

# **Tips on Writing an Expert Witness Report**

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# Report Writing Tips

- Meant for new experts
- These tips are not exhaustive
- Feedback and other tips welcome

# Number One Tip

- **Be Honest**
  - Opposing expert will help keep you honest
  - Opposing attorney may try to get a copy of everything you have ever written
    - Be prepared to be grilled on your previous testimony and/or publications

# Number Two Tip

- Remember, we are not lawyers
  - We do not understand most aspects of legal proceedings

# Types of Reports

- Affidavit
- Plaintiff's expert report
- Defendant's expert report
- Supplemental report

# Affidavits

- Usually narrow in focus
- May be asked to write more than one
- May be used in connection with a motion
  - e.g., motion for summary judgment

# Plaintiff's Expert Report

- Usually wide ranging
- Define issues
  - Set forth all the shortcomings

# Defendant's Expert Report

- Usually focused on rebutting plaintiff's expert
  - Address all issues raised by opposing expert



# Federal Rules

- Federal rules mandate certain content
  - List of your prior court testimony
  - Your experience/qualifications
  - Your compensation
  - Basis for your opinions

# “Daubert” Rule

- Admissibility of expert evidence
  - Governed by Federal Rule of Evidence 702
- Expert testimony must
  - Be "relevant to the task at hand"
  - Rest "on a reliable foundation"

# Some Benefits of a Report

- Reasons for using a report can vary by case
  - Help to get a more favorable settlement
  - Support a motion for summary judgment
  - Usually required in civil cases in federal court

# These Tips

- Lessons learned from the trenches
- Not exhaustive
- Not in priority order

# Legal and Scientific Issues

- Legal issues and scientific issues may be different
  - e.g., Adverse impact of exam versus adverse impact of selections

# What Issues to Address?

- Clarify with attorney topics/issues for you to address
  - What are the legally important issues you need to address?
  - Understand the **legally important** issues you need to address
  - What exact issues does your attorney want you to address?

# Talk to Your Attorney First

- BEFORE you put anything in writing
  - E-mail and drafts may be discoverable
  - Discrepancies in drafts may be focused on
- Different attorneys have different preferences/styles
  - Format
  - Length

# Discuss Scope/Length With Attorney

- Discuss scope of report with your attorney
  - Length desired (3 to 15 pages may be better than 15 to 100 pages)
  - Topics to cover
  - Level of detail desired
- Some attorneys want more or less exhaustive reports



# Ask Your Attorney

- What are the issues you should try to address in your report?
  - Then opine on specific topics/questions raised by your attorney
- What topics is your attorney not interested in?

# Listen to Your Attorney

- These tips are general
- Your attorney must be trusted

# Expert Report is Not a Scientific Paper

- Write for an intelligent lay audience
  - Minimize jargon
  - Use jargon correctly
  - Define jargon and terms
  - Define all abbreviations
- Be succinct

# Write for an Intelligent Audience

- Cite page numbers in the material referenced, so reader can check what you say.
- Explain all complicated concepts
- Also explain seemingly simple concepts

# Format of Report

- Get format from lawyer. It may include
  - Cover page
  - Table of contents
  - Signature page
  - Page numbering
- What word processor does attorney use?
  - Many (most?) filings are electronic nowadays

# Drafts

- Some attorneys want only one draft
  - If there are revisions, edit the same file.
  - Do not use successive revisions
  - No discoverable trail
- Other attorneys unconcerned about drafts
  - I have never been asked about earlier drafts
- Label report “Draft” until it is finalized

# Review By Attorney

- Attorney should NOT write your report
  - Your opinions are YOUR opinions
- Ask attorney if he/she wants to review your findings by telephone
  - Before or after you have begun writing
- Ask attorney to review report for clarity, completeness
  - Some do not do any review of reports

# Exhibits

- Report should include all charts, graphs, quotes, that you may want to use as exhibits in court



# Non-Opinion Content of Report

- Attorney will ask you for required content:
  - A list of all recent publications
  - A list of recent expert witness involvement
  - Etc.

# Other Things to Include

- List of all documents reviewed
  - Prepare this as you work
    - May have 50+ documents
  - Identify each document clearly
    - Title
    - Date
    - Length
    - Bates stamp numbering
    - Exhibit letter

# Be Objective

- Do not become an advocate for your “side”
  - Impugns your credibility
- Expert should be objective
  - You represent the profession

# Statement of Your Opinion

- State your conclusions clearly
  - Do not puff but do not be wishy-washy
    - Avoid, “I believe” or “it seems”
    - Rather, “The facts just described indicate...”
- Avoid superlatives like very, extremely, unless they are clearly warranted

# What If I Am Not Sure?

- If you are not confident, tell your attorney
  - May lead to settlement

# Write Clearly

- Short clear sentences
- Active voice
- Perhaps state your conclusions at the onset and again at the end
  - This differs from scientific writing

# Present Numbers Clearly

- Use simple graphs and charts
- Interpret meaning of numbers
  - p values
  - Statistical test results
  - Correlations
  - Reliability

# Educate Your Audience

- Explain statistical concepts
- Explain testing concepts
- Judges are bright
- Explain concepts needed to understand your report



# Avoid All Errors

- NO TYPOS
  - Typos impugn quality of report
- Be careful with statements about the professional literature
  - Expect your statements to be challenged
  - Be prepared to defend them

# Hope For

- A competent expert on the other side
  - Criticisms more likely to be reasonable

# Some Practicalities

- Do not leave report writing to the last moment
- Have a system to keep track of documents

# Be Professional

- Be respectful of opposing expert
  - Point out errors politely

# Deadlines

- Tell your attorney early if you foresee any delays
- Do not leave report writing to the last minute

# Examples of Shortcomings

- Focus on topics not important to lawyers
  - Many pages on issues not in dispute
  - Many pages on an unimportant legal issue
  - Ignore legally important issues
    - e.g., job relatedness

# Sample of a Good Report

- Jeanneret, 1/8/05
  - Title page
  - Table of contents
  - Starts with clear summary of opinions
  - Basis for opinions clear
  - Methodology clear
  - Tables/charts understandable
  - Citations to professional literature
  - Room for improvement (explain acronyms)

# Q & A's

- Questions/comments from the attendees



# Closing

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Best of luck as you start your expert  
witness careers!

Copies of this presentation are available at:  
<http://ipmaac.org>

# References

- Babitsky, S. & Mangraviti, Jr., J.J. (2002) *Writing and Defending Your Expert Report; The Step-by-Step Guide with Models.* Falmouth MA, SEAK, Inc.
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# Case Cited

- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 597 (1993).