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Direct Examination of Expert Witnesses: Help Them Tell Their Story

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Many lawyers are concerned about how to deal with an expert witness. Interestingly enough, the same rules and concepts that apply to questions for lay witnesses, also apply to an expert witness. If you properly ask the questions, you can control the flow of information. Direct examination will always start with a “w” (who, what, where, why and when) or “how” or “describe.” That is how lay witnesses are examined and that’s how expert witnesses are examined.

The kind of experts we see in family law include psychologists, psychiatrists, business appraisers, social workers, and realtors, as well as appraisers for “stuff” like coins, furniture or cars.

In preparation for an expert’s testimony, please ensure that they have always complied with

their own standards or guidelines. For example, in Pennsylvania, the American Psychological Association Guidelines for use in child custody cases are mandated by their ethical standards. Make sure they have used them. Indeed, when a psychologist is appointed to do a custody evaluation, ask the court to include in the order appointing them that they must use the APA Guidelines. You can also ask that they not give a recommendation but simply provide the facts to the court so the court may properly make its own recommendation.

When a report is received, obviously counsel must understand it in order to present it. If you are not familiar with any part or concept in a report, meet with another expert to gain expertise. Don’t get caught in a game of “gotcha” because you will probably lose unless you are on very sturdy ground.



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If the expert is a business appraiser, know their credentials and understand the difference between fair value versus fair market value in their appraisals. (New Jersey uses fair value, Pennsylvania uses fair market value.) Certainly you must be familiar with Revenue Rule 59-60.

If you're calling an accountant, again, review his credentials. Any testimony should be based on "generally accepted accounting principles." You should be aware of the Internal Revenue Code that is germane to the topic being discussed and certainly with the new tax code and its implications in family law. Review any revenue rulings that apply to their testimony.

When calling a psychiatrist in your case, after you review his credentials, find out what they know about the Diagnostic and Statistical Manual of Mental Disorders (DSM V). All diagnoses are based on the DSM V. Review the diagnoses and look for the list of characteristics that must be found for their assessment. (By the way, if you are doing a lot of custody work, you ought to have a copy of the DSM V on your shelf.)

Direct examination is the most important part of the case. This is your opportunity to educate the judge. Not all judges are knowledgeable about all subjects, no matter how many cases they have had. As such, the presentation of the case must be clear and concise. The questions to the expert should be formed so the expert speaks in "English"

not "expertise." If there is more than one syllable in a word, have them break it down. Most judges have not experienced these kinds of experts in their own practices. They are as naive about these big words as you are. If you do not understand the words, the court certainly does not. Just keep saying, "Would you explain that, please."

Any question to which an objection is drawn or to which a leading question is raised, can be rephrased to make them nonleading. Just remember, who, what, where, why and when will start any nonleading question.

The purpose of your examination is to illicit the story of your financial case or your custody case. Your questions are open-ended and they do not suggest the answer.

Every case has a story. What is yours? Your story will go through your entire case but certainly incorporates your expert witness. If you have a story, it will engage the judge.

Remember the "KISS" principle. Keep your story simple so the judge stays engaged.

When you question your expert, remember that how you start the question will determine how your expert witness will answer.

Remember your purpose is to get the expert's opinion, but with support. Set up the testimony with what they did, why they did it, how they did it, who they spoke with and what conclusions they reached. Then you will be a real civil lawyer.

Remember that on direct examination the spotlight is on the witness and they get to tell the story. Help them do it.

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