



F27 Expert Witnesses: A View From the Bench

*Daniel G. Martin**, Superior Court of Arizona, East Court Building, 101 W Jefferson, Courtroom 412, Phoenix, AZ 85003

The goal of this presentation is to provide an overview of the role of expert witnesses in the judicial system from a judge's perspective.

This presentation will impact the forensic science community by providing practical advice to experts who appear in court proceedings.

The testimony of expert witnesses contributes significantly to the United States judicial system. They provide expertise in all types of legal matters, both before, during, and after the proceedings. Experts can be used to enlighten the court or to distill complex information for a jury. They often testify in open court but just as frequently provide expertise behind the scenes in a consultative role. They can be called to impeach an opposing expert or to provide an alternative view of the findings. The training of many experts often excludes any information regarding the judicial system and their role in it. They are not aware of courtroom protocols, the different types of legal proceedings that precede trial, the documents that are prepared in advance of trial, or how to conduct themselves once they are on the stand. This presentation will address those issues from the court's perspective.

The judge has a unique viewpoint on the presentation of expert testimony. There are basic tenets that should be adhered to regardless of the type of legal proceedings at hand. The expert should be impartial and clear about the type of evidence he or she is reporting. The expert should speak in plain language that easily communicates their actions, procedures, thought processes, and conclusions. He or she should be prepared and ready to discuss the pros and the cons of their report. The expert should provide concise answers to questions, should comport himself or herself professionally, and adhere to the rules of the courtroom.

Prior to testimony in court and once the review of evidence is complete and a report of findings has been issued, the expert witness should expect his or her opinion to be made public. There are various stages to the legal process in which the findings will be presented. The expert can expect that those findings will be reviewed by the attorneys and that there will be some form of interview process, which can range from an informal meeting to sworn deposition testimony. Both sides will have the opportunity to question the expert and preparation is critical.

Experts may also be asked to express opinions in the form of a sworn affidavit. Such affidavits often constitute the attorney's interpretation of the expert's findings and may not be fully inclusive or accurate, depending on the level of the attorney's understanding. The expert should carefully review any document of this type to ensure that it accurately reflects his or her findings. If an expert is asked to give a deposition or defense interview, the expert should be aware that the proceeding will be recorded (often by video) and that the transcript can be used to impeach. Experts should maintain their objectivity, speak to the facts, be familiar with the literature that supports their findings, and refrain from expressing conclusions that are not supported by the record. Part of the responsibility of the opposing counsel is to bring out contradictions to the findings when they are helpful to their client(s). This process can be combative, but professional demeanor and honest acceptance of the cons of the findings should be the goal at all times.

Many expert witnesses have not been briefed on courtroom procedure and are unaware of the restrictions on their actions once they are sworn in. They will need to be qualified through preliminary examination as to their education, training, and experience. Providing a résumé or *curriculum vitae* to the attorney ahead of time is a good way to ensure this process goes smoothly. Experts are often the mechanism by which exhibits (reports, photographs, supporting documents, etc.) will be admitted into evidence; however, they cannot discuss them until that process is concluded. Generally speaking, experts may not stand or address the jury directly or review exhibits, photographs, or their report until given approval by the judge. Further, their testimony may be limited by court rulings made in advance of the case or at trial. Preparation for these procedural elements is critical to the effective presentation of evidence.

Experts should be prepared for all encounters they may have with the judicial system. This presentation will provide the practical knowledge necessary to make those encounters successful.

Expert Witnesses, Trial, Testimony