

Roof Consultants and Expert Witness Testimony

By Sy Elakman, RRC

Roof consultants are often asked to provide their opinion in the form of expert witness testimony. Many consultants seek this type of work, while others try to avoid becoming involved. Often, consultants are involved without warning following an unfavorable inspection report.

There is no reason for a knowledgeable consultant to avoid this involvement out of fear. Confrontation or hostile arguments between aggrieved and damaged parties should not enter into the performance of the professional witness.

It is the responsibility of the expert witness to assemble the facts of the case, carefully inspect, research and document the problems found, and, with notes, photos, tests, samples, etc., as required, solidify his or her opinion. When called upon to provide expert testimony in deposition or trial, it is the expert's job to clearly explain the situation, render an opinion, and back it up with facts, quotes from applicable code, manufacturers' installation literature, or recognized standards or publications.

To Testify or Not?

When given the opportunity, it is advisable to meet with the prospective client and/or his attorney to review the case before accepting it. The opinion of the client or his attorney may be contrary to your convictions, and you may not be able to help him. Your convictions, standards and personal values should not be compromised. If a conflict appears probable, it is best to decline the work.

Preparation

Preparation for expert testimony should not be taken lightly. Talk to the attorney you are working with to ask his or her advice on your testimony and to fully inform and educate him on your opinion of the problem and possible conflicting opinions. Prepare and organize your file for ease in finding the information you will need. Have the attorney look through your file before bringing it to the deposition or courtroom. It may contain information that is considered

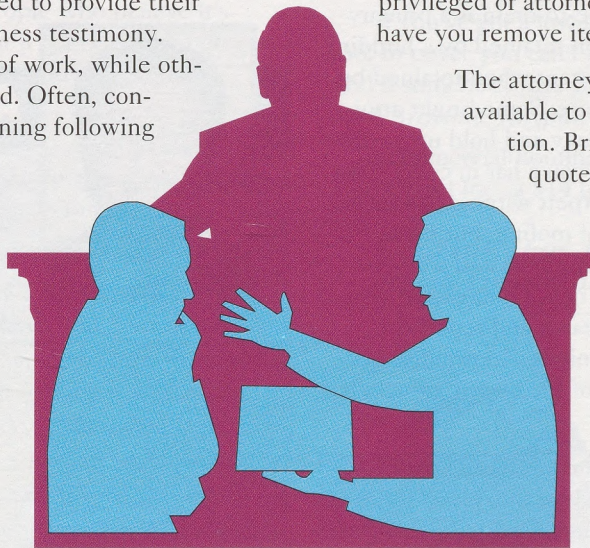
privileged or attorney's work product, and he may have you remove items.

The attorney may ask you to have your resume available to present to the court or at deposition. Bring any publications that you quote, if possible. Also, copy the pages or sections quoted to simplify presenting the information to the court or opposing attorney. Prepare or have prepared drawings, diagrams, details, and photographs as needed to clearly explain the problems you wish to describe. Enlarged photographs and large, clear drawings often assist the judge and/or jury to more clearly understand your testimony. Study your file and all pertinent information until you

are completely satisfied that you know it well. As an expert witness, precise answers add to your professional appearance and credibility.

Expert testimony in a deposition can vary greatly with that of a trial. Everything depends on the style, knowledge and attitude of the opposing attorney. In depositions, which are generally conducted in a relatively relaxed atmosphere, the opposing attorney generally tries to get as much information as possible. Be prepared to answer questions about your education, experience, credentials, and background. Keep a copy of your resume, or typed notes listing your experience, past testimony, education, licenses and registration numbers, etc., with dates and other pertinent information as a reference to glance at before answering.

Often, opposing attorneys word their questions to try to get you to answer in a manner that is favorable to their client or that is vague enough to use to discredit you later in court. An experienced expert witness listens carefully to each question and takes a few seconds before answering, and, if necessary, refers to his notes, report, photos, etc. This allows the attorney with whom you are working time to object to the question, if necessary. Those few seconds also give you time to think about the question and your answer. Remember, we are talking about a few seconds to think. A longer wait between the question and answer makes you appear hesitant or unsure of your answers. This



may not be very important in deposition, but it could severely affect the weight of your testimony to a judge and jury. Some attorneys in trial situations will try to excite or anger you or twist your words in an attempt to make you lose control. Stay calm, smile, and attempt to explain, "No, sir, I think you may have misunderstood my statement..." Stay in control of your emotions. Showing anger, contempt or displeasure with the method of questioning or questions in deposition is inadvisable; during a trial, it is unthinkable.

An expert witness must be consistent. It would not be prudent to state on record that slope-to-drain is a primary cause of premature roof failure when retained by a building owner, and then to say it is unimportant when retained by a defendant contractor in another case. Some bright attorneys may research your past testimony and hold up a copy of past contrary testimony, proving you a liar in court. This could end your career as a useful expert witness. There are many opinions about many facets of roofing, but there are many basics that are relatively indisputable and well-covered in published literature. A roof consultant expert witness must make every effort to research and report the truth and to present reasonable opinions. Knowledge is very important, but the credibility of the expert witness is a large measure of his value.

Make every effort to add to your credibility. Speak clearly, try to use words that are understandable to those not versed in construction terminology, and make an effort to explain yourself when necessary. Dress as a professional,

act as a professional, and express professional opinions and not personal animosity. Keep up-to-date with continuing education and credentials. Maintain records of classes, seminars and symposia attended. Strive for credentials. Even architects and engineers will be asked about the number of hours in roofing credits they received in school. Attaining certification and designation as a Registered Roof Consultant is positive proof of an advanced level of competence in roofing technology. Licensing as a roofing or general contractor in your area of operation may be helpful and add credibility to your testimony.



About The Author

Sy Elakman has been involved in the construction industry for 30 years and as a roof consultant for over 15. He has testified as an expert witness in Florida, Georgia and South Carolina cases. In 1987, he formed Elakman & Associates Inc., a construction consulting firm specializing in roofing and waterproofing. Mr. Elakman is an RRC, an SBCCI certified building inspector, a CABO certified building official, a registered general and roofing contractor in the state of Florida, and a member of the Standard Building Code ad hoc roofing committee.



BUILDING CODES & STANDARDS

ROOFING REFERENCE GUIDE

The Roof Consultants Institute developed its Building Codes and Standards Reference Guide under the authority of the RCI Board of Directors. Its purpose is to provide a resource center for roofing information and technology as it relates to building codes and standards. It provides a basic understanding of the building code promulgation process, the guidelines for the submittal of a proposed change to a standard or model building code, information for obtaining product-specific evaluation reports and a look into the future of the national and international building codes. A Roofing Chapter from each of the code groups is inserted at the end of each code chapter, intended as a guideline for referencing specific areas in each of the model codes.

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