

Chapter 2 The Six Golden Rules of Marketing an Expert Witness Practice

2.1 Introduction and Executive Summary

- Nobody can tell you with certainty how effective any technique will be in marketing your expert witness practice.
 - What works for other experts may not work for you and vice versa.
 - There are no hard formulas for marketing—it's not an exact science.
- Try different techniques and see what works best for you.
 - Testing involves not just trying new techniques, but tweaking existing ones.
- Track your results.
 - Make it a point in every case to press counsel for precise information on how she found you.
- Be patient and persistent.
 - Marketing techniques often take time to pay off.
 - Do not quit too early.
- Repeat what works for you, discontinue what doesn't.
 - Be open to trying new methods as technology evolves.
- Find the time necessary to devote to business development.
 - One of the biggest mistakes most experts make is not devoting sufficient time to business development.
 - A small amount of time regularly devoted to business development can pay large dividends.

2.2 Rule 1: Nobody Can Tell You with Certainty How Well Any Marketing Technique Will Work for Your Expert Witness Practice

Nobody is capable of telling you exactly what will work to market your expert witness practice and guarantee results. There are many reasons for this. For example, expert witnessing is a somewhat unique service to

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market. Expert witnessing services cannot be successfully marketed using many of the tried and true techniques that work with more traditional products and services. A reason for this is that expert witnesses are subject to cross-examination on all of their marketing materials and techniques. Anyone who does not understand the subtleties and pitfalls of expert witness marketing is in no position to give you sound advice.

For example, many years ago we saw what was probably one of the most egregiously inappropriate efforts to market an expert witness practice. An expert was bidding his services on eBay. Here's verbatim (only deleting the expert's name and contact information) what the eBay posting said:

Example 2.21: The epitome of why some traditional marketing techniques are inappropriate for expert witnesses

EXPERT WITNESS SERVICE, MEDICAL MALPRACTICE. I am a Registered Nurse. I am also an Attorney practicing Medical malpractice law in MA. I am an Expert Witness for Medical Malpractice Claims, law suits or cases. I am available to be your Medical Malpractice Expert Witness anywhere in the USA. A Medical Malpractice Witness is one who reviews your medical records, your medical malpractice facts and situation and determines if there is a Medical Malpractice that happened to you. I determine that you suffered harm, the harm of Medical Malpractice by your physician, doctor, hospital, clinic, HMO, outpatient serice or clinic, or any other health care provider that provided health care to you. Once I determine that you are suffered this medical malpractice harm, I provide an Opinion as a Letter of Opinion for you that assists you to begin your lawsuit against the health care provider(s) that caused you your harm. I work with you, your lawyer or both of you. If you win this ebay auction you win one hour of free Expert Witness service from me, in that I will review your medical records for one hour for free. Or, you can consult with me about your case or situation for one hour for free. If additional hours are needed, I will provide them for a modest fee of only \$24.00 an hour. This is a great savings for you as Expert Witness fees are almost always over \$100.00 an hour. My Expert Witness services are recognized throughout the USA, my Letter of Opinion is recognized throughout the USA. My Letter of Opinion that would state that you are in fact suffered the medical malpractice harm, what it is, etc. will bolster, improve and strengthen your medical malpractice case, and in most cases provide the

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criteria to enable you to file your lawsuit. You need Expert Witness Testimony in almost all cases to win your case. I am an Attorney or Lawyer in the state of Massachusetts, (MA) and am available to provide legal services to you for issues in MA. I practice and am available to you for Medical Malpractice, Health and General Law issues. Anyone may win or buy this auction for this one hour service, you can purchase it as a gift for someone who may need it, or to explore your questionable situation. My phone number is: xxx-xxx-xxxx. If you want to mail me materials to look over, mail to me at:_____. I look forward to hearing from all of you as needed. I would like to reach out and help all of you in need. Thank you.

Analysis and Discussion: An ad like this is Kryptonite. No lawyer in his right mind would hire an expert who marketed himself in this way because the ad would be brought up during cross-examination to diminish the expert. There are many traditional marketing methods (such as sales, coupons, eBay, and infomercials) that are totally inappropriate for expert witnesses.

Example 2.22: Coupons for new clients

Another expert witness sent out coupons to prospective new clients offering \$100 off his bill for the first forensic assignment he was hired for.

Analysis and Discussion: This is another example of a traditional marketing technique that is inappropriate and very ill-advised for an expert witness. The opposing lawyer will bring up the \$100-off coupon during cross-examination to destroy the expert's credibility and effectiveness.

Example 2.23: Business/tip card

Another expert we know put on the back of his business card a "tip calculator" you can use when in a restaurant.

Analysis and Discussion: This may be effective for a vacuum cleaner salesman, but it is wholly inappropriate and counterproductive for an expert witness.

As we like to say, when it comes to marketing, there is simply no place you can go and look up "the answer." What works very well for some experts may work very poorly for you. What has worked for you in the past may no longer work. In sum, there are no guaranteed answers in marketing, only informed choices.

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Here's a good example of what we mean. We recently surveyed over 250 expert witnesses regarding their expert witness marketing.¹ As part of the survey we asked the following two questions:

1. Please briefly describe the single *most* cost-effective thing you did in the last 36 months to market/promote/develop your expert witness practice.
2. Please briefly describe the single *least* cost-effective thing you did in the last 36 months to market/promote/develop your expert witness practice.

The results of these two survey questions are highly instructive. What was so instructive was that the same techniques appeared as responses to both questions. This meant, of course, that for some experts a certain technique was fantastic. For others, that same technique turned out to be a disaster. For example, some experts listed certain places to advertise as the best thing they did, while others listed *the same advertising medium* as the least effective thing they had done.

There are many potential reasons for the above phenomenon. First, not all experts are created equally. Some expert marketing may not work simply because the expert or the expert's service is not in demand. For whatever reason (and there can be many, please see Chapter 7), the expert in question is not attractive to potential clients. Other reasons could include a poorly executed marketing campaign and a failure to be persistent. The lesson is that just because a technique has worked for a colleague, it in no way assures that that technique will work for you.

2.3 Rule 2: Try It Out and See What Happens

Keeping in mind Rule 1, the only way to determine if a particular marketing technique will work for your expert witness practice is to try it out. The economics of expert witness marketing strongly support an approach of aggressive experimentation. Each new client an expert

¹ For complete results of this survey, please see Appendix A.

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witness earns can be extremely valuable.² Combine this fact with the reality that many, if not most, expert witness marketing techniques are relatively inexpensive (e.g., a listing in an expert witness directory may cost less than an hour's billing) and you can readily see that you have very little to lose and much to potentially gain by aggressively testing new techniques.

Testing should always include tweaking existing techniques. For example, before you conclude that your web page doesn't work, try redesigning it and working on search engine optimization. In a similar vein, before you conclude that giving presentations to groups of lawyers doesn't work for you, try different groups of lawyers and different topics. In sum, the best practice for testing should include variations of the more general marketing methods described in this book. You will find that seemingly minor tweaking will often yield significantly better results.

2.4 Rule 3: Track Your Results

Tracking is essential to help determine which marketing techniques are working and which are a flop. If you are not going to track your results, you might as well not spend time or money on marketing. Unfortunately, we have found that a large minority (over 20%) of experts do not track their referrals in any way.³

We see the result of this failure to track very often. The authors' company, SEAK, Inc., has been publishing an online and print expert witness directory since 1999.⁴ We strongly believe in standing by our products and services. As such, we offer a somewhat unique money-back guarantee. An expert can place his listing in our directory and, if, within 8 months he is not satisfied, he can get all his money back.

² For more on how much a new client is worth, please see Chapter 4.

³ See Appendix A, Section Q.

⁴ SEAK *Expert Witness Directory* (www.seakexperts.com).

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We are very proud to say that we traditionally receive refund requests from less than 2% of our listed experts. When we receive a refund request, oftentimes the conversation goes something like the following:

Example 2.41: Expert believes marketing technique is not working, but has no supporting data

Expert: Alex, I would like to cancel my listing. I haven't gotten any referrals from it.

Author: I am very sorry to hear this. Can I ask you a couple of questions?

Expert: Sure.

Author: Do you ask your new clients how they found you?

Expert: No, am I supposed to?

Author: How many new matters did you start this year?

Expert: About 10–12.

Author: Do you know how those 10–12 people found you?

Expert: Some of them, yes, they volunteered that, others, no.

Author: How much is a new case worth to you?

Expert: On average, \$10,000 or so.

Author: Well, then, how do you know the directory hasn't worked for you?

Expert: I guess I can't be so sure then.

Author: OK, I will process the refund if you like, but without tracking your referrals you may be cutting out tens of thousands of dollars of your referral base. I would suggest you give it some more time and start tracking your results.

Expert: I agree. I'll start tracking and see how things go for a bit.

The simplest way to track your referrals is to ask retaining counsel how they found you. *Asking how retaining counsel found out about you should be a routine and essential part of your protocol/checklist for accepting new cases.* If you use a new case intake sheet or form, this question should be at or near the top of your list. When this question is asked, you may get a vague answer such as “the Internet.” Because the information of *exactly* where and how you are found is so important, you should gently but firmly push to find out that information.

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Example 2.42: The wrong way to track your cases

Attorney: I'd like to discuss retaining you to assist me in some litigation.

Expert: Great. Can I ask how you found me?

Attorney: Online.

Expert: Thanks. How can I help?

Example 2.43: The right way to track your cases

Attorney: I'd like to discuss retaining you to assist me in some litigation.

Expert: Great. Can I ask how you found me?

Attorney: Online.

Expert: Can you be more specific? Exactly what site did you use?

Attorney: I'm sorry, when I Googled the issue in my case, your article on the topic came up on your website.

Expert: Thanks. How can I help?

Asking is, of course, the simplest and most common way to track your referrals. There are others, however. For example:

- The analytics program for your website (e.g., Google Analytics) should tell you where people who visited your website came from. If you don't have analytics on your website, talk to your web developer or hosting company. Analytics are common and inexpensive. They are generally not difficult to set up and use.
- Setting up a new e-mail address or telephone for each online directory you list yourself in. You will then be able to tell from what number was called or which e-mail address was used where you were found.

It is very helpful to maintain an internal running list of all of your cases from the last four years or so and how you received them. Many experts do this on Excel. When we consult with a client on how they can build their expert witness practice, we always ask them to compile such a list. The list itself should be used for analysis, reflection, and planning as described in Section 2.6.

2.5 Rule 4: Be Patient, Be Persistent, and Don't Give Up Too Easily

Sometimes marketing works almost like magic. You do some marketing and bang, you get a good chunk of business immediately. Although we'd like this to be the case all the time, there is often a much greater lag time to marketing. *For a true test of what is and is not working you must be patient and persistent.*

As an example, a few years ago a certain expert witness listed himself in SEAK's *Expert Witness Directory*. He listed himself on a Monday. That Wednesday, we received the following rather curt e-mail:

"I am in your Directory but have not received any cases. What is the problem?"

We figured it was a mistake and that he had mixed us up with another directory he was listed in. We were wrong. Every few days for the next month we received increasingly cold e-mails from this expert, such as:

"Where are my cases?"

"I sent you \$395. I was expecting cases and have received none."

"Please advise when I will be receiving cases."

We came close to preemptively removing this person from our directory as he was not happy, ill-informed as to how marketing works, appeared nearly impossible to please, and was a distraction. We were just about to do this about a month after he placed his listing, when the e-mail complaints stopped altogether. He's been in our directory ever since (having renewed several times), and we haven't received any further complaining e-mails.

What had happened was quite obvious. It just took a little time for the directory to start working for him. A lag between marketing attempts and securing new business is very common in expert witnessing. Keep in mind that attorneys need new cases before they can hire an expert. They can't and won't hire you until a case comes along.

Here's a typical scenario that we've seen played out many times. An expert calls us after seven months or so and requests a refund because he

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hasn't gotten any cases to that point. We suggest that he give it more time, but he still wants a refund. We process the refund. A few weeks later we get an e-mail:

Alex, you were right! I just got a case from the Directory. I should have been more patient. I am sending you back my refund and including funds for a renewal for next year. Thank you.

The lesson is clear. Be patient and persistent. Just because you give a talk at a CLE conference and haven't gotten any cases from that talk yet doesn't mean that you should never speak again for a group of lawyers. The same goes with networking, writing articles, maintaining a web page, and the other marketing techniques explored in this book. Before you conclude that a technique is ineffective, give it a very thorough try over a good period of time. There is simply too much money at stake to prematurely give up on a technique that may turn out to be very effective.

2.6 Rule 5: Repeat What Works, Discontinue What Doesn't Work, and Keep Trying New Methods and Techniques

It is a best practice to periodically sit down and analyze how your various marketing efforts are working. Techniques that work should be expanded. For example, if writing an article for a legal publication generates 2–3 good new cases, you should consider publishing additional articles. Conversely, if your ad in the local bar journal had run for over a year and you did not receive one phone call, you should consider either tweaking the content of the ad, running the same ad in a different publication, or discontinuing the ad.

Always remember that expert witness marketing is a dynamic process. New techniques continually emerge and formerly effective techniques may become less effective. Much of this has to do with technology and the way people do business. For example, when we started helping expert witnesses in 1990, print advertising was king. Today, print is in decline as lawyers are not reading print publications nearly as much. The Internet is now king. Most recently, professional social networking through

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LinkedIn has emerged as a viable expert witness marketing technique. Nobody can predict what new techniques will emerge in the future and what old techniques will lose their effectiveness. The lesson is clear. Keep testing, keep experimenting, and keep plugging away.

2.7 Rule 6: Find the Time to Market Your Expert Witness Practice

Perhaps the biggest and most common marketing mistake we see experts make is to not devote an appropriate amount of time to marketing their practices. In fact, our research has shown that a majority of experts devote less than 10 hours of their time per year to marketing and business development. Fully 17% spend no time whatsoever on marketing.⁵

These are jaw-dropping statistics. Expert witnesses commonly earn from tens of thousands to hundreds of thousands of dollars or more each year from their forensic practices. The thought of a majority of them spending less than ten hours per year on business development is shocking.

We see this happen all the time. A common occurrence is that an expert will hire us to consult with them on how to grow their expert witness practice. We receive a sizeable retainer and then request information from the expert so that we can holistically analyze their current practice. The documents never arrive. We sometimes have to follow up four or five times to prod the expert client to send us the requested documents. The problem invariably is that the expert is too busy with other activities—many of which the expert should not be involved with.

Marketing is often given the lowest of low priorities by an expert. This may be because many experts don't know how to market their practices or are uncomfortable with the process. This is a regrettable situation, however, because experts who devote more than 20 hours per year or budget more than \$1,000 to business development report by a ratio

⁵ See Appendix A, Part II, Section N.

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of more than 6:1 that this minimal investment of time and money is worthwhile.⁶

Experts should *make* the time to devote to business development. This is very likely to pay off. If time is an issue, experts should leverage themselves by hiring others to do some of the things that they had been doing personally—be it cutting their lawn, sending out invoices, organizing records, or the like. By devoting even two hours per month to marketing and business development, experts should be able to easily return their investment of time many times over.

⁶ See Appendix A, Part II, Section P.