

HOW TO DRAFT A POWERFUL, PERSUASIVE, AND UNDERSTANDABLE EXPERT WITNESS REPORT

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This white paper provides succinct advice regarding expert witness report writing. It is designed for both novice and experienced expert witnesses. The information herein has been adapted from and is an abridged version of Chapter 4 in the text, [How to Write an Expert Witness Report](#) (SEAK 2014).

State Things Clearly and Directly

Use clear and direct language. An expert's role is to state and provide an opinion, not to hide one. Avoid rhetorical questions and less than artful sentences.

Do Not Guess

Do not guess. Guesses undermine the credibility of the expert's report. Counsel will use guesses against the expert.

Practice Pointers

- *Every word in an expert witness report matters. Choose each word extremely carefully and try to think of how an aggressive cross-examiner might try to use your own words against you at deposition or trial.*
- *Avoid unreliable methodologies. When an unreliable methodology is used, your opinion may be excluded under Federal Rule of Evidence 702 and the Daubert line of cases. Even if your opinion is not excluded, where unreliable methodologies are employed your opinion can be easily challenged on cross-examination.*
- *Make clear to the reader where you obtained each fact and piece of data. This can be done in footnotes or by direct references in the text of your report, such as, "according to the owner's manual" or "Mr. Jones testified at his deposition that," etc. Doing so will show the reader that you didn't pull facts from thin air and will help you testify at deposition or trial.*
- *A careful and thorough investigation is a prerequisite for a persuasive report that will stand up to challenge. The jury is probably not going to understand everything you have done, but they will certainly understand an expert witness who was lazy, sloppy, or who cut corners.*
- *Document the justification for each assumption you make.*

- *Beware of guesses regarding estimated costs and values. Experts are best served when they have objective and substantial justification for their financial estimates. Pure guessing in terms of costs or value can have an extremely detrimental effect on the credibility of the expert and her report. Many times, making any estimate as to costs or value is outside of the expert's true area of expertise.*

Be Extremely Cautious When Using Absolute Words Such as “Always” and “Never”

The use of absolute language such as “always” or “never” in an expert report can be extremely problematic. Use of absolute language leaves the expert wide open to damaging cross-examination. When absolute language is used, all the cross-examiner has to do is to present the expert with a single counterexample where the expert's statement is incorrect. Once this is established it will then also be established that the expert was either exaggerating or flat out wrong when the absolute language was used. In either event, the expert will lose credibility.

Avoid Vague, Equivocal, and Uncertain Conclusions and Bases

Expert reports should be written with precision and based upon a solid foundation. Expert opinions within expert reports should be expressed to a reasonable degree of certainty unless a different standard is being utilized in the case at hand. The courts continue to reject reports where the expert's opinion is expressed vaguely, equivocally, or with insufficient certainty.

Practice Pointer

- *Beware of using hedge words in your report that suggest uncertainty, such as, “it seems,” “could,” “apparently,” and “I believe.”*

Do Not Use Emphasis When Expressing Findings or Conclusions

Experts often use various methods such as emphatic language, exclamation points, bolding, italics, and capital letters to emphasize their findings or conclusions. A well-written report will not need such emphasis. A seasoned trial attorney may use an expert's use of emphasis against that expert. The trial attorney may attempt to show that the expert's use of emphasis is a sign of bias.

Practice Pointers

- *Before you start writing, make sure you understand the legal standards that apply in the case. Don't feel the need to express your opinions in a way that goes beyond what needs to be proven. The stronger your words, the more difficult they will be to defend (e.g., “thoroughly derelict” instead of “below the standard of care”).*
- *Use of underlining, boldface, and the like risks making the expert sound like an advocate and may diminish the expert's credibility.*

Avoid the Passive Voice—Use the Active Voice

Experts should write their reports in the active as opposed to the passive voice. Sentences that use the passive voice are more likely to be ambiguous. Sentences that use the passive voice also tend to sound awkward. Active voice sentences are clearer and sound more persuasive.

Use Precise Language

Precise language should be used in expert reports where possible. The use of precise language will make the report more persuasive as the expert will appear to be both detail-oriented and on top of the facts. On the other hand, the use of imprecise language will make the expert report less persuasive.

Practice Pointer

- *Be as precise as possible when documenting measurements. Precision builds persuasiveness. Imprecision sows doubt in your investigation, thoroughness, and conclusions.*

Use First-Person Singular to Refer to Yourself

Experts should use the first-person singular when referring to themselves. Some experts use the third person when describing their qualifications in a report. Because this is awkward and can be used to make the expert sound pompous or silly, avoid referring to yourself in the third person. Jurors do not commonly refer to themselves in the third person and may not relate well to someone who does.

Some experts use the word “we” when describing an investigation or conclusion that only they were involved in. This is known as the royal “we” and experts should avoid it. The royal “we” is not commonly used and can make the expert look silly, pompous, or even dishonest. Unless more than one person was involved in forming the opinion, reports should be written in the first-person singular.

Practice Pointer

- *Avoid the royal “we.” If you worked on the case alone, use the word “I.” Normal people usually don’t refer to themselves as “we.”*

Use Confident Language and Avoid Hedge Words

The purpose of an expert report is to communicate the expert’s findings and opinions. Experts should state these findings and opinions in a clear, confident manner. Hedge words, such as, “it seems,” “could,” “apparently,” and “I believe” indicate that the expert does not have confidence in her findings and opinions. They may even make the expert’s report insufficient as a matter of law. Use of such hedge words will decrease the persuasiveness of the expert’s report.

Practice Pointers

- *The reader should not be expected to have confidence in a report that employs hedge words and other language suggesting a lack of confidence.*
- *Be very careful when using “it seems,” which is a hedge term suggesting lack of confidence.*
- *Do not preface your opinions with “I believe.”*
- *Avoid “apparently.” Consider instead stating the fact you are assuming to be true and then citing the source or reason for your assumption of the fact in question.*
- *A well-written expert report will contain explicit justification for each and every position taken in the report.*

Define Technical Terms and Jargon

Expert reports are designed for a lay audience. To make reports easy to understand and read as persuasively as possible, experts should define technical terms with which the lay reader may be unfamiliar. Experts should also spell out all acronyms. This will make the report much more valuable and bolster the report’s effectiveness. Forcing the reader to look up technical terms and acronyms makes the report more difficult to read and understand.

Practice Pointer

- *Spell out all acronyms. Remember that your report is targeted toward lay people.*

Use Objective Language and Avoid Subjective Characterizations

Expert reports should use language that is as objective as possible. Experts should avoid subjective characterizations. Most commonly, experts add characterizations to describe their investigations, findings, and conclusions. Such subjective characterizations seldom add anything of substance to the report and make the report less, as opposed to more, credible. Subjective characterizations provide fertile ground for cross-examination.

Practice Pointers

- *Avoid describing your work as “complete,” “thorough,” “exhaustive,” and the like. Such subjective terms can make you an easy target on cross when opposing counsel points out all the things you didn’t do as part of your “complete and thorough” work.*
- *Before finalizing your report, go through it and remove subjective characterizations and speculation.*

State Your Opinion but Don't Argue Counsel's Case

The tone of the expert report should be formal and objective. Avoid argumentative language. Argumentative language makes the expert appear as though she has an interest in the case. This will result in a loss of credibility.

Practice Pointer

- *Avoid argumentative language. Your report should not read as if it were written by a partisan advocate.*

Additional Resources from SEAK, Inc. – The Expert Witness Training Company

- For more detailed information on report writing, please consult SEAK's highly-acclaimed text, [*How to Write an Expert Witness Report*](#) by **James J. Mangraviti, Esq., Steven Babitsky, Esq., and Nadine Nasser Donovan, Esq.** [*How to Write an Expert Witness Report*](#) contains 17 complete model reports.
- SEAK has been conducting regularly scheduled [training seminars for expert witnesses](#) since 1990.
- For those seeking the highest level of assistance SEAK also offers [1-1 report writing training and assistance](#). For more information, please call Jim Mangraviti at 978-276-1234 or email him at jim@seak.com.