

Are You Prepared for When an Attorney Calls?

When first opened, I had envisioned Rappoport Development Consulting Services LLC providing commercial consulting services to the home building industry. For decades, I worked for private and public homebuilders and master community developers as a land development specialist. I opened RDCS LLC when the recession closed down the homebuilding industry in 2008. At that time, the marketing plan was to attract developer and homebuilder clientele, assuming they had fired most of their employees.

That strategy proved ineffective as the recession was far more severe than anticipated. When an attorney from a previous employer suggested my experience and education qualified me as an expert witness, I considered adding litigation support and expert witness consulting services within my areas of expertise. I spent a great deal of time learning about what qualifies one to become an expert witness, joined FEWA (Forensic Expert Witness Association), attended workshops, spoke with several attorneys about my fields of expertise and expended thousands of dollars retooling the company website to display litigation support and expert witness consulting services along with commercial consulting services.

I was somewhat taken aback when the first attorney called! With all the time I spent analyzing, marketing and preparing myself to provide expert services, I had failed to consider a process for screening potential attorney clients when they called to discuss their case on the telephone. As I listened to the attorney's theory about how the accident occurred, I needed a format to sift out the facts from the opinions espoused by the attorney. I was uncertain if the attorney was telling me factual information or his version of the facts.

We all know the importance of making a good first impression, especially with an attorney who is listening to every nuance and bit of information you mention over the telephone. Not wanting to lose a potential client due to lack of preparedness, I developed a verbal interview script employed during the initial conversation with an attorney. The purpose of the script is to organize my thought process, conduct a thorough interview and uncover enough relevant facts to form a preliminary expert opinion and whether that opinion will assist the attorney.

I find it necessary to form an expert opinion during the very first conversation. The opinion formed may or may not support the position of the attorney. We strive to avoid accepting a case that discovery later uncovers facts that do not support the attorney you work for, that is why the initial attorney conversation must be in depth, comprehensive and factual. Attorney opinions are not facts for an expert to base their impartial opinion on.

Like many FEWA members, I have found the monthly dinners, guest speakers, and workshops very relevant and highly educational. Networking with other members provided helpful information that answered many questions on how to provide professional expert services. By incorporating member suggestions combined with the specific and technical aspects of my area of expertise, I developed a verbal script to use during initial attorney contact.

Early on, I learned the importance of active listening and allowing the attorney to fully describe the case and history without interruption. Questions developed while the attorney spoke were written down and returned to after the attorney was finished speaking. I discovered allowing the attorney to speak uninterrupted sometimes provided insight to the strength of the case and the attorney's belief or understanding of the facts.

Once the attorney completes their presentation, I begin my questioning, establishing the basic facts and time frame of the accident and case. Many of my cases involve trip and fall accidents due to landscape, tree, plant, line of sight, irrigation or construction hazards. Therefore, gaining factual information about the accident during the telephone discussion is essential to form an opinion.

Basic questions include the date of the accident, time of day, weather and climatic conditions, site conditions, visibility and obstructions. What was the condition of the site, the paved surfaces, was the irrigation operating, was there standing water? Similarly, every expert witness in their field of expertise will have their own industry related questions to seek out answers to form an opinion.

The telephone conversation should clarify fact from opinion. When the facts are not always clear, attorneys may form their own hypothesis or opinion on how an accident happened. I accepted a case because the defendant attorney sold me on his theory about why a plaintiff tripped over a steel tree grate located in a busy pedestrian sidewalk. The tree had been removed, the hole filled in with dirt, the tree grate placed over the dirt. Three weeks later, a pedestrian caught their foot inside of circular opening in the grate where a tree should have been. The plaintiff went flying, landed and suffered severe injuries, resulting in a lawsuit against the tree company that removed the tree and the management company that hired the contractor and directed the work.

During our initial telephone conversation, the defendant attorney (my future client) told me when the tree was removed it was not replaced, instead the hole was filled in, the dirt was compacted up to the grade of the grate, but over time the grade somehow settled resulting in a gap that caused the accident. His theory was winter rains had caused the soil to erode away, resulting in the uneven grade, therefore his clients were not responsible and it was an act of God. He claimed to have NOAA (National Oceanographic and Atmospheric Administration) data supporting his theory of heavy rains. At the time, it sounded

like a reasonable theory, rather than ask for pictures of the site, I allowed myself to agree with his theory and accepted the case.

Photographs later depicted moist soil with numerous footprints through the hole in the grate. It was obvious pedestrian foot traffic compacted the soil, not winter storms. I had to advise the attorney his theory was incorrect and he should seek a settlement, as my expert opinion would not support his theory, but rather negligence on the part of one or both of his clients. Fortunately, the case was settled without further incident.

That experience taught me the importance to separate fact from opinion or theory. I learned to question attorneys during telephone calls and play the role of devils advocate. They usually appreciate hearing technical information that might impact their case, whether positive or not. In certain instances, you might be doing the attorney a favor by warning them off of a case.

If I'm still uncertain about the facts of a case, I'll ask for pictures or important documents be emailed to review in order to form an opinion before accepting a case. I found this very helpful and it has made an enormous difference in understanding the dynamics of a case and developing an impartial opinion. You might also find an attorney will pay you as a consultant to review the information prior to determining your opinion. I had an attorney call; he wanted to know whether a tree branch could droop down during a rainstorm. His client encountered a tree limb blocking an exterior stairway, while trying to avoid the branch, the person fell down the stairs. He wanted to send me pictures and pay my time to review and offer an opinion because he was unsure about the validity of the case and whether his client claims made sense. We did just that, I charged him for an hour or two of consulting time and was able to render an opinion that turned into a case that eventually settled in mediation.

Landscape, arboriculture, horticulture and land development are fields many attorneys are unfamiliar with. During our initial conversation, their lack of technical knowledge becomes evident. It is incumbent for me to provide the technical context to enable them to understand the facts, yet at the same time, not expose to much information to an attorney who is simply on a "fishing expedition". This is a great opportunity for an expert to highlight their technical proficiency and showcase how their abilities may benefit the attorney. Provide enough information to impress, not too much where you give away your services for free.

In conclusion, preparation is paramount to success. You only have one first time opportunity to impress a potential client with your knowledge and professionalism. Make the most of it, be prepared!

