
DIRECT EXAMINATION OF AN EXPERT

§90.702

Admissibility of Expert Testimony Checklistⁱ

- Will the expert testimony assist the trier of fact in understanding the evidence or determining a fact at issue? (Discretion of the court)
- Is the witness qualified to express an opinion?
 - a. An expert is defined in § 90.702 as a person who is qualified as an expert in a subject matter “by knowledge, skill, expertise, training, **or** education” (doesn’t have to be scientific/technical knowledge – anyone with specialized knowledge).
 - b. A witness may only testify as an expert in the areas of his or her expertise.ⁱⁱ
- Is the opinion being applied to evidence offered at trial?
- Even if the evidence or testimony is technically relevant, does the introduction of it create a substantial danger of unfair prejudice that outweighs its probative value?

Not necessary to formally proffer witness as an expert – may be improper for the court to declare that the witness is an expert (except in ruling on an objection).ⁱⁱⁱ

Frye Test (Reliability): before expert testimony based on scientific tests or principles is admitted, those tests or principles “must be sufficiently established general acceptance in the particular field in which it belongs.” Under Frye, the relevant scientific community principally determines admissibility not the judge.

The expert can testify that the scientific tests and methods on which the testimony was based have gained “general acceptance” with the relevant scientific community.

1. Order of Direct Examination^{iv}
 - a. Introduction
 - b. Education, training, and expertise

PRACTICE TIP: You can ask leading questions – this is proper because these are preliminary matters not in dispute – so that expert merely agrees with you regarding credentials.
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- c. Opinions
 - d. Reasons for the opinions
 - i. Sources of information that the expert relied on e.g. Learned Treatises
2. Qualifying the Expert (see checklist): Sample Questions
 - o Where are you employed?
 - o What are your duties?
 - o What is your educational background?

- e.g., degrees, board certifications, licensing, post graduate training and work experience
- How long have you been employed at your current position
- Do you have any special training or certifications?
- Have you published any articles?
- Do you belong to a professional organization?
- Have you previously testified as an expert? How many times? What area?
- Did you reach an opinion as to a reasonable degree of medical certainty?

PRACTICE TIP: Tie the expert's background and experience to what was done in this case.

Objections^v

- The qualification as an expert.
- The discipline in which the witness purports to qualify will not provide information that is helpful in understanding facts at issue.
- Witness's opinion is beyond the area of expertise in which he or she has been qualified.

Responses to Objections

- I have shown that the witness is qualified as an expert in _____, through the witness's knowledge, skill, experience, training or education.
- I have shown that the area of expertise in which the witness is qualified is one that will be helpful in determining _____.
- The court has qualified the expert in the area of _____ and the witness's opinion is within that area.

ⁱ *CSX Transp., Inc. v. Whittler*, 584 So. 2d 579, 584 (Fla. 4th DCA 1991)

ⁱⁱ *Terry v. State*, 668 So. 2d 954, 960 (Fla. 1996)

ⁱⁱⁱ Standard 17, Civil Trial Practice Standards of the Section of Litigation of the American Bar Association (1998)

^{iv} Thomas A. Mauet, *Trial Techniques* (Sixth Edition) p.321.

^v Anthony Bocchino and David Sonenshein, *Federal Rules of Evidence with Objections*, 6th ed.(NITA 2003) 36-37.