filed against their licenses. Additionally, it requires examination of Facebook comments/philosophies (and other social media sites) that might suggest a bias.

No. 3 -- **Not contacting past attorneys the expert candidates have been retained by.** Direct feedback on your expert candidate's professionalism and overall performance from previous attorneys who retained their services is absolutely critical.

No. 4 -- **Not obtaining copies of the expert candidate's previous Summary Of Opinions Reports and past deposition transcripts.** This will help the retaining attorney to understand how the candidates are able to communicate in simple everyday language and how they perform "under fire" during their deposition.

No. 5 -- **Not asking the candidates to review and provide feedback (at no cost) on certain case documents.** For example, have the candidates review the Complaint, Cross-Complaint and/or MSJ to (i) ensure that the case issues are within their expertise envelope and (ii) obtain their initial thoughts on the case issues as they may pertain to Industry standards, customs and practices.

No. 6 -- **Not asking the expert candidates why they are the best expert for the case.** Have the expert convince you that based on their CV, and equally important their past cases with similar issues, they are your best choice for the subject case.

No. 7 -- **Not conducting a personal interview of the final candidates prior to their designation.** How else can the retaining attorney accurately assess the candidate's demeanor, credibility and their "stage-presence" - because those traits really do matter.

No. 8 -- **Not reviewing and approving, prior to designation, the expert's engagement letter.** It makes no sense to designate and then ask the now-designated expert for the terms and conditions of said engagement. Be sure the engagement letter is acceptable to you, and your client, before designation.



No. 9 -- **Not composing the expert's "areas of designation" in concert with the expert.** The expert's "buy-in" on areas he will be opining on is critical. It must be "co-authored" by the retaining attorney and the expert.

No. 10 -- **Not giving the expert any and all case documents that may, in any way, possibly impact his analysis and opinions offered.** The general rule is – the more case documents produced to your expert, the better. You don't want opposing counsel to produce a case document at deposition or trial and then ask your expert if he has seen it. If your expert says "no"; then opposing counsel will of course ask – "*So had you read this document, it could have impacted or changed your opinions – correct?*"

No. 11 -- **Not fully utilizing the expertise of your retained expert.** Consider having your expert assist in your deposition preparation and be sure to have him attend all depositions, especially, that of his opposing expert. This will ensure that certain questions are asked that may be important to your expert's possible opinions. Remember, the role of the expert is to "assist the Trier-of-fact" (and the retaining attorney) in understanding what takes place on a daily basis in the real estate Industry as it pertains to Industry standards, customs and practices.

No. 12 -- **Not acknowledging that your designated expert is a "neutral" and can't cross the line of being an "advocate".** If that line is crossed, your expert will lose all credibility. Don't try to "steer" your expert on case issues or certain opinions desired. Suggestions are acceptable, mandates are not; as the expert must maintain his professional integrity (and neutrality) at all times.

No. 13 -- **Not accepting, by both the retaining attorney and his client, that litigation is expensive – period.** While an estimate of the expert's cost is difficult to project at the outset, the retaining attorney and the expert should check-in periodically to assess how the expert's review of case documents (and associated costs) is progressing. However, you certainly don't want "*to step over dollars to pick up dimes*". To prevail on the case, everyone (including the expert) must be fully prepared and that, of course, is expensive. Winning never comes cheap; but it certainly beats the alternative.

#### **ABOUT THE AUTHOR:**

Michael K. Ryan has been in the real estate Industry for 45-plus years. He is President of CastleLyons Corporation, a firm that specializes in providing real estate expert witness services to the legal community. He has performed expert testimony, on diverse case issues, in Northern and Southern California and in the States of Hawaii, Colorado, Utah, Oregon, Montana and Oklahoma. Please view the 1-minute video on the CastleLyons website – [www.castlelyons.net](http://www.castlelyons.net).