

TIPS FOR EXAMINATION OF PARENTING EXPERT

Selection of Expert

4th JD CFI Roster. Google the URL

Names to Propose. I always propose 2 names, but seemingly not necessary. I've seen plenty of cases where attorney has proposed just one, I propose alternatives suggesting "deck stacking", and end up with order bolstering expert ("Court has seen XXX multiple times and has complete confidence in his/her integrity/skills/professionalism.")

Availability. Is expert available within the timeframe? Will expert travel if needed?

Cost Can parties afford him/her? Need overall costs, not initial quoted fee (often \$5K up front becomes \$10K by time of trial)

Location. Expert from outside El Paso County? Stipulation?

Subpoena Expert?

Clear hearing date with expert - verbally, and in writing.

Appointment order may address attendance at hearing. Some experts want subpoena to testify, others will show up if requested.

Almost all of them will want to be paid!

Bias towards Attorney

Don't waste time/money, even if particular attorney always proposes same expert, who you believe delivers favorable recommendations. End up with order bolstering expert. Why?

1. JDF 1338 - Existence of relationship with counsel, etc. Most attorneys & experts know each other, see each other at CLEs, may have dinner at conferences, etc.
2. Impossible to prove bias w/o discovery; no fishing expedition into confidential files
3. No "hearing within a hearing." Attack the report, not the person.
4. Every case different, so who's to say expert was incorrect when favored attorney

Expertise

Look at resume. Sufficient experience to address unique issues, children special needs, etc?
Challenge at time of appointment, if applicable.

CRS 14-10-127(4) laundry list of basic qualifications (effects of divorce/remarriage, child development, psychopathology, clinical assessment techniques, etc)

CRS 14-10-127(5) specific expertise (e.g. DV, child abuse, alcohol/drugs, psychological testing).

Request Expert File

Review notes:

1. Candid observations made contemporaneous with events before mind made up
2. "Raw" data w/o expert distilling them for report, so may include helpful facts not mentioned in report, or facts which were downplayed
3. Client concerns reflected in notes which were never explored - why not?

Case where mother blew up at PRE and child in meeting, but PRE still recommended in her favor. Two pages of notes were much more detailed & damning than 1 sentence in report, and included annotation that mother later dismissed outburst as being issue with "time of month".

Party statements - good to read at least opposing party statement to see if they assert provably false facts, show trying to carve out other parent, make concessions helpful to your case, etc.

Collateral statements - if from party's family/friends, expected to be one-sided and not useful. If teacher, day care provider or therapist, read carefully.

Psychological Testing - sometimes a report may indicate testing done, but gloss over results. Read actual test results to see if any psychological issues may dovetail into demonstrably bad behavior of party.

"I Won't Back Down"

Expert is unlikely to be browbeaten into admitting report was flawed. Don't expect submission, just chalk up points (e.g. on issues which may have been missed), save argument for later.

Bad Information

What?

1. Newly-discovered evidence.
2. Parent concealed facts
3. Report relied upon provably false facts

Exception to not backing down. If true zingers that would change expert recommendation, confer in advance and provide evidence, then co-opt expert at trial. If believe expert would stick to guns, consider saving for cross at trial.

Questioning Philosophical Approach

Does expert have biases towards certain approaches, e.g. “tender years doctrine” or always recommends equal time? So what - we’re human.

Competing school of thought, especially with younger children. Examples:

Attachment perspective - frequent overnights with other parent hard on kids under 3

Parent Involvement Perspective - shared parenting should be the norm, even for young

If report cites specific research, or appears to be based upon a philosophical approach, cross-examine on contrary research, get expert to endorse expertise of contrary works, and conceded that reasonable minds can differ.

Then stop! Argue in closing that expert performed valuable service in fact-gathering, but conclusion is based upon philosophy, not evidence, and other philosophical approach is just as valid, so it’s really up to judge.

Unequal Treatment of Parties

Did expert spend substantially more time with one party than other? Interview one party’s witnesses personally but only review written statements from other?

Had situation where PRE dedicated $\frac{2}{3}$ of “positions of the parties” to father, and even in the $\frac{1}{3}$ where addressed mother’s position, interjected father’s “rebuttal” to each of her points - something PRE did not do when discussing father’s position. Not a concern for court.

Supplemental Evaluation

Is cross-examination enough? Or do you need supplemental evaluation? Or critique?

Call Expert if Agree with Report?

Often judges not need in-court testimony simply to parrot what’s already in report. So if agree with report, don’t call expert unless:

1. Want to emphasize important issue that may be glossed over or not sufficiently highlighted in report
2. Bolster weaker areas of report, discuss facts/thought process
3. Discuss additional facts relied upon in report that are not explicitly in report.
4. Non-standard recommendation: Separate kids in relocation, restrict a parent, etc. Really want detail on the “why”
5. Rehabilitate if other side attacks report, especially if supplemental