

GUIDE TO WORKING WITH EXPERTS

- **PRELIMINARY CONSIDERATIONS**

- Review your case, client's records (medical, educational, etc.), and discovery prior to contacting experts. This will help you determine exactly what type of expert assistance is needed and have a more productive conversation with an expert.
- Do not engage a mental health expert before obtaining substantial social history records unless the client is floridly psychotic upon your entry into the case. See IDS Policy on the [Effective Use of Mental Health Experts in Potentially Capital Cases](#).
- Educate yourself on the issues. Consult the [IDS Forensics website](#) for information on topics of forensic science, such as DNA, firearms, fingerprints, death investigation, etc. Scholarly articles are available such as Google Scholar and [PubMed](#).
- Do you need an expert?
 - Is the forensic evidence adverse to the defense theory of the case?
 - Do you need evidence re-tested?
 - Are you critiquing the state's testing of the evidence?
 - Even if the State is not using an expert, consider whether there are affirmative uses of experts that would support your theory of the case, such as crime scene experts, use of force experts, or mental health experts.

- **FINDING AN EXPERT:**

- Don't wait until the last minute – your desired expert may not be available. Any expert will need time to review your case prior to forming an opinion.
- Consider consulting with Sarah Olson, Forensic Resource Counsel or the Elaine Gordon, Trial Resource Counsel for additional ideas about what type of expert to use.
- Know what particular expertise you need before you start making phone calls: i.e., rather than looking for a "DNA expert," consider whether you need an expert on DNA mixtures, an expert who can challenge contamination, or an expert who can challenge the statistical computation.
- Consider the role of the expert: Do you need an expert to assist in evaluating the quality of the evidence? To explain the science to you or to the jury? Do you need an expert to develop mitigation evidence or to establish a defense such as self-defense or diminished capacity? Will assistance require access to a laboratory? Can a professor or academic fulfill the role or do you need a practicing analyst or scientist? Is the expert willing to testify?

- **RESEARCH THE EXPERT:**

- You should research your potential expert as thoroughly as you would research a State's witness that you are preparing to cross-examine.
- Review their CV. Do not assume that just because the expert has been used frequently that he/she has been properly vetted.
- Utilize disciplinary boards if available. If an expert lists a particular license or certification, see if that organization posts disciplinary information online.
- Ask the expert about any certifications or professional qualifications attempted—has the expert taken any certification exams or other professional exams that he/she has not passed? This [website](#) can be used to check to see whether an MD is certified in a particular specialty.
- Seek references on listserves, with the IDS Forensic Resource Counsel, NACDL Resource Center, American Academy of Forensic Sciences (AAFS), other lawyers, other experts and competitors, universities, and publicly-funded laboratories.
- Search LexisNexis and/or Westlaw for cases in which the expert testified.
- Additional information on how to research an expert online is available [here](#).

- **GUIDE TO YOUR FIRST CONVERSATION WITH EXPERT**

- Be able to explain to the expert what work you need performed, including specific [referral questions](#) you would like addressed if working with a mental health expert. Never ask a mental health expert simply to “evaluate” your client without providing specific guidance. Do not assume that the expert already knows what constitutes a potential defense or mitigating factor. Sometimes an expert who has not received proper guidance will tell an attorney that his or her evaluation has turned up nothing useful, when in fact the expert simply does not have the legal expertise to know what is useful and what is not.
- Get the expert to provide you with a copy of his/her CV.
- Discuss with the expert anticipated hours of work needed, any re-testing needed, any travel required in order to prepare a request for adequate funding. Discuss [AOC's rate schedule \(see p. 2\)](#) and prepare justification if the expert requires a deviation from the rate schedule.
- Discuss any potential conflicts with the expert due to co-defendants, scheduling, or any other professional or personal matter that would adversely affect the expert's work/testimony in the case.
- Verify that your expert will be able to testify. Do not assume that testimony will not be needed or promise your expert that testimony will not be needed.
- Your expert will need lab reports and the underlying data in order to analyze the evidence.
- Communication

- Can they explain their conclusions clearly and understandably?
 - Consider non-verbal communication: arrogance, bias, appearing defensive, organized, prepared, etc.
- Considerations to discuss with expert(s)
- Position currently held.
 - Description of the subject matter of the expert's specialty.
 - Specializations within that field.
 - What academic degrees are held and from where and when obtained.
 - Specialized degrees and training.
 - Licensing in field, and in which state(s).
 - Length of time licensed.
 - Length of time practicing in this field.
 - Board certified as a specialist in this field.
 - Length of time certified as a specialist.
 - If certifications/proficiency tests/etc have been attempted, history of results.
 - Positions held since completion of formal education, and length of time in each position.
 - Duties and function of current position.
 - Length of time at current position.
 - Specific employment, duties, and experiences (optional).
 - Teaching or lecturing in the relevant field, dates and location of teaching.
 - Publications in this field and titles.
 - Membership in professional societies/associations/organizations, and special positions in them.
 - Requirements for membership and advancement within each of these organizations.
 - Honors, acknowledgments, and awards received by expert in the field.
 - Who is considered "the best" in the field?
 - Number of times testimony has been given in court as an expert witness in this field. (Case names and transcripts, if available.)
 - How has the expert's testimony been treated in the past? Did the expert appear balanced, knowledgeable, and credible? Has the expert ever not been qualified as an expert? Why?
 - Availability for consulting to any party, state agencies, law enforcement agencies, defense attorneys.