

Expert Testimony and Opinions

<p style="text-align: center;"><u>Rule 702: Testimony By Experts</u></p> <p><i>"...an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise [jury education], if.</i></p> <p><i>(1) the testimony is based upon sufficient facts or data</i></p>	<p style="text-align: center;"><u>Rule 704: Opinion on Ultimate Issue</u></p> <p><i>"...testimony in the form of an opinion is not objectionable because it embraces an ultimate issue to be decided by the trier of fact..." [except mental state at issue in the case]</i></p>
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STEP 1: Establish Methodology (Bases for Opinions)

- Once (i) qualified as an expert, (ii) tendered as an expert in a particular field and (iii) accepted by the court, you should, through the expert, establish why the expert is testifying in court, what information the expert reviewed, and which formed the basis for her testimony and opinions:
 - "What were you asked by my office to do in relation to this case?"
 - "What information did you review in this case? . . .other information unable to review?"
 - "Was [each item of information] important [to you] [your opinions] in this case? Why?"
 - "Do other experts in your field rely on similar materials?"
- Establish if and then why [each piece of information] was significant [in the field][to the opinions]?
 - "Was your review of the accounting recording from sales important? Why?"
 - "Did you reach any opinion to a reasonable degree of certainty in [field of expertise]?"

NOTE: Jury Education

- You must educate the jury about the subject matter, terminology or background necessary to understand the case and the expert's opinions.
- Prepare the witness that they will be teaching their field of expertise to a *USA Today* audience, such as:
 - "As an experienced firefighter, could you describe to the jury what you mean by "backdraft"?"
 - "As an expert in fingerprint analysis, how does a person leave a "latent print" on a surface?"
 - "What is the effect of an incontestability clause in a life insurance policy?"

STEP 2: Expert Opinions (Conclusions)

- Organize and present the expert witness' opinion in a clear, understandable and memorable way:
 - “Did you first reach an opinion as to [the cause of the accident] [the specific issue] in this case?”
- Elicit each opinion/conclusion and then ask about the bases for each. (Opinion first, then the why?)
 - “As to your first conclusion that the fire was an arson, why do you believe it was intentional?”
 - “How did you opine that the print found on the gun does not match the defendant's print?”
 - “Why do you conclude that the plaintiff should not recover on his insurance plan?”
- Use Demonstrative/Summary Exhibits
 - Consider using a demonstrative exhibit, chart or summary that outlines/explains the expert's testimony and opinions (ie. a blow-up photo comparing latent and known fingerprints)
- End strong by re-emphasizing the expert's conclusions
 - “In your professional opinion, was Ms. Y's injuries caused by defendant's actions?”
 - “What does the DNA evidence tell us about whether the defendant was at the house?”