Introduction

 Look at

- Role of expert
- Recommended practices for consultants acting as experts in dispute resolution
- How to find & hire experts
- Experience & traits to look for
- Case management, level of expert involvement & typical tasks
- How to control costs
In claims resolution

- Document organization
- Claim analysis
- Assist counsel with discovery & strategy
- Assist client & counsel with negotiation, mediation, arbitration or litigation
Recommended Practices for Design Professionals Engaged as Experts in the Resolution of Construction Industry Disputes

- Published by American Society of Civil Engineers (ASCE)
- 1988
Endorsing Organizations

- ASFE/The Association of Engineering Firms Practicing in the Geosciences
- American Academy of Environmental Engineers
- American Association of Cost Engineers
- American Association of Engineering Societies
- Now, AACEI
- American Association of Engineering Societies
- American Congress on Surveying & Mapping
- American Consulting Engineers Council
Endorsing Organizations

- American Council of Independent Laboratories
- American Institute of Architects
- American Institute of Certified Planners
- American Nuclear Society
- American Public Works Association
- American Society of Agricultural Engineers
- American Society of Consulting Planners
- American Society of Landscape Architects
Endorsing Organizations

- American Society of Mechanical Engineers
- American Society of Safety Engineers
- American Tort Reform Association
- Association of Energy Engineers
- Association of Engineering Geologists
- California Geotechnical Engineers Association
- Illuminating Engineering Society of North America
Endorsing Organizations

- Interprofessional Council on Environmental Design
- National Academy of Forensic Engineers
- National Society of Professional Engineers
- Structural Engineers Association of Illinois
- Washington Area Council of Engineering Laboratories
Do Organizational Endorsements Matter?

If you’re a member of an organization that has endorsed these “Recommended Practices”

- You have agreed to abide by them

If you have **not** conformed

- Professionalism called into doubt
- Credibility & motivation questioned
- Testimony discredited
Recommended Practices

Expert must avoid conflict of interests & appearances of conflict

- Opinion may be discredited
- Should reveal all past relationships
- Let client & attorney decide if conflict or appearance of conflict exists
Recommended Practices

- Expert should take assignment only if qualified
- Expert should rely on others qualified in areas beyond own expertise
  - Know limitations
  - Report need for other expertise
  - Refuse to be “pushed” beyond own area(s) of expertise
Recommended Practices

- Expert should consider other opinions relative to issues
  - Should consider
    - Relevant literature
    - Opinions of other professionals
  - If disagree with others, must be prepared to explain why
Recommended Practices

- Expert should obtain all information to avoid reliance on assumptions
- If must make assumptions, must be prepared to explain
  - Review all documents personally
  - May need to visit project
  - If make assumptions, identify & justify
Recommended Practices

- **Expert should** evaluate all reasonable explanations of causes & effects
  - **Should** study & evaluate differing explanations of causes & effects
  - **Should not** limit review simply to support view of client
Recommended Practices

* Expert should strive for integrity of tests & investigations conducted on case
  * Conduct tests, investigations personally
  * Or, direct through qualified individuals capable to serving as experts
**Recommended Practices**

Expert **should** testify about standards of care only if have knowledge of standards at time

- **Remember** -- Standard of care changes with time, location, type of project
- **Must** identify proper standards
Recommended Practices

- Expert **should** use presentations which simplify or clarify issues
  - **Must** be reviewed by attorneys prior to trial
  - **Should** demonstrate relevant principles without bias
Recommended Practices

- Expert should maintain custody, control over all materials entrusted to care
  - Preservation of evidence, documentation necessary to admit evidence
  - Take appropriate precautions
Recommended Practices

- Expert should respect confidentiality of assignment
  - All discussions are privileged & confidential
  - Not disclosed without consent
Recommended Practices

- Expert should refuse, or even terminate involvement if inappropriate attempts made to influence opinion
  - Retained to clarify issues with objectivity & integrity
  - “Buying time & effort, not opinion”
Recommended Practices

- **Expert should** refuse, terminate involvement, if **not** permitted to perform necessary investigation(s)
  - Should inform client & attorney about investigations needed
  - If limitations **too restrictive** to allow testifying with reasonable degree of certainty, resign
Recommended Practices

- **Expert** should strive to maintain professional, dispassionate demeanor.
  - **Refrain from** testifying as if this is contest between themselves & other side.
How to Find & Hire

- Identify needs of case
  - Schedule delay
  - Geotechnical
  - Design issues
  - Damages

- Identify potential experts
  - Attorneys
  - Expert directories
  - Others similarly situated
How to Find & Hire

- Review resumes
- Check references
- Interview
- Discuss case, needs, approach
- Question how expert would like to proceed
Experience

- Discuss expert’s experience
  - With similar cases
  - With issues

- Explore various ways to analyze situation

- Discuss pros & cons of each method
Traits to Look For

- Integrity & objectivity
- Preparedness
- Accessibility & responsiveness
- Regular status reports
- Defined work scope & budget
- Early notice of out-of-scope work
- **GOOD COMMUNICATION SKILLS!**
Management of Case

**DO**
- Take active role
- Keep experts involved
- Follow through with commitments
- Retain experts in advance
- Pay for services timely
Management of Case

DON’T

- Take a “wake me when it’s over” approach
- Fail to keep expert informed about things which may effect their work
- Leave your expert hanging
- Wait until 3 weeks before trial to select experts
- Ignore expert’s invoices
Expert Involvement

- **Light**
  - Review client work product
  - Review only selected issues

- **Medium**
  - Supplement client work product
  - Prepare independent findings
Expert Involvement

Heavy

- Document organization
- Detailed analysis
- Heavy discovery assistance
- Heavy participation at hearings
Typical Tasks

- Site visits
- Project administration
- Status meetings with client
- Review claim submittal
- Identify claim issues
- Document organization & control
- Develop issue files
Typical Tasks

- Prepare as-built schedule
- Delay & productivity analyses
- Damages analysis
- Interrogatories
- Deposition & discovery assistance
- Prepare opinions & reports
- Presentation graphics
- Testimony
How to Control Costs

- Agree on scope of work
  - Approach
  - Records to be reviewed
  - Expected outcome
- Agree on schedule
- Agree on budget
  - Not to exceed cost
- Agree on deliverables
Fee Reduction Approach
Use Client Staff

- Tasks client staff can perform
  - Document organization & control
  - Compile issue files
  - As-built schedule information
  - Non-technical interrogatories
  - Deposition support
  - Attendance at hearings

- Lower level of expert involvement = lower fees!
Conclusion

- Make certain expert follows recommended practices
- Make certain expert has experience with type of claim you’re dealing with
- Make certain expert has experience needed
- Control costs