

## SAMPLE QUESTIONS FOR EXPERT WITNESSES

Laying the foundation for the admissibility of expert witness testimony requires careful preparation. The following questions offer a starting point for this task.<sup>1</sup> The required showing will vary depending on the subject matter of the expert's testimony, the extent to which the expert's field of expertise is novel, whether it involves hard or soft science and the connection between the expert's qualification and the opinion being offered. The response to each question will often point to additional lines of inquiry for follow up.

### ***TIP:***

Meet with any expert well in advance of trial to discuss the expert's qualifications, the basis for his or her opinion and the scope of his or her expertise. Do not exceed the scope of the witness's expertise in your direct examination of the expert. With an opponent's expert, or when your expert is being cross examined, keep this issue in mind and object if a question seeks an opinion outside the scope of the witness's established expertise.

### **QUALIFICATIONS<sup>2</sup>**

What is your occupation/profession?

What is your educational background?

What degrees, certificates, or licenses do you have?<sup>3</sup>

Have you attended or conducted continuing education seminars, conferences and related training?

Are you a member in any professional organizations/societies?

Have you received any awards or other professional recognition?

Have you published articles in your field?

How many cases involving [*subject matter*] have you handled?

How many years have you worked in this field?

### **NEED FOR EXPERT OPINION<sup>4</sup>**

This case involves a child [*with a brain injury/severe burns/bite marks; victim of sexual abuse/Munchausen by Proxy, exposed to methamphetamine production/other*].

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<sup>1</sup> For overview of the case law regarding expert witness testimony, See Practice Guide, SECTION 8, EVIDENCE, Expert Witness Testimony.

<sup>2</sup> Tex. R. Evid. 702 (witness must be qualified by reason of his knowledge, skills, experience, training or education).

<sup>3</sup> For aid in interpreting academic or professionals credentials, See Practice Guide, SECTION 11, TOOLS, Evidence, Acronyms for Commonly Encountered Degrees, Licenses, and Certifications.

<sup>4</sup> Tex. R. Evid. 702 (expert testimony will aid the fact-finder understand the evidence or determine a fact in issue).

What it is about [*a brain injury/a burn injury/bite marks/sexual abuse/ Munchausen by Proxy/exposure to methamphetamine production/other*] that requires an expert to explain?

What is it about this case that a lay person with no background in this field might not understand?

What are the key principles that a person without education or experience in this field would need to grasp in order to understand this case?

Can you explain the [*research/theoretical basis/concept/scientific principles*] involved in this field of study to a non-expert?

Do you believe your testimony will aid the judge or jury in understanding the facts in this case? How?

## **BASIS FOR OPINION**

Have you examined or interviewed [*the child/parent/other person*]?

Have you administered any medical or psychological tests to the [*child/ parent/other person*]?

Have you reviewed [*medical records/documents/photographs of scene/injury/ x-rays/court reports/police reports/child's written or recorded statement/other evidence*]?

Have you [*made a diagnosis/made a conclusion/formed an opinion regarding cause of injury/diagnosis/child's needs or other issue*]?

Did you rely on any other source of information in forming your opinion other than the [*examination/interview/records/photographs/etc.*] that we have discussed? If so, what other sources did you rely on?

If the facts were [*supply hypothetical*], could you render an opinion regarding [*cause of injury/whether the injury was intentional/whether the injury is consistent with the parent's report of the incident/other?*]

## **EXPERTISE IN "HARD" SCIENCES**

### **Testing**

What theory/technique did you base your opinion on?

How did you test this theory/technique?

What were the results?

How many times have you used this theory/technique?

Have you always used the same method when you used this theory/technique?

Have you ever had different results- or results inconsistent with the theory/technique you based today's opinion on?

### **Extent of Subjective Interpretation**

Does any part of the theory/technique require subjective interpretation?

If yes, describe what facet of the testing is subjective.

If yes, do you believe another professional might interpret the same data differently?

Is there any method you use to assess the subjective component of this theory/technique?

Did you use that method in arriving at your opinion in this case?

### **Peer Review**

Has there been peer review of your theory/technique?

Has the theory/technique you rely on today been published? If so, where & when?

Have any articles or other publications criticized or cast doubt on your theory/technique?

If so, when and what was the basis for the criticism?

Does that criticism change your opinion in this case? Why not?

### **Error Rate**

Does your theory/technique have a known or potential error rate?

If yes, what is the error rate?

How did you calculate the error rate?

Have you considered alternate theories or explanations?

Why did you reject any alternate theories or explanations?

### **Acceptance in Scientific Community**

Is this technique/theory generally accepted in the scientific community of [*engineers/physicians /coroners/other*]?

What evidence is there that this is a generally accepted technique/theory?

- Formal statements of professional organizations
- Professional literature, training, publications
- Use by government/trade/community organizations

### **Use Outside Courtroom**

Is this technique/theory used for a purpose outside the courtroom and litigation?

- Diagnosis, treatment, social work assessment, criminal investigation

### **EXPERTISE IN "SOFT SCIENCES"**

What is your field of expertise/specialty?

Within the [*mental health/social work/social sciences/other discipline*] field, is this a recognized professional area of expertise?

Are there published articles recognizing this field of expertise/specialty?

Has this field of expertise/specialty been recognized by any licensing or accreditation body or any governmental agency?

Are there professional journals or conferences that focus on this field of expertise /specialty?

Is there controversy within the profession about the efficacy or reliability of this field of expertise/specialty?

If so, can you articulate why these [*opinions/statements/criticism*] should not undermine the value of your opinion?

Repeat questions related to QUALIFICATIONS, above, as needed to establish the specific expertise and experience.

Based on your education and experience, are you able to give an opinion as to \_\_\_\_\_?

Within your [*field of expertise/specialty*] is it common for a practitioner to give an opinion as to [*the cause of an injury/whether termination is in the child's best interest/a caretaker and child are bonded/a certain placement is in the child's best interest*]?

What facts or evidence did you rely on?

Did you rely on [*observation/examination/review of records/photographs/written or recorded statements/reports/ tests/other*]?

Is this the type of evidence relied on in the ordinary course by professionals in your field?

Is there any other evidence or information relied on in the ordinary course by professionals in your field as part of making such a determination that you did *not* use?

Why not?