

## Crossing the Divide: Part Two

*Editor's Note: This is the second article in a two-part series on coordination between in-house and outside counsel to determine expert needs, establish expectations and locate the best experts. It is based off an article by IMS Vice President of Business Development [Bill Hueter](#) that was published in the [Summer 2011 In-House Defense Quarterly](#).*

In [part one](#), we wrote about the advantages of coordination between in-house and outside counsel. It allows the client to be more involved in the process and the attorney to benefit from their knowledge. This article will detail exactly how to best coordinate these efforts.

### Development of the Expert Profile

It is important for in-house counsel to be actively involved in the development of the expert profile because they will be able to guide outside counsel on specific characteristics that will lead to engaging a more credible expert.

With the input of in-company personnel, outside counsel will have access to a much more robust and accurate list of qualities. For example, IMS ExpertServices has been called upon several times to provide a [pharmaceutical chemist](#) only to discover that what was needed was a [formulations expert](#). This was a subtle yet important distinction that was obvious to in-house counsel but not to the outside attorney.

In an effort to locate the best expert for a case, in-house counsel should be involved in determining the technical experience required in the expert. The expert's testimony experience and credibility, however, should be determined by outside counsel.

### Credentials, Credibility and Communications

One quality that outside counsel will determine is how much litigation history the expert needs to have. Should the expert have extensive experience testifying in patent cases? Or is prior expert witness experience not an issue?

For example, a several years ago, an expert who had testified in "at least two Voice over IP (VoIP) cases" was requested by the client at a time when VoIP had not been around long enough to have gotten to testimony in any single venue. Therefore, an expert's level of litigation support experience is an attribute outside counsel can address more specifically.

Another consideration for outside counsel is the experts' credentials and credibility. The ability to understand the technical details of a case and the ability to communicate those concepts to a judge and jury appear at times to be at odds with each other.

While credibility is an important consideration for every expert, it is harder to quantify on a resume. Communication skills, physical presentation and believability all play a part in whether or not a jury will follow the expert along his persuasive journey. Even regional dialects and socioeconomic factors will

influence a jury's perception of the expert. With extensive experience litigating in a courtroom, these qualities are easier for outside counsel to determine.

### **Staying Involved**

Once the expert profile has been determined and a selection of experts that meet this criteria have been located, in-house counsel should stay involved by reviewing the candidates. The list of candidates can include experts provided by outside counsel, suggested by in-house counsel or those located by IMS. Regardless of the source, in-house counsel or other company personnel should confirm that the experts possess the specific qualifications required.

After narrowing down the experts to a short list of final candidates, in-house counsel and outside counsel should coordinate to jointly conduct interviews. Company personnel have the deep knowledge of the company's products and technologies and outside counsel are best suited to judge the expert's ability to deliver a persuasive message. Both must work together to identify and choose the most suitable expert.

Once the experts have been hired, outside counsel typically manages the litigation. However, in-house counsel should stay involved. Communication through frequent phone calls, written reports and invoices allows everyone involved to stay up-to-date on the case's progress and budget considerations.

**Tell us:** Do you have any other advice on how to best coordinate with in-house counsel?

*This article was originally posted on [BullsEye](#), a legal blog published by [IMS ExpertServices](#).*