
CROSS-EXAMINATION OF AN EXPERT WITNESS

Summary Checklistⁱ

1. Must I cross-examine this witness?
 - a. Has the witness hurt my case?
 - b. Is the witness important?
 - c. What are my reasonable expectations?
 - d. What risks do I need to take?
2. What favorable testimony can I elicit?
 - a. What parts of the direct helped me?
 - b. What parts of my case can the witness corroborate?
 - c. What must the witness admit?
 - d. What should the witness admit?
3. What discrediting cross-examination can I conduct?
 - a. Can I discredit the testimony? (perception, memory, communication)
 - b. Can I discredit the witness' conduct?
4. What impeachment can I use?
 - a. Can I show bias, interest and motive? §90.608(1)(b)
 - b. Can I use prior convictions?
 - c. Can I use prior bad acts?
 - d. Can I use prior inconsistent statements? §90.608(1)(a)
 - e. Can I show contradictory facts? § 90.608(1)(e)
 - f. Can I show bad character for truthfulness? §90.608(1)(c)
 - g. Can I use treatises?
 - h. How will I prove up the impeachment if necessary?

Use your own expert to learn more; read the literature in the field – they are also sources of potential impeachment; read articles the expert has published; review the expert's resume to show weakness in education training and experience and if their area of expertise is the one involved in this case; review the written report.ⁱⁱ

Possible Strategiesⁱⁱⁱ

1. Qualifications – expert not qualified in the pertinent area
2. Bias and interest
3. Date reviewed materials
4. Assumptions – would opinion be change if assumptions were different?
5. Prior inconsistent statements – commit the witness to the direct examination that you want to attack, credit, or build up the reliability of the prior statement, confront the witness by reading the statement, then stop.

Treatises – expert can be impeached by treatises.

ⁱ Thomas A. Mauet, Trial Techniques, 6th ed. (New York: Aspen Publishers, 2002) p. 306.

ⁱⁱ Thomas A. Mauet, Trial Techniques, 6th ed. (New York: Aspen Publishers, 2002) p. 379.

ⁱⁱⁱ Thomas A. Mauet, Trial Techniques, 6th ed. (New York: Aspen Publishers, 2002) p. 378-395.