



Engineering Sciences Section – 2011

C13 Court Appointed Expert Selection Methodology: Federal Rule 706

Helmut G. Brosz, PEng, BASc, Brosz & Associates, 64 Bullock Drive, Markham, ON L3P 3P2, CANADA*

The goals of this presentation are to give an example of methodology used for the selection of a court appointed expert, highlight some of the important attributes a court appointed expert needs to possess, and propose the use of a multi-dimensional matrix system to determine the most appropriate expert witness.

This presentation will impact the forensic science community by addressing the important attributes needed by court appointed expert witnesses.

Court appointed experts simplify and make easier for the courts to understand highly technical and complex cases, particularly electrical matters. Court appointed experts, agreed to by both the plaintiff and defendant, play an important role in giving judges an easier

understanding of complex and technical cases. Cases have settled where court appointed experts were used in the interest of expediting justice and reducing costs.

Rule 706 of the Federal Rules of Evidence states that a 'court may appoint any expert witness agreed upon by the parties, and may appoint expert witnesses of its own selection.'

It is suggested that the key attributes are education, training, experience, reputation and track record. In addition, the court may require specific experience that is relevant to the particular technical engineering issues facing the court. If this attribute is missing, the court may not recognize the individual as qualified to testify as an expert. The matrix for evaluating potential expert witnesses can be appraised based on the following categories: possible conflict of interest, education, practical experience, publications, forensic experience, design experience, application experience, technical issues, safety issues, court experience, available support and professional affiliations. Typically, plaintiffs and defendants, each, nominate potential experts for consideration who are then interviewed via conference call and scored according to the multi-dimensional matrix proposed by the author. Each party pays the pro-rata expert fees while the court is exempt from paying.

Conclusion: The matrix system provides a logical method to overcome the difficulty faced by opposing parties and experts on being able to agree on an independent court appointed expert. This methodology worked well in the subject product liability case involving a double fatality by immolation of two utility linemen resulting from an exploding pole top oil filled utility transformer that had a defective gasket. The two experts for the two deceased, one the expert for the utility, and the expert for the transformer manufacturer ultimately agreed on one court appointed expert.

The court expects the expert to review opposing reports and obtain information, and then interpret its meaning. The court appointed expert must prepare a protocol for questioning information and then obtain it, using the power of the court. The protocol would describe documents needed, testing needed, and experiments and inspections necessary. In this way, the use of a court appointed expert is efficient, decisive and cost effective.

Appointment of an expert will undoubtedly remain an unusual event, suited only to the most demanding cases and judges. Regardless, Rule 706 remains an important alternative source of authority to deal with some of the more scientifically demanding evidentiary issues that arise in courts.

Expert Witness, Rule 706, Selection