

Domestic Violence Advocates as Expert Witnesses

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What is expert testimony and when is it permissible?

What qualifies as an expert for the purposes of provision of testimony in a case and who qualifies as an expert have been defined by case law and court rules:

Section 702 of the Federal Rules of Evidence states, “If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.”

What is expert testimony and when is it permissible?

In *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) the Supreme Court held the trial court must determine whether the proposed scientific expert evidence will assist the trier of fact in determining a fact at issue in the case, and whether the evidence is relevant, and whether the testimony is reliable.

In *Kumho Tire Co v. Carmichael*, 526 U.S. 137 (1999), the court clarified that *Daubert* not only applied to “hard science” but also to “soft sciences” which has been interpreted as including testimony about psychology, sociology, the behavioral sciences and cultural issues.

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Finally, North Dakota has its own interpretations of these standards which determine what you may be asked to testify about and what questions you may be asked to establish that you are an expert, that your testimony is relevant, and it is more probative than prejudicial.

What expertise could you be asked to provide in a case through expert testimony about domestic violence?

As an expert on the dynamics and impacts of domestic violence to educate the judge/jury about:

- the definition of domestic violence – what is it, how does it differ from a squabble or fight, power and control dynamics, the non-physical aspects of the violence
- impacts of the offender's abuse on the victim, why a victim stays with a perpetrator, returns to a perpetrator, fails to report or delays in reporting abuse, does not wish to participate in the prosecution
- What else have you been asked to testify about regarding domestic violence?

Preparation to serve as an expert witness

- An up to date resume/CV
- Talk with and if possible, meet with the attorney to discuss the case and go over your testimony in detail
 - determine what kind of case it is – civil, criminal
 - determine what stage of the litigation it is
 - determine what aspect of domestic violence you are being asked to testify about
- Ensure that there is no conflict
- Determine if you have ever provided services to the victim

Consider the questions that you may be asked on the stand to establish that you are an expert

- present employment and duration of job
- duties and responsibilities
- prior jobs related to domestic violence
- your experience and training that qualifies you to hold your current position
- your experience working directly with victims of domestic violence
- the number of victims whom you have assisted
- certifications, licensing, etc., if any
- membership in related professional groups
- research and writing on domestic violence
- prior expert testimony given

Other possible uses of domestic violence experts

- Help evaluate the case and develop trial strategy
 - Draft questions for potential jurors
 - Assist with jury selection
- Conduct a clinical assessment of the victim (who is NOT your client) and write an expert report to outline issues and arguments to be made
 - Help prepare the victim for trial

Fact Witnesses v. Expert Witnesses

Important to distinguish between expert witnesses
and fact witnesses

Which is which?