



North Carolina Mock Trial Program Establishing Credentials for an Expert Witness

According to **Rule 602**, “lay” witnesses (non-experts) generally are limited to testifying to matters about which they have personal knowledge – events they have actually witnessed themselves. Think of their testimony as including events they perceived with their “five senses”: seeing, hearing, smelling, tasting, or touching. In general, lay witnesses are NOT allowed to give opinion testimony. For instance, they cannot proclaim that the defendant was legally intoxicated; but they can say that they saw the defendant drink four beers in one hour, stumble across the room and fall down, speak with slurred speech, etc. Such testimony will tell the jury what the witness actually observed and will allow the jury to draw their own conclusions.

According to **Rule 701** of the Rules of Evidence, a **lay** witness can only offer opinion testimony IF the testimony is rationally based on the witness’s perception, helpful to understanding the witness’s testimony or determining a fact in issue, and NOT based on specialized knowledge within the scope of Rule 702. For example, “I thought the engineer exaggerated the dangers of my zoo tram so he could make money if I hired him to fix the so-called problems.”

According to **Rule 702**, an **expert** witness CAN give opinion testimony in his/her area of expertise without having personal knowledge of an event, IF the witness is first “qualified as an expert by knowledge, skill, experience, training, or education.” The directing attorney should use a series of questions to establish the expert’s qualifications before asking the judge to admit him/her as an expert in a particular, specified field of expertise. The team is limited to the information in the affidavit and/or exhibits; the witness cannot invent additional qualifications in order to be qualified as an expert. One way to do this is as follows:

1. Establish the expert’s educational background: “Could you please tell us about your education in this field?” “Have you written any scholarly papers on the subject?” “Have you gotten any additional training after obtaining your degree?”
2. Establish the expert’s experience: “Please tell the jury about your work experience.”
3. Establish that s/he used reliable methods to reach his/her expert conclusions: “Did you have sufficient facts and data to reach a conclusion in this case?” “Did you use reliable methods to reach those conclusions?” “Did you apply those reliable methods to the facts in this case?”

At this point, you have established sufficient foundation to ask the judge to qualify the witness as an expert in a specific field: “Your Honor, at this time we ask that [witness] be admitted as an expert in the field of [field].” If admitted, the expert may now give his opinion about an event s/he did not observe. “The unsafe design of the zoo tram allowed the gorilla to reach and harm Ms. Malcolm. If the tram had been rebuilt as I had suggested, Ms. Malcolm could not have been injured in this way.”