

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: City Attorney

AGENDA DATE: November 10, 2015

CONTACT PERSON NAME AND PHONE NUMBER: Sylvia Borunda Firth, 212-0033

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE the appointment of Evan D. Reed as an Assistant City Attorney effective November 10, 2015 at a salary of \$60,000.00 per annum, plus benefits.

BACKGROUND / DISCUSSION:

Mr. Reed will be assigned as an Assistant City Attorney. He obtained his Doctorate of Jurisprudence from the University of Miami School of Law in 2011. Mr. Reed has the experience and knowledge necessary to perform the duties of an Assistant City Attorney.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes, last appointment of an Assistant City Attorney was April 8, 2015.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Budgeted in FY2015 Budget
103/10500/1000/501000

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A
N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing,
client department should sign also)

Information copy to appropriate Deputy City Manager



OFFICE OF THE CITY ATTORNEY

MEMORANDUM
CONFIDENTIAL ATTORNEY-CLIENT AND/OR
ATTORNEY WORK PRODUCT COMMUNICATION
NOT INTENDED FOR PUBLIC DISSEMINATION

TO: Mayor Oscar Leeser
City Representatives: Peter Svarzbein, Larry Romero, Emma Acosta, Carl L. Robinson, Michiel R. Noe, Claudia Ordaz, Lily Limón and Cortney Carlisle Niland

FROM: Sylvia Borunda Firth, City Attorney *SBF*

SUBJECT: Appointment of Assistant City Attorney – Evan D. Reed
November 10, 2015 City Council Agenda

DATE: November 3, 2015

I have placed an item on the City Council Agenda for November 10, 2015, regarding the appointment of Evan D. Reed as an Assistant City Attorney at an annual salary of \$60,000.00

Evan D. Reed's starting date will be November 11, 2015. Funding for this position was approved in the FY2016 Budget and the filling of this position is essential to the efficient operations of the City Attorney's Office.

I have attached a copy of Mr. Reed's resume for your reference. I hope you will favorably consider my recommendation and approve his assignment. If you have any questions or comments, please do not hesitate to contact me.

Attachment

Cc: Tomás González, City Manager

Evan D. Reed

EDUCATION:

University of Miami School of Law, Coral Gables, Florida

Juris Doctor Candidate, May 2011

Activities: Military Law Society
Phi Alpha Delta Law Fraternity

University of Texas at El Paso, El Paso, Texas

Bachelor of Arts in Political Science, May 2007

Minor: Criminal Justice

Honors: Law School Preparation Institute, Summer 2006
Alpha Lambda Delta Freshman Honors Society

EXPERIENCE:

Law office of Leon Schydlower, El Paso, Texas

Associate, March 2015 – Current

- Conducted client visits
- Analyzed discovery on cases
- Assisted in the preparation of evidence for trial
- Checked documents for accuracy and completeness

Comic Strip Comedy Club, El Paso, Texas

General Manager, August 2005 – May 2007

- Responsible for overall operations of club on a daily basis
- Supervised 10 – 15 employees
- Maintained ALOHA computer system related to credit card transfers, inventory and orders
- Ensured compliance with the Texas Alcoholic Beverage Code ("TABC") and Texas laws

Diocesan Migrant & Refugee Services, El Paso, Texas

Research Aide, September 2006 – December 2006

- Prepared appropriate applications for clients
- Opened and maintained client files

Eleventh District Family Court, Miami, Florida

Research Aide/Intern, August 2010 - December 2010

- Wrote memoranda to assist Judge with deciding unusual or complex issues
- Observed multiple Court cases and litigation strategies

LANGUAGE SKILLS:

Spanish and Portuguese (basic knowledge)

INTERESTS:

Computers (able to build and repair personal computers)

Texas licensed -- 2014

MEMORANDUM

TO: Judge Maria Espinosa Dennis
FROM: Evan Reed
RE: What qualifies an expert witness

I. QUESTION PRESENTED

What are the factors that a court may use to determine whether a person may testify as an expert, allowing them to give an opinion as to the meaning or nature of complex facts in a case.

II. SHORT ANSWER

Trial courts have nearly unlimited discretion to qualify or not qualify a person as an expert and unless the court abuses its discretion, or is clearly erroneous, its determination is conclusive, a court should focus mainly on whether or not the testimony will assist the finder of fact in making a decision about matters that are outside of their competency, it is understood that the initial finder of fact is in a better position to judge the testimony than subsequent courts.

III. WITNESSES GENERALLY

According to Florida Evidence Statute § 90.702 (2010),

"If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial."

This statute is the basic foundation of Florida evidentiary law regarding expert testimony. Courts use the testimony of an expert witness to offer guidance to the finder of fact regarding material that is either outside of their own understanding, or too complex for a layperson to decipher. The overarching guideline is that the testimony must assist in either understanding what evidence means, or determining a particular issue.

The court generally looks for an expert to have some sort of advanced degree in the subject, or for a level of experience, training, or education that would give the individual a discrete knowledge of the subject matter at hand which the average person would not possess. This knowledge may be in the form of self study, from work experience, or from frequent exposure to the subject matter. There is no precise rule for what method or means the knowledge

is obtained, though it is understood that simply reading advanced material will not turn a non expert into an expert, and that mere general experience in the area does not make one an expert by mere exposure.

There are few limits to a court's ability to determine what qualifies a person as an expert in a given subject. The trial court has wide discretionary power to qualify an expert witness and their decision is generally conclusive unless clearly erroneous or an abuse of discretionary power. See, e.g., Schwab v. Tolley, 345 So. 2d 747 (Fla. 4th DCA 1977).” Brooks v. State, 762 So. 2d 879 (Fla. 2000).

IV. DISCUSSION

To understand what kind of factors a court should look at there is an abundance of helpful case law. Take the case of Rowe v. State, 163 So. 22 (Fla. 1935), where the court dealt with what would qualify a witness as an expert in a murder case. In this case a Sheriff was asked to testify as to the distance at which a person would suffer powder burns from a shotgun. The trial court allowed the Sheriff to testify to that effect, but the appellate court held his testimony inadmissible on that question, due to the fact that he had no Specialized knowledge concerning the distance from which a person could receive such burns.

In Rowe the court was taking notice that though the Sheriff may generally know about such things, his opinion would be no more than conjecture. Contrast this to Armstrong v. State, 862 So. 2d 705 (Fla. 2003), where the court held a firearms expert sufficiently qualified to offer testimony about firearm searing. The man testified that he had fired hundreds of different weapon types, and that he had acted as a firearms instructor for 8 years, during which time he had test fired weapons for the court to determine their functionality. While he admitted that he had attended no school of weapons searing, he also testified that he did not believe such a thing existed.

The key difference between the two witnesses was the degree to which they were knowledgeable on the subject. While the Sheriff used firearms in the course of his employment, it was not shown that he was possessed of any significant particular knowledge about them, in fact by his own admission he had no experience in measuring the distances from which one could be burned by a shotgun blast. A firearms instructor on the other hand, who trains others in the operation of a multitude of different weapons and is relied on to determine the functionality of such weapons for the court system would have a different level of knowledge about the subject. And while the firearms instructor did not have any specialized training in the specific area of searing, the nature of his job would have given him more insight into the area than any layperson would have.

Humble v. State, 652 So. 2d 1213 (Fla. 1st DCA 1995), is another useful case to consider when discussing what qualifies expert witnesses. In Humble the trial court determined that the defense witness was insufficiently qualified to testify as an expert. The particular witness was going to testify as to what battered women's syndrome was, and had presented her qualifications as 17 years of experience working in the field of domestic violence, operating shelters and having attended and taught numerous workshops on spousal abuse. The court held that this experience was insufficient to qualify her as she held a bachelor's degree in music, and had no formal education in the area of mental health or psychology. This case shows that someone with extensive experience in an area associated with a subject does not qualify as an expert by association.

Compare Humble with Gianos v. Baum, 941 So. 2d 581 (Fla. 4th DCA 2006), where the court admitted testimony on a pathology matter from a pulmonologist and critical care physician. The court trial court held that while the doctor was not a pathologist by profession, his training as a physician and work on pathology in medical school was sufficient to allow him to render an opinion. The appellate court affirmed the holding. Stating that though he might not have been board-certified in pathology, it did not render him incompetent to offer an opinion.

The difference in these two holdings centers on what kind of experience the witnesses had. On the one hand you have a person who has spent 17 years of their life in a field with exposure to battered women's syndrome, and on the other a doctor who was only exposed to pathology in medical school. The witness in Humble did not have any formal training in psychology, whereas the doctor in Gianos had received special training in pathology. The fact that such training was only during medical school, and not his area of specialty, did not preclude the past training from qualifying him as expert in this situation.

V. CONCLUSION

As Florida Evidence Statute § 90.702 and case law show, it is the trial court's choice to determine who qualifies as expert. Given the wide discretion the court has it should use its own best judgment as to what testimony will be useful and necessary. What qualifies a person to be an expert is therefore a fact specific matter, the court should consider what a person will add to the discussion of any complex facts in its case, and should admit testimony from people with skills and knowledge that are directly and clearly related to the specific issue. If there is a clear and articulable reason that a person should be considered an expert, and there is a fact or evidence that they can assist the court in understanding, the court should allow them to testify. Barring some clear error or abuse of discretion, a superior court will defer to such judgment.