

## Expert Witness Retention Checklist

---

Step-by-step guide from initial search to trial testimony

- ✓ Complete retention workflow (search → vet → retain → prepare → testify)
- ✓ Rule 26(a)(2) disclosure requirements
- ✓ Expert report best practices
- ✓ Trial preparation and direct examination framework



# Expert Retention Workflow

## Phase 1: Search & Identify

- Define the specific opinions/testimony needed
- Identify the required specialty and sub-specialty
- Search expert directories (ExpertSlate, Expert Institute, SEAK, referrals)
- Compile a shortlist of 3-5 candidates
- Run preliminary DaubertTracker searches on each candidate
- Check for conflicts of interest

## Phase 2: Vet & Select

- Send vetting questionnaire (see PDF 2, page 8)
- Verify credentials independently (degrees, licenses, publications)
- Review prior testimony transcripts (2-3 recent engagements)
- Conduct initial phone consultation (most experts offer 15-30 min free)
- Compare rates, availability, and engagement terms
- Select expert and confirm availability for case timeline

## Phase 3: Retain & Engage

- Execute engagement letter specifying: scope, rates, retainer, cancellation terms
- Pay initial retainer
- Provide organized case materials (indexed, chronological, with cover memo)
- Brief expert on case theory, key issues, and opposing arguments
- Set milestones: preliminary opinion deadline, report draft, final report

## Phase 4: Report & Disclosure

- Expert delivers preliminary opinion (written or oral)
- If favorable: proceed to formal report
- Expert drafts Rule 26(a)(2) report
- Attorney reviews draft for completeness (NOT for changing opinions)
- Expert finalizes report
- Serve report per Rule 26 disclosure deadline

## Phase 5: Deposition & Trial

- Prepare expert for deposition (4-8 hours typical)
- Expert testifies at deposition
- Prepare expert for trial testimony (8-20 hours typical)
- Expert testifies at trial

# Rule 26(a)(2) Disclosure Requirements

## What Must Be in Your Expert's Report

### Required Elements (FRCP Rule 26(a)(2)(B))

- A complete statement of all opinions the expert will express and the basis and reasons for them
- The facts or data considered by the expert in forming the opinions
- Any exhibits that will be used to summarize or support the opinions
- The expert's qualifications, including all publications authored in the past 10 years
- A list of all other cases in which the expert has testified as an expert at trial or by deposition during the previous 4 years
- A statement of the compensation to be paid for the study and testimony

### Disclosure Deadlines

Disclosure Type	Default Deadline	Key Rule
Plaintiff's expert report	90 days before trial	Rule 26(a)(2)(D)(i)
Defendant's expert report (rebuttal)	30 days after plaintiff's disclosure	Rule 26(a)(2)(D)(ii)
Supplementation	"In a timely manner" if information changes	Rule 26(e)

#### Late disclosure = exclusion.

Courts routinely exclude expert testimony when the Rule 26(a)(2) report is served late. Calendar the deadline immediately when the trial date is set. Build in 2-3 weeks of buffer.

#### Draft communications are discoverable.

Under the 2010 Rule 26 amendments, draft expert reports are protected work product. However, communications between the attorney and expert are discoverable if they relate to: (1)

compensation, (2) facts or data provided by counsel, or (3) assumptions provided by counsel. Be mindful of what you put in writing.

# Expert Report Best Practices

## What Makes an Expert Report Bulletproof

### Checklist

- Methodology section is explicit.** Report identifies the specific methodology used, why it's appropriate, and how it was applied to the facts. No "ipse dixit."
- All data sources identified.** Every document, dataset, interview, and record the expert relied upon is listed.
- Alternative explanations addressed.** Report acknowledges and rules out plausible alternative causes or conclusions.
- Opinions within scope of expertise.** Expert does not opine on matters outside their demonstrated specialty.
- Consistent with prior testimony.** Opinions do not contradict the expert's published works or prior testimony in other cases.
- Quantified where possible.** Damage calculations, probabilities, and measurements are specific — not vague ranges.
- Readable by a non-expert.** Report can be understood by a judge or juror without specialized training.
- No legal conclusions.** Expert opines on facts and science — not on legal standards like "negligence" or "liability."

### The "So What?" Test

Every opinion in the report should answer: (1) What is the opinion? (2) What methodology supports it? (3) What facts/data did the expert rely on? (4) Why should the court credit this opinion over opposing expert's? If any opinion fails this test, it's vulnerable.

# Deposition Preparation Checklist

## Preparing Your Expert for Deposition

### Pre-Deposition

- Expert re-reads their own report thoroughly
- Expert reviews all materials they relied upon
- Expert reviews their own prior testimony (transcripts from past cases)
- Practice session with retaining counsel (3-4 hours minimum)
- Identify likely cross-examination themes and prepare responses
- Expert brings ONLY their report, relied-upon materials, and fee schedule to deposition (nothing else)

### During Deposition — Expert Guidance

- Listen to the complete question before answering
- Answer ONLY the question asked — do not volunteer information
- "I don't know" is an acceptable answer when true
- Do not guess, speculate, or estimate unless specifically asked and qualified
- If the question assumes facts not in evidence, say so
- Request clarification for ambiguous questions
- Take your time — there is no clock

#### The #1 Deposition Mistake

Experts who try to "win" the deposition by advocating instead of answering questions. The deposition is not trial testimony. The expert should be calm, concise, and precise — not argumentative.

# Trial Preparation Framework

## From Report to Verdict: Trial Testimony Preparation

### Trial Preparation

- Expert reviews updated case materials and any new evidence since report
- Prepare direct examination outline (attorney + expert collaborate)
- Create demonstrative exhibits (charts, diagrams, models)
- Run full mock direct examination (1-2 hours)
- Run mock cross-examination (2-4 hours — use a colleague or mock examiner)
- Expert reviews opposing expert's report and identifies points of disagreement
- Prepare for voir dire questions about qualifications

### Direct Examination Framework

Phase	Purpose	Duration
1. Qualifications	Establish credentials; make expert relatable to jury	5-10 min
2. Scope of engagement	What were you asked to do? What did you review?	5-10 min
3. Methodology	How did you approach the analysis? Why this method?	10-15 min
4. Findings and opinions	Walk through each opinion with supporting data	20-40 min
5. Demonstratives	Visual aids that simplify complex concepts for jury	Throughout
6. Rebuttal of opposing expert	Why opposing expert's methodology/conclusions are flawed	5-15 min

#### Use demonstratives.

Jurors retain 65% of visual information vs. 10% of oral-only information. Every complex opinion should have a chart, diagram, or visual aid. Work with the expert to create these BEFORE trial.

# Expert Retention Timeline

## When to Retain Your Expert — Case Phase Planning

Case Phase	Expert Action	Timing
Pre-litigation	Informal consultation; help evaluate case merit	Before filing
Filing	N/A	Day 0
Discovery opens	Retain expert; begin document production	ASAP after filing
Fact discovery	Expert reviews produced documents and depositions	Ongoing
Expert discovery cutoff	Expert report due (Rule 26 deadline)	90 days before trial
Rebuttal deadline	Rebuttal report due	30 days after opposing report
Summary judgment	Expert may provide declaration supporting/opposing MSJ	Per court schedule
Pre-trial conference	Expert availability confirmed; demonstratives prepared	2-4 weeks before trial
Trial	Expert testifies	Trial dates

### Retain Early.

The #1 mistake attorneys make is retaining experts too late. Experts who are rushed produce weaker reports, have less preparation time, and command rush surcharges. Retain your primary expert within 30-60 days of filing.

# ExpertSlate

## ExpertSlate

1. **Printability matters.** Attorneys print these. Avoid large solid color areas on interior pages (waste ink). Reserve full-bleed backgrounds for cover and back cover only. 2. **Tables are the star.** These guides live or die on their reference tables. Make tables scannable, well-spaced, and easy to read at 100% zoom on screen AND when printed on letter paper. 3. **Checklist pages should be func**

**Find experts at [expertslate.com](https://www.expertslate.com)**