

## Qualifying an Expert Witness in Florida

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An expert witness is an individual that is authoritative in their particular field and able to assist the finder of fact in reaching a conclusion at a trial. Aside from discerning whether the potential expert witness is someone who can make some sort of impact on the case and present well to a fact finder, it is important to know what is required in order to have that expert presented to the fact finder for evaluation of the expert opinion. This post describes the law and methods utilized in qualifying an expert witness in Florida.

*Fla. Stat.* §90.702 requires that before an expert may testify in the form of an opinion, two preliminary factual determinations must be made by the court under section 90.105. First, the court must determine whether the subject matter is proper for expert testimony, i.e., that it will assist the trier of fact in understanding the evidence or in determining a fact in issue. As a part of this decision, the court may be required to determine whether a reliable body of scientific or other specialized knowledge has developed to support the opinion testimony. Second, the court must determine whether the witness is adequately qualified to express an opinion on the matter.

Florida Rule of Civil Procedure 1.390 defines an expert witness as “a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify”. A witness may be qualified as an expert by knowledge, skill, experience, training or education. *Fla. Stat.* § 90.702 (2011). Florida courts have generally recognized that an individual may qualify as a witness by virtue of study of authoritative sources or practical experience. To determine qualifications, an inquiry must be made into the basis of the witness’ knowledge. *Seaboard Air Line Railroad Company v. Lake Region Packing Association*, 211 So.2d 25, 31 (Fla. 1968).

The methods of gaining the necessary knowledge and background to express an expert opinion are stated in the disjunctive; that is, any single method of qualification is adequate. Since the question is whether the expert is qualified through “knowledge, skill, experience, training, or education” the lack of certification in a particular medical specialty is not an automatic prohibition to a medical doctor testifying in that area of expertise. Rather, the appropriate question for the court is whether the witness has sufficient knowledge, training, or education on the discrete subject to render the opinion expressed.

Counsel must elicit from the witness that part of the witness's background which qualifies the witness as an expert. It is not necessary for counsel to formally proffer or tender a witness as an expert to the court. In fact, it may be an improper comment by the court if the witness is “declared” an expert before the jury. The qualifications, or lack thereof, may be raised by an objection to a question that only an expert may answer. It is possible for opposing counsel to stipulate to the expert's qualifications and avoid the necessity of having them elicited from the witness stand. However, counsel who has called the expert as a witness must agree to such a stipulation of the expert's qualifications. If counsel does not stipulate, the witness may be examined concerning her qualifications in order to help the jury evaluate the expert's testimony.

A witness may only testify as an expert in the areas of his or her expertise. It is not enough that the witness is qualified in some general way. The witness must possess special knowledge about the discrete subject about which an opinion is expressed. When an expert goes beyond his or her expertise, the expert will not be allowed to testify in terms of expert opinion. For example, in a suit to recover the proceeds of a casualty insurance policy for damage to machinery and lumber, a witness who was offered as an expert, but who admitted having little knowledge of lumber and wood, was not permitted to testify as an expert in regard to damages to the lumber. *Consolidated Mut. Ins. Co. v. Hampton Shops, Inc.*, 332 So. 2d 101, 102-03 (Fla. 3d DCA 1976).

Below is a list of sample questions designed to qualify a witness as an expert as taken from Gil I. Sapir, Qualifying the Expert Witness: A Practical Voir Dire, Forensic Magazine, February/March 2007 at 5.

1. Name.
2. Occupation.
3. Place of employment.
4. Present title.
5. Position currently held.
6. Describe briefly the subject matter of your specialty.
7. Specializations within that field.
8. What academic degrees are held and from where and when obtained.
9. Specialized degrees and training.
10. Licensing in field, and in which state(s).
11. Length of time licensed.
12. Length of time practicing in this field.
13. Board certified as a specialist in this field.
14. Length of time certified as a specialist.
15. Positions held since completion of formal education, and length of time in each position.
16. Duties and function of current position.
17. Length of time at current position.
18. Specific employment, duties, and experiences (optional).
19. Whether conducted personal examination or testing of (subject matter/person/instrumentality).
20. Number of these tests or examinations conducted by you and when and where were they conducted.
21. Teaching or lecturing by you in your field.
22. When and where your lecture or teach.
23. Publications by you in this field and titles.
24. Membership in professional societies/associations/organizations, and special positions in them.
25. Requirements for membership and advancement within each of these organizations.
26. Honors, acknowledgments, and awards received by you in your field.
27. Number of times testimony has been given in court as an expert witness in this field.
28. Availability for consulting to any party, state agencies, law enforcement agencies, defense attorneys.

29. Put curriculum vitae or resume into evidence.

30. Your Honor, pursuant to (applicable rule on expert witness), I am tendering (name) as a qualified expert witness in the field of \_\_\_\_\_.

Whether a witness is qualified as an expert is a preliminary question of fact that must be determined by the trial judge prior to the admission of the expert's opinion. Whether a witness is qualified as an expert is largely a matter for the discretion of the trial court.

Practice areas: [Business Litigation](#)

Tags: Commercial Litigation; Experts; Trial

Source documents: Expert Witnesses, Erhardt 1 Fla. Prac., Evidence § 702.1 (2011 ed.)