



Tatevik Gasparyan

MORGAN & MORGAN

Expert designation: Not just a deadline, a case-shaping event

THE DO'S, THE DON'TS AND THE PRACTICAL STRATEGIES OF EXPERT DESIGNATION

Expert designation is one of the most important procedural and strategic stages. It is not simply a deadline-driven disclosure obligation, but an opportunity to define the theory, narrow disputed issues, challenge causation and damages, prepare for dispositive motions, and improve leverage in settlement negotiations. A plaintiff's designation determines not only who may testify at trial, but also to anticipate whether the defense can meaningfully evaluate, depose, challenge, limit, or exclude the opinions needed to provide liability, causation, damages and future loss. On the flip side, the defense will evaluate the claimed injuries, mechanism of the impact, treatment history, medical records, damages claimed, venue and other factors.

The plaintiff should approach the expert exchange as a strategic disclosure decision. It is key to designate every witness reasonably necessary to prove the case, provide legally sufficient declarations for retained experts, preserve flexibility where permitted, and assume the defense will scrutinize every omission and technical defect. A well-developed expert designation provides notice of the defense's anticipated testimony while preserving the ability to present credible, admissible opinions at trial. A weak designation can lead to exclusion of testimony, discovery disputes, unnecessary costs, impeachment opportunities, or a last-minute scramble to address issues that should have been evaluated months earlier.

Start the expert analysis early

The most important practice is to begin evaluating expert needs early in the case. Early involvement allows you to identify what evidence must be preserved and obtained. An accident-reconstruction expert may need vehicle photographs,

repair estimates, scene measurements, dash-camera footage, body-camera footage, surveillance, black-box data, witness testimony, or police materials. A medical expert may need complete prior records, diagnostic imaging, pharmacy records, employment records, prior accident information, and records documenting subsequent events.

Undue delay in seeking these materials may cause you to lose access to evidence that would have materially supported the expert's analysis. Vehicles may be repaired, sold, or destroyed. Surveillance video may be overwritten. Medical providers may have incomplete records. Witness memories may fade. Experts may become unavailable or unable to complete a meaningful review before the deadline.

Early consultation also helps the plaintiff determine whether an expert will be helpful at all. A preliminary review may reveal that an expert cannot support the desired plaintiff theory. That is valuable information. It may lead plaintiff's counsel to refine strategy, seek additional evidence, retain another expert, or use the original expert strictly as a non-testifying consultant.

Plaintiff's counsel should remember that an expert's first value may be in guiding discovery, not necessarily testifying at trial.

Expert designation is a strategic event, not a clerical task

It is easy to treat an expert designation as a procedural task: gather a curriculum vitae, obtain a fee schedule, insert broad boilerplate language, and serve the disclosure before the deadline. That approach creates risk. The designation should instead be the result of a deliberate analysis of the case. Before

naming any expert, plaintiff's counsel should identify the core questions that need professional or technical support. Those questions will vary depending on the nature of the case.

In a motor-vehicle collision case, the plaintiff may need expert testimony regarding:

- Accident reconstruction;
- Vehicle damage and collision severity;
- Speed, direction, braking, and point of impact;
- Crash data or event data recorder information;
- Biomechanics and injury mechanisms;
- Medical causation;
- Preexisting conditions and degenerative findings;
- Reasonableness and necessity of medical treatment;
- Future medical needs;
- Life-care planning;
- Wage loss, vocational issues, and economic damages;
- Reasonableness of medical billing.

In a premises-liability matter, both sides may need experts to address:

- Code compliance;
- Industry standards;
- Condition of the premises;
- Lighting, flooring, slip resistance, or maintenance procedures;
- Whether an alleged defect was dangerous;
- Whether the condition was open and obvious;
- Causation of the alleged fall;
- The role of footwear, distraction, gait, or preexisting physical limitations.

In a products-liability or construc-

tion case, engineers, safety professionals, or industry experts may be necessary to address design, warnings, inspection protocols, standards of care, or the cause of a failure. The key question is not whether the plaintiff has an expert. The question is whether the plaintiff needs expert testimony to prove, rebut, explain, or contextualize an important issue for the judge or jury.

Identify the real issues in dispute

Not every personal-injury case requires a full roster of experts. Expert retention should be based on the actual disputes in the record, the value of the case, the plaintiff's claims, the available evidence, and the anticipated trial themes. For example, a plaintiff may view a medical expert necessary and especially important where the plaintiff claims:

- A traumatic injury despite minor property damage;
- Surgery or invasive future treatment;
- Significant disability with limited objective findings;
- Aggravation of preexisting conditions;
- A delayed onset of symptoms;
- Long gaps in treatment;
- Multiple prior accidents;
- A history of similar complaints;
- A substantial future-care claim.

Likewise, a reconstructionist may be more important where liability is disputed, the parties give conflicting accounts, the police report is inconclusive, speed or impact angle matters, or the plaintiff claims a severe mechanism that is inconsistent with the physical evidence. The plaintiff should avoid the reflexive practice of designating experts solely because similar cases often involve them. A case-specific strategy is more effective and often more cost-efficient.

Carefully distinguish retained and non-retained experts

One of the most important designation issues is whether a witness is retained for litigation or is a non-retained witness whose opinions arise from personal knowledge, ordinary professional duties, or direct involvement in the underlying events. This distinction often changes the disclosure requirements. A retained testifying expert such as a reconstructionist, biomechanical engineer, economist, or a life-care planner involve detailed opin-

ions, bases, qualifications, compensation, report requirements and prior testimony.

A non-retained expert is someone who serves in the role of a treating provider, responding officer or a company employee with specialized knowledge. Testimony of a non-retained expert is generally limited to personal knowledge and opinions formed in their ordinary duties. Plaintiff should not assume a witness can be labeled "non-retained" merely because that label is more convenient.

For example, a treating physician may testify regarding diagnosis, treatment, prognosis, and opinions developed during care. However, if counsel asks the physician to review new materials outside the treatment context, assess accident mechanics, critique other doctors' opinions, or formulate opinions specifically for trial, the witness may be treated as retained or subject to heightened disclosure requirements. Courts frequently look beyond the title and consider the nature of the anticipated opinions. Both sides should clearly define the witness's role and ensure the designation accurately reflects it.

Select experts for credibility, not credentials alone

Credentials are important, but they are not enough. An expert may have an impressive résumé and still perform poorly before a jury if the expert is evasive, overly argumentative, unable to explain technical issues, or perceived as a professional witness who will say anything for the side paying the fee. Plaintiff's counsel should look for experts with the following characteristics:

- Relevant education, training, and experience;
- Expertise that directly matches the issue in dispute;
- Familiarity with litigation and deposition practice;
- A disciplined and reliable methodology;
- The ability to communicate clearly with non-specialists;
- A professional demeanor;
- A balanced, objective presentation style;
- A reasonable and understandable fee structure;
- Timely responsiveness;
- A manageable litigation history;
- No significant undisclosed con-

flicts or disciplinary issues.

Practically, the plaintiff's expert must explain technical concepts in plain language. Jurors may not understand complicated medical terminology, engineering calculations, or economic models. The expert must translate the analysis into understandable terms without oversimplifying or overstating the conclusion.

The strongest plaintiff expert is often one who appears fair. An expert who acknowledges undisputed facts, accepts reasonable limitations, and explains alternative interpretations can be more persuasive than an expert who gives categorical answers to every question.

Vet experts before retention

Before retaining an expert, plaintiff's counsel should conduct a meaningful background review. This is especially important in high-exposure cases or matters likely to proceed to trial. The vetting process should include:

- Confirming that the expert has no conflict of interest in the case at issue;
- Reviewing relevant qualifications and licenses;
- Obtaining an updated curriculum vitae;
- Reviewing the expert's publications and public statements;
- Identifying prior testimony in similar matters;
- Checking for significant exclusion orders or unfavorable rulings;
- Understanding the expert's litigation volume;
- Reviewing the expert's billing practices and fee schedule;
- Confirming availability for review, deposition, mediation, and trial.

Plaintiff's counsel should also ask the expert about potentially damaging impeachment material. An expert may have prior testimony, publications, disciplinary history, income information, or opinions from other cases that opposing counsel will use at deposition or trial. It is better to know about those issues before disclosure than to discover them after the defense has already found them.

Retain only the experts the case requires

There is no benefit to over-designating experts without a clear purpose. Too many experts can create excessive

cost, overlap, inconsistent opinions, and a perception that your side is trying to overwhelm the case with hired witnesses. Each expert should have a distinct role. Before designation, determine whether the expert is necessary.

As an example, in a contested auto case with major orthopedic claims, the plaintiff may consider a reconstructionist to address the mechanics of the collision. If causation is at issue, a biomechanical expert to explain the forces involved and injury mechanisms. Often, the defense will find the treatment speculative, so an orthopedic or neurosurgical expert to address causation, treatment, prognosis, and future care would be warranted. A billing expert, where appropriate, to address the reasonableness of charges. If lost wages or futures are at issue, an economist to address claimed wage loss.

Those roles should not overlap unnecessarily. For example, a reconstructionist should not offer unsupported medical opinions. A medical expert should not attempt to calculate collision speed. An economist should rely on medical and vocational assumptions rather than independently deciding whether a plaintiff is disabled. A targeted expert strategy is more effective than a broad, duplicative designation.

Know the rules, court orders, and deadlines

Expert-disclosure obligations are heavily dependent on the jurisdiction and the case-management order. Counsel should review the governing rules early, calendar the deadlines, and create a case-specific checklist. A generic designation template can be useful as a starting point, but it should never replace a case-specific review. Courts may exclude testimony where the designation does not comply with the required format or does not provide adequate notice of the opinions. Also, timely proof of service is key. A technically sound designation does not help if there is a dispute about whether it was served on time.

Provide clear and specific opinion summaries

The opinion summary is often where a designation succeeds or fails. The disclosure should be specific enough to give fair notice of the expert's expected testimony, yet accurate enough not to commit the plaintiff to unsupported or premature

opinions. A well-drafted summary generally identifies:

- The expert's discipline;
- The topics to be addressed;
- The expected opinions;
- The factual basis for the opinions;
- The materials expected to be reviewed;
- Any relevant methodology;
- The limitations of the opinions;
- The possibility of appropriate supplementation based on new evidence.

For example, instead of stating that a physician "will testify regarding plaintiff's injuries," a stronger designation may state that the physician is expected to testify regarding:

- The nature and extent of the claimed injuries;
- Whether the claimed injuries are causally related to the incident;
- The significance of preexisting conditions and degenerative findings;
- The necessity and reasonableness of treatment;
- The appropriateness of future care recommendations;
- Prognosis and functional limitations;
- Any inconsistencies between the objective findings and claimed limitations.

The designation should not merely list broad topic headings. It should convey the substance of the anticipated testimony.

Don't rely only on boilerplate "catch-all" language

Broad catch-all language is one of the most common weaknesses in expert designations. Statements such as the following are often insufficient on their own:

- "The expert may testify regarding any issue within his or her field."
- "The expert may rebut all opinions offered by plaintiff's experts."
- "The expert may testify concerning causation, liability, damages, and all related matters."
- "The expert reserves the right to offer additional opinions at trial."

These phrases may preserve limited rights in certain circumstances, but they

do not replace a meaningful disclosure of actual anticipated opinions. If the defense moves to exclude testimony as undisclosed, a court may find that generic wording did not provide fair notice. The better practice is to identify the real opinions the plaintiff expects to offer while preserving the right to supplement as permitted by rule or court order.

Build a litigation-ready expert file

The expert's file may become a central focus of discovery and cross-examination. Depending on the applicable rules, materials reviewed, relied upon, considered, or generated by an expert may be discoverable. The plaintiff should help ensure that each expert maintains an organized file that include the materials received, reviewed, relied upon, reports and opinions, notes and calculations, data, photographs, diagrams, testing materials, communications, billing records, curriculum vitae and qualifications and publications and prior-testimony information where required.

Experts should be reminded that emails, texts, handwritten notes, preliminary analyses, and draft materials may later become impeachment tools. The goal is not to conceal information or interfere with disclosure obligations. The goal is to ensure that the expert's work is accurate, organized, professional, and capable of being explained.

Argumentative attorney memoranda, settlement discussions, or unnecessary advocacy materials may create avoidable discovery disputes or allow opposing counsel to argue that the expert adopted counsel's theory rather than independently reaching an opinion.

Confirm that methodology is reliable

An expert's qualifications alone do not make the testimony admissible. Both sides must also consider whether the expert's methodology is reliable, relevant, and properly applied to the facts. Although admissibility standards differ by jurisdiction, courts commonly assess:

- Whether the expert is qualified;
- Whether the opinion is based on sufficient facts or data;
- Whether the methodology is reliable;
- Whether the methodology has been properly applied;
- Whether the opinion will assist the trier of fact;

- Whether the testimony falls within the expert's field;
- Whether the opinion is speculative or unsupported.

You should understand how the expert reached the conclusion before the designation is served. For a medical expert, this may involve medical records, imaging, examination findings, prior history, differential diagnosis, and relevant literature. For a reconstructionist, it may involve physical evidence, photographs, measurements, vehicle data, witness testimony, and recognized reconstruction principles. The expert should be able to explain both the conclusion and the process used to reach it.

Don't ask an expert to become an advocate

An expert must remain independent. The expert may be retained and paid by the one side, but the opinions must be grounded in professional judgment and supported by the evidence.

The other side will always try to portray the opponent's expert as biased, especially where the expert performs frequent work for one side or receives substantial litigation income. The plaintiff should not make that argument easier by presenting an expert who appears hostile, dismissive, or committed to a result regardless of the facts. Some of the common warning signs are ignoring unfavorable evidence, refusing to acknowledge limitations, attacking the opposing party personally, criticizing treating providers without a clear evidentiary basis and overstating conclusions.

Define the scope of the engagement

Before designation, counsel should define what the expert has been retained to do. The engagement should be focused and should identify the specific questions the expert is expected to address. A clear scope may include:

- Whether the expert will inspect a scene, vehicle, product, or premises;
- Whether the expert will conduct an independent medical examination;
- What records or data should be reviewed;
- The opinions expected to be formed;
- Whether the expert will prepare a report;
- Whether the expert will respond to defendant's expert opinions;

- Whether the expert will create demonstratives;
- Whether the expert will testify at deposition, mediation, or trial.

A defined scope helps avoid surprise opinions and prevents the expert from drifting into fields outside his or her qualifications.

Coordinate the expert process across the team

Expert designations often involve more than trial counsel. A coordinated process should include:

- A master deadline calendar;
- A list of each anticipated expert;
- Confirmation of expert availability;
- Tracking of records transmitted for review;
- Collection of CVs, fee schedules, and required disclosures;
- Consistency checks against interrogatory responses;
- Budget planning;
- Scheduling of inspections, examinations, reports, and depositions;
- Evaluation of mediation and settlement implications.

Paralegals are particularly valuable in this stage. They can organize the medical and discovery record, maintain chronology materials, track document production, obtain updated expert materials, coordinate communications, calendar deadlines, and verify service. A designation should never be prepared in isolation from the actual litigation record.

Don't designate experts without understanding their opinions

You should not designate an expert merely because the expert has been used in previous litigation. Before designation, counsel should have a substantive discussion with the expert and understand the anticipated opinions.

At a minimum, you should evaluate the following:

- Whether the expert supports your theory;
- What information the expert has reviewed;
- What additional evidence the expert needs;
- Whether the expert has significant limitations or concerns;
- Whether the opinions are likely to be admissible;
- Whether the expert can meet the case schedule;

- Whether the expert is effective in deposition and trial testimony.

An unfavorable preliminary opinion is not necessarily a failure. It may expose weaknesses in the case that need to be addressed.

Prepare for qualification and foundation challenges

The defense may challenge an expert's qualifications, methodology, factual basis, or scope of testimony. The plaintiff should anticipate these attacks. Qualification challenges may arise where an expert attempts to testify outside the expert's true field. A physician may be qualified to address treatment and diagnosis but not collision mechanics. An engineer may understand forces but not be qualified to diagnose a medical condition. A billing witness may understand coding or reimbursement but not medical necessity.

Foundation challenges often focus on what the expert did – or did not – review. Opposing counsel may ask whether the expert considered:

- Complete medical records;
- Prior medical history;
- Diagnostic imaging;
- Prior accidents;
- Subsequent incidents;
- Employment records;
- Surveillance;
- Witness testimony;
- Police materials;
- Vehicle data;
- Scene photographs;
- Treating-provider opinions.

Plaintiff's counsel should conduct a pre-deposition foundation audit. The expert does not need to review every document in the litigation file, but the expert should have considered the information reasonably necessary to support the opinions being offered.

Don't overstate what the evidence supports

Experts should not claim more certainty than the evidence permits. Overstatement creates impeachment opportunities. Accurate and appropriately limited opinions are more likely to survive admissibility challenges and be accepted by a factfinder.

Use rebuttal experts properly

Rebuttal experts can be valuable when the defense introduces new theories and methodologies that could not reasonably have been anticipated. However, rebuttal designations should not be used

to fix omissions from the initial disclosure. You should review defense expert disclosures promptly and determine:

- What new opinions have been offered;
- Whether existing experts can address them;
- Whether a separate rebuttal expert is necessary;
- Whether the anticipated rebuttal is truly responsive;
- Whether the rebuttal deadline permits the disclosure.

A rebuttal expert should focus on new issues raised by the opposing party. Courts may exclude testimony that is labeled “rebuttal” but actually presents an untimely affirmative case.

Treat the expert deposition as trial preparation

Expert-deposition preparation should be thorough. A deposition is not merely a discovery event; it is the defense’s opportunity to test the expert’s opinions, preserve testimony, develop impeachment, and create a record for a later exclusion motion. Before deposition, the expert should be prepared to discuss the qualifications and work history, materials reviews, opinions and supporting basis, methodology, assumptions, limitations, compensation, prior testimony, publications, potential impeachment issues, opinions of opposing experts and demonstrative materials.

Counsel should ensure the expert understands the importance of answering the question asked, avoiding speculation, and acknowledging reasonable limitations. Preparation should improve accuracy and clarity – not manufacture testimony. After the deposition, the plaintiff’s counsel should assess whether the testimony created a need for supplementation, clarification, further review, or motion practice.

Consider expert work in mediation and settlement

Expert opinions can substantially affect settlement posture. A favorable

expert analysis may support a lower valuation by identifying weaknesses in causation, liability, treatment necessity, future care, or economic damages. For example, expert review may reveal:

- Significant preexisting degeneration;
- Similar prior complaints;
- Inconsistent symptom reporting;
- Gaps in treatment;
- A low-severity mechanism;
- Lack of objective support for future care;
- Unsupported lost-income assumptions;
- Inconsistencies between claimed disability and employment or activity records.

The plaintiff should decide strategically whether to share an expert report, provide a summary in mediation, use the expert’s conclusions confidentially in internal evaluation, or reserve the evidence for trial. That decision should account for local procedure, confidentiality, timing, and whether disclosure is likely to increase settlement leverage.

Supplement when necessary

Expert opinions may need to be supplemented when new material information becomes available. This may include newly produced records, updated imaging, deposition testimony, additional inspections, new wage information, plaintiff expert reports, or changes in the plaintiff’s medical condition.

Proper supplementation may clarify, correct, or refine a disclosed opinion. It should be timely and consistent with the applicable rules.

The plaintiff should not use supplementation as a way to add a completely new opinion late in the case without justification. Courts may exclude late opinions where the delay causes prejudice or disrupts the case schedule.

Conclusion

Expert designation is a pivotal stage in litigation. It should be approached as an extension of the plaintiff theory,

not as a routine filing obligation. The plaintiff’s objective is to identify the right experts, define their testimony clearly, ensure their opinions are reliable and well-founded, and disclose them in a manner that complies with the governing rules.

The best designations are timely, specific, accurate, and strategically focused. They give fair notice of the anticipated testimony without relying on vague boilerplate. They are supported by early investigation, complete record review, disciplined expert selection, and careful coordination across the team.

Plaintiff’s counsel should begin expert planning early, understand the evidence, vet experts thoroughly, define each expert’s scope, prepare for admissibility challenges, and maintain a clear path for supplementation when appropriate. Just as importantly, the plaintiff should avoid rushed designations, unsupported opinions, excessive advocacy, and attempts to use rebuttal or supplementation to cure avoidable omissions. Ultimately, the most effective expert is not merely highly credentialed. The most effective expert is credible, prepared, independent, appropriately qualified, and able to explain an evidence-based opinion in a way that helps the factfinder understand the plaintiff’s position.



Tatevik Gasparian is a civil litigation attorney in the Los Angeles office of Morgan & Morgan. She has years of experience, and has also served as a Professor of Law, teaching Trial Advocacy and Legal Research and Writing.