

When is a forensic handwriting examiner an expert?

In South Africa, the court system is adversarial in nature. This implies that the document examiner will be faced with attempts to discredit their skills and knowledge of forensic handwriting examination (FHE). This approach prevents the real objective of the expert testimony to be achieved, which is to provide the court with information which will assist in making objective well informed decisions.

While the cross-examining attorney will try to cast doubt on the expert witness, when the opposing expert, however, spends an extraordinary amount of time trying to discredit another expert, instead of motivating their own reports, it begs the question, how confident is that witness in their work and how professional is their conduct. As explained by Sellers (1950, p654), 'the qualified document examiner, and for that matter any technical witness, should strive to express a correct opinion and further to give the reasons for his opinion so clearly and forceful that the judge, the jury, and the appeal court will be convinced of the correctness of that opinion.' It is counterproductive for the cross examining attorney and the opposing expert witness to launch personal attacks on the opposing parties, as according to Sellers (1950), 'topnotch trial lawyers, as well as successful witnesses, recognize the futility in most cases of making personal attacks.' He goes on to say that the expert should 'stick to piling on the evidence to the sole end of convincing the jury' and that he 'gets much further than when he attempts to appear a clever witness.' Sellers (1950), advises that experts are more convincing when they are sincere, know what they are talking about, accurate in their statements, are self assured and maintain an attitude of helpfulness irrespective of who is asking questions.

As outlined by Manamela and Mokwena in (Zin and Dintlwe(eds) 2015), forensic handwriting examiners set out to determine several issues related to documents. These include authorship of documents, authenticity of handwriting, changes made to documents, the examination of indented writing, ink and paper. The work of the forensic handwriting examiner as outlined above therefore suggests that s/he should have a thorough knowledge of and apply tried and tested methodologies in handwriting examination as a forensic science.

Scheepers (2010) states that if opinion evidence is to be presented to court, 'the common law demands proof that the witness presenting such evidence, is a competent witness and the witness should be able to motivate an opinion. Competency is proved by adducing proof of qualifications and/or experience!'

An American court noted in their Rule 702, 'If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to 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, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.' Justia US Law, 220 F. Supp.2d 548 (S.D. W.Va., Sept. 11, 2002).

According to Dumani (2005) in South Africa, an expert witness need not have a formal qualification or acquired experience in a profession as long as the expert witness has acquired sufficient knowledge from experience. In the case of R v Silverlock, it was decided that an expert's experience and knowledge therefore, need not necessarily be acquired in the course of a profession, but may be the result of personal experience or even his own reading (Faure 2000).

In the South African context, Hoffman & Zeffertt (1989) in Artz (1997), list a number of criteria for admissibility of expert testimony. These include:

- ☐ Be able to furnish the court with information falling outside the knowledge and expertise of any reasonable court
- ☐ Have some qualifications, but not necessarily 'formal' or 'professional'
- ☐ Must be able to state his or her opinion either as an inference from facts or upon facts provided by others
- ☐ Be able to guide the court to a correct decision on questions falling within the expert's field

Faure (2000) explains that the court must be satisfied that the expert witness provides evidence and can justify that evidence based on specialist knowledge or experience; the expert witness does not express opinions that cannot be substantiated; and that the expert witness testimony can assist the court in making sound rulings.