Preamble

More than 50 years of experience constructing and inspecting buildings, together with 40 years of working with lawyers, from sole practitioners to partners of major law firms, has provided me with the ability to quickly get to the “heart” of the matter being litigated and to address legal counsel so that they may easily understand the technical issues as well as the legal implications of the case. This guide is intended to provide legal counsel with clarity in the process of case vetting and management ... from an expert’s point of view.

Michael S. Poles GC, CM, RCI, DABFET, ACFE / MPGroup

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Early Case Evaluation by the Expert(s)

When undergoing the selection of the most appropriate expert or team of experts for your case, it is imperative that counsel personally make direct contact with the expert(s) so the specific issues in dispute can be thoroughly discussed and all relevant questions by both counsel and expert can be reasonably asked and answered. Only then can counsel make the right decision whether to retain or not to retain the expert being interviewed.

Frequently counsel’s assistant is delegated the task of finding the expert(s), with instructions for them to “find an engineer” or “find a plumbing expert.” At the same time, the assistant may not be familiar with the specifics of the case and is simply collecting names, curriculum vitae and fee schedules for counsel’s consideration. When the expert asks specific questions about the case, the assistant often answers with “I really don’t know.” Simultaneously the expert is analyzing how they can best assist counsel with the case.

Vetting the Expert(s)

The vetting process begins with the initial interview between counsel and the expert. This examination is truly a two-way street as the lawyer examines the education, experience, specialized training and overall qualifications of the expert. Deposition and trial experience questions are important to ask and conflict of interest questions should not be forgotten. The expert should be vetting counsel and counsel’s client at the same time. Fees, billing and payment requirements must be discussed and agreed to early on. Nothing can replace many years of hands-on experience and specialized training in the corresponding technical field(s) being pursued for their expert opinion(s) and future testimony. Deposition and trial experience including the experts’ performance during examination is a crucial element for consideration.

Early Site (Premises) Inspection

It may be advisable for counsel to consider hiring the expert as a consultant early on to enable them to physically inspect the site or premises in question to evaluate, collect relevant evidence and document with numerous digital photographs. The photographs should illustrate the overall location, physical address and close-up photos of the issue(s) at hand. The close-up photographs should include a ruler or other measuring device in the frame that clearly shows the scale or size of the object(s) in question.

Early site or premises inspection should be conducted quickly before any evidence can be degraded or irrevocably lost. This is where cases can be won or compromised!
Retaining the Expert(s)

After vetting and accepting the expert(s) to provide their professional services on behalf of counsel's client, the expert(s) should be retained by a written agreement. Customarily counsel will send his/her retainer letter or the expert will provide their written retainer agreement for counsel to execute. Our policy is for counsel to review and execute our comprehensive fee schedule and retainer agreement form (a copy is available upon request).

In today's economy, most experts have been forced to adopt a policy of collecting advance retainer(s) as a precedent to accepting and continuing their work in a case. The “business as usual” ethic no longer can be relied upon as all too many times the experts’ payment for their billing has exceeded 30, 60, 90 days and even more. The business of consulting as an expert witness can no longer withstand the burden of “financial litigation support.”

Pre-Designation of the Expert(s)

After allowing your expert reasonable time to conduct his/her initial review of the documents provided by counsel and prior to designating your expert(s), it is advisable to thoroughly discuss the issues upon which you expect your expert to opine and testify to during both deposition and at trial. Exercise caution here because what you may think your expert will opine to and testify about may be very different from what he/she eventually comes up with. Your expert designation should be a clear and concise “road-map” of what your expert will testify to.

Creating Your Expert Team

Often cases will require more than one expert witness. When the occasion arises, it becomes necessary to retain multiple experts who will be required to testify in your case. In this instance, the question of expert management becomes an essential element just as case management is essential to the outcome of the lawyers’ case.

In general, a single construction project can incorporate in excess of twenty-six (26) trades and when litigating complex construction cases, it is critical for the trial attorney to martial the experts in a careful and highly coordinated fashion. Consider having multiple experts working the case issues independently and not having the benefit of coordinating their research and findings with the other experts who are also working independently. Should they proffer different opinions and/or basis for their opinions, this could be disastrous for the outcome of the case. We firmly believe that all experts should form a contiguous “team,” thereby assuring that all team members and counsel will be on the “same page.”
Discovery

Use your expert(s) to assist you with locating discoverable items, documents, photographs and official records. Collect all discoverable items and provide them to your expert(s) in the format that the expert can best utilize. We prefer digital copies of documents and photographs. We collect and disseminate them on our secure FTP (File Transfer Protocol) Server. This practice makes handling large digital files convenient, easy to handle and secure. We also maintain our computer case files in perpetuity as they are backed up daily and archived onsite and offsite (for safe keeping).

We urge counsel to utilize the experts' expertise and enlist their assistance to help counsel prepare questions for depositions. Commonly, by the time the expert receives deposition transcripts (often without the exhibits) it is too late to provide counsel with specific or technical input for the Q & A.

We prefer digital copies of deposition transcripts, and have found that receiving the transcripts in full-page Adobe Acrobat™ (PDF) or Microsoft Word™ (doc or docx) format, rather than the condensed transcript makes it much easier to review, annotate and disseminate in whole or in part. Having a legible copy of the exhibits is also very helpful and much appreciated.

Communication — “Where the Rubber Meets the Road”

Communication between counsel and the expert is absolutely essential. We are keenly aware of the attorney work product and the attorney/client privilege doctrines. We also realize that all writings and electronic E-mails to and from the expert are fully discoverable. Therefore, verbal communication between counsel and the expert is vital. We realize that trial attorneys are extremely busy and are not always available to discuss the case and the experts’ progress on the telephone.

To facilitate better communication between counsel and our expert(s) we ordinarily do not charge for telephone conversations (unless we first ask and receive permission to bill for working the case over the phone). In addition, I remain available to our clients beyond “normal business hours” and on weekends when needed. Whenever I am out of the office, I have set up our voicemail server to automatically text me and alert me that I have a message. My practice is to always return the calls soon as possible.

We also utilize the Internet for communicating via Skype™ and GoToMeeting™ for group conferences. Yes, communication is a big thing here at MPGroup!
Opinions and Testimony

Our policy regarding opinions is to first base all opinions upon material facts. Prima facie evidence really constitutes a sound basis upon which an expert witness can rest his/her opinions. We cite relevant code sections, code standards, document(s), plan sheet with detail numbers and other relevant empirical data to support the opinion(s) we proffer... PERIOD!

Part 2: MPGroup – Construction Experts | Michael S. Poles, Mediator

Introduction

Michael S. Poles (d.b.a. MPGroup) is a second generation general building contractor (California License No. 263193-B), construction manager, construction inspector and forensic expert witness who delivers more than 50 years of experience and technical expertise for his clients.

MPGroup is a collaboration of senior architects, engineers, contractors and other technical experts specializing in providing legal counsel with forensic expert witnesses and litigation support for virtually any type of construction-related case for plaintiff or defense.

Throughout the years Michael Poles and his team of senior professionals have designed, managed, constructed and inspected a wide variety of projects for both private and public sectors.

Project Types

Apartments, Commercial, Condominiums, Custom Homes, Fire Stations, Hospitals, Hotels, Industrial, Offices, Police Stations, Public Schools, Public Works, Shopping Centers, Skilled Nursing, Tract Housing, and Theme Parks.

Professional Consulting Services

Mediation

Michael Poles is a "Non-Attorney Mediator." He received his mediation training at the Straus Institute for Dispute Resolution at Pepperdine University School of Law and the Institute for Mediation Studies. Michael has served as a member of the Court A.D.R. Panel of Mediators with the Los Angeles County Superior Court Alternative Dispute Resolution Program and is currently providing private mediation services.

Michael expertly evaluates the technical aspects of the issues embroiled in a construction/real estate dispute and as a result of his technical expertise; the parties are facilitated in reaching an expedient outcome, with a high settlement rate.

Litigation Issues

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Professional Associations: Michael S. Poles

American Bar Association

Diplomate of the American Board of Forensic Engineering and Technology

American College of Forensic Examiners International

American Society for Testing and Materials

American Institute of Architects/Los Angeles

Beverly Hills Bar Association

California Dispute Resolution Council

Consumer Attorneys of California

Consumer Attorneys Association of Los Angeles

Construction Specifications Institute

Forensic Expert Witness Association

International Code Council

Los Angeles County Bar Association

Los Angeles Construction Inspectors Association

National Fire Protection Association

National Forensic Center

Navy League of the United States | Beverly Hills Council

Southern California Mediation Association

Structural Engineers Association of California

West Hollywood Chamber of Commerce
Biography: Michael S. Poles

Michael Poles joined his father's construction business in 1962 and built commercial, industrial and residential projects with his father for many years.

Later, he conducted continuous inspections of high-strength reinforced masonry and reinforced concrete work as a "Special Inspector/Deputy Building Inspector" during the course of construction for hundreds of projects. Michael was the Inspector of Record (I.O.R.) for numerous hospital construction projects and was registered as a Class "A" Construction Inspector for health facilities by the Office of Statewide Health Planning and Development (O.S.H.P.D.), as well as for public schools and state owned facilities registered by the Division of the State Architect (D.S.A.).

Michael Poles was educated at the United States Navy Hospital Corps School at the Balboa Naval Hospital, San Diego, California and served in the United States Navy as a Hospital Corpsman. He majored in pre-med at Santa Monica College and at U.C.L.A. He later attended courses of study at Los Angeles Trade Technical College and at Lumblau Real Estate School. In addition to his litigation support as a construction expert, Mr. Poles is actively practicing mediation. Michael received his mediation training at the Straus Institute for Dispute Resolution at Pepperdine University School of Law and the Institute for Mediation Studies and maintains a high level of continuing education.

Michael has served as a member of the Court A.D.R. Panel of Mediators with the Los Angeles County Superior Court Alternative Dispute Resolution Program and is providing private mediation services.

Michael is currently active with the Navy League of the United States and is a member of the Board of Directors of the Beverly Hills Council, where he serves as the Public Affairs Officer (P.A.O.) and Web Master.

Conclusion

We appreciate your consideration of our services and look forward to being of service to you and your clients in the future. Associates’ curriculum vitae, references and our fee schedule are available upon request ... and referrals would be sincerely appreciated.

Links to Additional Material

Articles: Michael S. Poles, GC, CM, RCI, DABFET, ACFE

Curriculum Vitae: Michael S. Poles, GC, CM, RCI, DABFET, ACFE

Licenses and Certifications: Michael S. Poles, GC, CM, RCI, DABFET, ACFE