

EXPERTS

TESTIMONY OF EXPERT WITNESS

TRE 702

A witness qualified by knowledge, skill, experience, training, or education may testify in the form of an opinion if his testimony will help the trier of fact understand the evidence or help determine a fact in issue.

BASES OF EXPERT'S OPINION TESTIMONY

TRE 703

An expert may base opinion on data in the case which he has reviewed, been made aware of or personally observed.

The data relied on does not have to be admissible as long as experts in the field would reasonably rely on that kind of data in forming an opinion on the subject.

OPINION ON ULTIMATE ISSUES TRE 704

An expert's opinion can extend to an ultimate issue in the case.

An ultimate issue is one that is to be decided by the fact finder in the case.

Examples: Negligence, arson.

DISCLOSING UNDERLYING FACTS OR DATA
SUPPORTING OPINION
TRE 705

(a) Opinion can be given first without disclosing underlying data, but expert must disclose the underlying data if requested on cross.

(b) If requested by opposing counsel, Court may (in civil cases) allow voir dire of expert on underlying data before expert gives opinion. This is done outside the presence of the jury.

DISCLOSING UNDERLYING FACTS OR DATA SUPPORTING OPINION TRE 705 (Continued)

(c) Opinion is inadmissible if underlying data does not provide a sufficient basis for the opinion.

(d) If underlying data is inadmissible, it may not be disclosed if disclosure violates TRE 403. If Court allows disclosure, Court must give a limiting instruction if timely requested to do so.

DIRECT EXAMINATION OF EXPERT

- A. Introduction / Place the witness.
- B. Qualify expert.
- C. Elicit opinion in one of two ways:
 - * Ask for opinion (based on reasonable degree of probability) and then get basis of opinion **OR**
 - * Ask for basis of opinion first and then ask for opinion (based on reasonable degree of probability).

DIRECT EXAMINATION OF EXPERT

- D. Anticipate cross.
- E. End strong with expert's opinion.
- F. *Practical Tips for Effective Direct*
 - * If expert is capable, let him teach.
 - * Use visual aids.
 - * Simplify complicated concepts.

MORE PRACTICAL TIPS FOR EFFECTIVE DIRECT (Continued)

- * Explain unfamiliar / technical terms.
- * Have expert point out problems with the opposing expert's qualifications and/or opinion.
- * Use open-ended questions to allow expert to educate.
- * Make expert likeable.

CROSS EXAMINATION OF EXPERT

- A. Get helpful testimony before impeaching.
- B. Attack qualifications and/or limited expertise.
- C. Attack assumptions: Get him to (1) agree his conclusions are based on assumptions, (2) agree if assumptions are wrong, conclusion could be wrong, then (3) attack assumptions.
- D. Show any errors in calculations.

CROSS EXAMINATION OF EXPERT (Continued)

E. Impeach with fees, bias for other side of case, contrary opinions made in his other writings and contrary statements in authoritative treatises.

F. Attack quality of what he reviewed as incomplete or limited by hiring party.

G. Show lack of personal knowledge.

PRACTICAL TIPS FOR EFFECTIVE CROSS

- * Do not challenge expert on his area of expertise (once proven qualified). You cannot win.
- * Be careful on impeaching with fees (and other areas in E. above) if your expert charged more fees or has other similar issues.
- * If you question whether expert is qualified to give opinion, ask to voir dire expert on qualifications before he gives opinion.