



Saponaro, Inc.
Assisting Trial Lawyers Since 1974



QUALIFYING YOUR EXPERT DURING

VOIR DIRE

WRITTEN BY:

Mary Beth Klemencic, Esq.

Mazanec, Raskin & Ryder Co., L.P.A.



The qualification process by voir dire at trial is not the same as a *Daubert* hearing.

A *Daubert* hearing will usually occur before trial, initiated by a motion in limine, when a party seeks to preclude an expert witness from testifying, in total or in part, because the expert used unreliable principles and methodology or does not hold the required level of expertise on the subject matter.

It is the Rules of Evidence that governs whether a witness is qualified as an expert and the Rules along with the guidance of *Daubert v. Merrell Dow Pharmaceuticals Inc.*,¹ *General Electric v. Joiner*,² and *Kumho Tire Co., Ltd. v. Carmichael*³ governs whether an expert's testimony is relevant, reliable and admissible.

1. 509 U.S. 579, 592, 113 S. Ct. 2786, (1993).
2. 522 U.S. 136, 118 S. Ct. 512, (1997).
3. 526 U.S. 137, 119 S. Ct. 1167, (1999).



Saponaro, Inc.
Assisting Trial Lawyers Since 1974

Call Toll Free: 800-327-3026 or Visit: www.saponaroinc.com



Getting your expert qualified at trial starts with selecting an appropriate and competent expert.

Anyone can be an expert, if they have specialized knowledge, skill, experience, training or education greater than that of a lay person regarding the subject matter. A young doctor just graduated from medical school can qualify as an expert because she has greater knowledge, training and education than a lay person even though many doctors have superior qualifications. When selecting your expert conduct due diligence on articles authored, involvement in other cases on the same subject, and ask the tough questions on whether they have ever failed to be qualified, has their testimony ever been excluded or limited by a court, and whether they have any substance abuse issues or negative personal life issues. This will go a long way when ready to qualify your expert at trial. A voir dire examination is a threshold determination on whether the witness is competent in the area of expertise that is the same as the subject matter of his or her testimony.



Saponaro, Inc.
Assisting Trial Lawyers Since 1974

Call Toll Free: 800-327-3026 or Visit: www.saponaroinc.com



Qualifying an expert witness can vary from one jurisdiction to another, so check the civil and local rules pertaining to the jurisdiction.

Some courts may require the expert to be formally tendered and accepted by the court before being allowed to offer an opinion. Other courts may allow you to proceed with questioning the expert on his opinions as long as a proper foundation is laid, unless an objection and request for opportunity to voir dire the witness is made by the opposing party.

The determination of whether a witness has the qualifications, training and education, needed to testify as an expert is made by the trial court and its decision will not be disturbed on appeal absent an abuse of discretion. *Scott v. Yates*, 71 Ohio St.3d 219, 643 N.E.2d 105.

During voir dire you must review the expert's credentials, establishing his or her competency and knowledge on the subject matter of their testimony. The opposing party will be allowed to voir dire the expert if they want to attempt to prevent the qualification. A good voir dire should withstand an opposing party's cross-examination.



Saponaro, Inc.
Assisting Trial Lawyers Since 1974

Call Toll Free: 800-327-3026 or Visit: www.saponaroinc.com



Good voir dire can impress a jury on the credibility of your expert before he or she even begins to testify on the subject matter.

The order and format of your voir dire should be specific and fitted to qualify the witness at hand. Voir dire questions should reflect how your expert is qualified – by knowledge, skill, experience, training, or education on the subject matter. A chronological order of education and work history is usually the most constructive. Broadly cover their knowledge and experience on the subject of their testimony to demonstrate their authority on the issue. Establishing a broad expertise on the subject issue will expand the reason which your expert can testify. Specific accomplishments and honors are best mentioned by you intermittently during the voir dire, to relieve the expert from coming across as too pretentious.

Opposing counsel may offer to stipulate to your expert's qualifications in an attempt to minimize his or her prominence in her field. If the judge coerces you into agreeing to the stipulation, offer the witness' curriculum vitae as an exhibit. A lengthy vitae in the jury room for the jurors to review, can work to your advantage.



Saponaro, Inc.
Assisting Trial Lawyers Since 1974

Call Toll Free: 800-327-3026 or Visit: www.saponaroinc.com



Be prepared to ask questions that show your witness' expertise on the subject matter.

Determine what two or three questions you are going to ask your expert that will make the difference as to whether a judge will qualify him or her as an expert on the relevant issue. Your witness may have much training, many accolades and numerous publications, but focus on those that are relevant to his expertise on the subject matter of his testimony. Discuss these questions with your witness and letting him or her know the answers to these questions will make a difference.



Saponaro, Inc.
Assisting Trial Lawyers Since 1974

Call Toll Free: 800-327-3026 or Visit: www.saponaroinc.com



Ask leading questions.

During this qualifying stage, ask your witness leading questions and have the accolades come from you. Such as, “You completed your fellowship in 1981 and are actually one of only about 100 physicians in the country who have, correct?” This way your witness does not appear to be bragging.

Keep the voir dire simple. Demonstrate to the court your witness is a qualified expert on the subject matter. Present to the jury a witness who is knowledgeable, credible, likeable, and indubitably right.



Saponaro, Inc.
Assisting Trial Lawyers Since 1974

Call Toll Free: 800-327-3026 or Visit: www.saponaroinc.com



Information to know about your expert prior to voir dire.

An outline of possible questions you may use to qualify your witness may be framed like the following: *(If videotaping trial testimony, include why unavailable to appear in court.)*

- | | |
|--|--|
| Name? | Membership in professional organizations and positions held? |
| Occupation? | Awards, honors or other professional recognition? |
| Place of employment? | Continuing education seminars and conferences? |
| Title and position held? | Teaching or lecturing? |
| Education? | Published articles? |
| Licensure, where and when? | Number of cases involved in on this subject matter? |
| Specialty certifications? | Key principles to know to understand this case? |
| Description of field and/or specialty? | Offer curriculum vitae or resume into evidence? |
| Positions held, and when? | |
| Specific duties and functions at current position? | |



Saponaro, Inc.
Assisting Trial Lawyers Since 1974

Call Toll Free: 800-327-3026 or Visit: www.saponaroinc.com

REMEMBER

The voir dire of your witness should not be used just to confirm his or her expertise, but to show that your expert is credible, amiable and right.





QUALIFYING YOUR EXPERT DURING

VOIR DIRE



Saponaro, Inc.

Assisting Trial Lawyers Since 1974

**We Connect Attorneys with Respected
Expert Witnesses in All Areas of Litigation.**

Saponaro, Inc. has a strong selection of premier expert witnesses, in all areas of litigation, as well as a no-obligation consultation to help you obtain the best expert for your case. A strong case starts with the right expert.

Call Toll Free: 800-327-3026 or Visit: www.saponaroinc.com