

## V. EXPERT TESTIMONY

### OVERVIEW:

[Fed. R. Evid. 701-706](#) allow for the admission of testimony of expert witnesses, i.e., witnesses with scientific, technical or other specialized knowledge. The Trial Attorney may have the need to call an expert to prove the allegations in the complaint.

### OBJECTIVE:

To remind the Trial Attorney of the potential for the use of expert witnesses and to provide resources for further study if the attorney must deal with an expert witness.

#### 1. WHEN TO CALL AN EXPERT WITNESS:

Although use of an expert witness is rare, there are specific circumstances under which the calling of an expert may be appropriate. Generally, there are 3 reasons for having an expert witness testify:

- As a fact witness;
- As a witness to explain principles in order that the trier of fact can apply those principles to the facts (e.g., a personnel expert); and/or
- As a witness to evaluate the facts.

#### 2. PROCEDURE FOR ARRANGING FOR EXPERT WITNESS:

- a. *RA approval:*

If the Trial Attorney decides that expert testimony is necessary, that decision must be reviewed and approved by the RA..

b. *Qualifying the witness as an expert witness:*

If the Trial Attorney calls an expert witness, s/he is prepared to qualify the witness as an expert before the witness can begin to provide "expert" testimony. In addition, if the witness is being called to state an expert opinion, the Trial Attorney is careful to lay the proper foundation prior to the witness' testimony as to the expert opinion.

c. *Suggested outline for structuring an expert witness' testimony:*

i. Objectives:

- Qualify the witness as an expert, and
- Introduce witness' opinion into evidence in an understandable, compelling manner.

ii. Method: Lay foundation that permits you to accomplish both objectives; use chronological/logical approach in eliciting the following testimony:

- Establish that the witness is an expert in his/her field;
  - full name
  - education
  - professional education
  - license/board certification
  - curriculum vitae (have expert discuss)
  - occupation/area of specialization
- Tender the expert;
- Stating the expert's opinion;
- The bases for the opinion;
- The factual bases for the expert's conclusion;
- Confront weaknesses; and
- Redirect, if necessary.

**EXAMPLE**

**Establish that witness is an expert in his/her field**

**Trial Attorney:** Please state your name and where you reside.

**Mr. Donovan:** Thomas J. Donovan, I reside in New York City, New York.

**Trial Attorney:** What is your occupation and where are you employed?

**Mr. Donovan:** I am a Document Analyst and Director of the U.S. Postal Inspection Service Crime Laboratory, located in New York City, New York.

**Trial Attorney:** State your experience as a Document Analyst.

**Mr. Donovan:** I was with the New York City Police Department for 17½ years, the last 15 of which I was assigned to their Crime Laboratory as an Examiner of Questioned

Documents. I have been employed by the U.S. Postal Service as a Document Analyst since January 1, 1972.

**Trial Attorney:** Please explain the nature of your work as a Document Analyst.

**Mr. Donovan:** My position entails the examination, comparison and identification of questioned handwriting, hand printing and typewriting in cases coming under the investigative jurisdiction of the U.S. Postal Service.

**Trial Attorney:** In your official capacity, how much of your time is devoted to this profession?

**Mr. Donovan:** My full working time.

**Trial Attorney:** Briefly state your qualifications in this field.

**Mr. Donovan:** I have an Associate and Applied Science degree from Brooklyn College, majoring in Police Science, I have a Bachelor of Science degree from John Jay College of Criminal Justice, majoring in Criminology. I trained under retired Captain Joseph P. McNally, New York City Police Department and retired Detective Hugh L. Sang, New York City Police Department, both qualified Document Analysts. I have examined thousands of handwriting, hand printing and typewriting problems; prepared reports and exhibits, qualified in court on handwriting, hand printing and typewriting problems. I have been certified by the U.S. Civil Service Commission as a Document Analyst.

**Trial Attorney:** Are you a member of any scientific or professional organizations?

**Mr. Donovan:** Yes, I am a member of the American Board of Forensic Document Examiners and the American Society of Crime Laboratory Directors.

**Trial Attorney:** What courts have you qualified and testified in previously?

**Mr. Donovan:** State Supreme Courts, Criminal and Civil Parts, in the five counties of New York City, also Criminal Parts of Supreme Courts in Nassau County, Suffolk County and Westchester County in New York and Dauphin County, Pennsylvania and Federal courts in Southern and Eastern District New York, Pennsylvania, Rhode Island, Massachusetts, Maine, Florida and North Carolina.

**Trial Attorney:** Please name some of the technical books you have studied.

**Mr. Donovan:** "Questioned Document Problems" by Albert S. Osborn, "Ames on Forger" by Daniel T. Ames, "Twentieth Century Handwriting Systems" by Albert W. Sommerford, "Scientific Examination of Documents" by Ordway Hilton and "Suspect Document" by Wilson R. Harrison.

**Tender the Expert**

**Trial Attorney:** "Your honor, I move that the witness be accepted as a qualified expert in the field of Questioned Documents."

**Stating the Expert's Opinion**

**Trial Attorney:** I hand you FLRA Exhibit 1 and ask you whether you have previously examined this document?

**Mr. Donovan:** Yes, I received this exhibit from Postal Inspector Smith.

**Trial Attorney:** I hand you FLRA Exhibit 2 (known handwriting specimens) and ask you whether you have previously examined them?

**Mr. Donovan:** Yes I have. This Exhibit (Specimen Handwriting) was submitted to the Crime Laboratory by Postal Inspector Smith.

**Trial Attorney:** Did you make a comparison between the questioned writing on FLRA Exhibit 1 and the specimen writing, FLRA Exhibit 2?

**Mr. Donovan:** Yes.

**Trial Attorney:** Did you form any conclusions with respect to the questioned and known writings?

**Mr. Donovan:** Yes.

**Trial Attorney:** Will you state your findings?

**Mr. Donovan:** The questioned writings were authored by the same person who authored the known writings.

### The Bases for the Opinion

**Trial Attorney:** Did you prepare or cause to be prepared any photographic enlargements of the writings contained in FLRA Exhibits 1 and 2?

**Mr. Donovan:** Yes.

**Trial Attorney:** For what purpose?

**Mr. Donovan:** To demonstrate the basis for my findings.

### Factual Bases for the Expert's Conclusion

**Trial Attorney:** Did you compare them with the originals?

**Mr. Donovan:** Yes, and I find them to be true copies.

**Trial Attorney:** Do you have the photographic enlargements with you?

**Mr. Donovan:** Yes.

**Trial Attorney:** Will you produce it please. (Photographic copy is offered for identification and so marked as FLRA Exhibit 4).

**Trial Attorney:** Will you, with the aid of this chart, FLRA Exhibit 3, explain to the Administrative Law Judge the basis for the laboratory findings previously expressed?

**Mr. Donovan:** (Expert witness explains).


### Confront Weaknesses

**Trial Attorney:** "Mr. Donovan, in reaching your conclusion as to the author of the questioned documents, did you take into consideration the fact that FLRA Exhibit 1 was written with a magic marker and FLRA Exhibit 2 was written with a ballpoint pen?"

**Mr. Donovan:** Yes.

**Trial Attorney:** "What effect did that information have upon your conclusion and why?"

**Mr. Donovan:** No effect, the handwriting pattern of an individual is constant regardless of the type or writing instrument utilized.

 *If Respondent's counsel cross-examines the expert, the Trial Attorney is prepared to examine the witness on redirect, if necessary. See [Part 2, Chapter W](#) concerning Redirect Examination.*

Q [Part 2, Chapter W](#) concerning Redirect Examination.

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