

PUBLICATION UPDATE

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Art of Advocacy: Cross Examination of Non-Medical Experts

Publication 42 Release 36

May 2018

HIGHLIGHTS

Cross Examination of Consulting Engineer

- This release adds **new** Chapter 29B.

Law of Cross-Examination of Non-Medical Experts

- This release also updates Chapter 2.

Chapter 29B, Cross Examination of Consulting Engineer. The expert was a seasoned engineer who had testified for plaintiffs in over 400 cases. He was popular with plaintiffs' attorneys because his testimony resulted in many favorable outcomes but unfortunately not for the plaintiff in this case. The case involved an intoxicated plaintiff who fell from a subway platform onto the train tracks and was hit by the train. The cross examiner challenged the expert's opinion that the train operator should have been able to stop the train in

time to avoid hitting the plaintiff. The cross examination cast doubt on the plaintiff's theory that the defendant train operator's actions were negligent. The jury returned a verdict for the defendant. The direct examination of the expert as to his qualifications has been included as well as the voir dire by defense counsel. The examination illustrates the process necessary to qualify an expert in New York, which follows the *Frye* standard. Practice aids, including an outline and a checklist, have been added. *See* Ch. 29B.

Chapter 2, Overview of the Law of Cross-Examination of Non-Medical Experts features a new survey identifying the states that have adopted the *Frye/Daubert* standards. (§ 2.03[8] *Survey of Adoption of Frye/Daubert Standards*). The *Frye* test was originally used to determine the admissibility of scientific evidence. In *Daubert*, the United States Supreme Court ruled that the Federal Rules superseded *Frye* as the standard for admissibility of expert evi-

dence in federal courts. Under the *Daubert* test, expert testimony is admissible if the judge, acting as a gatekeeper, determines

that the testimony is both reliable and relevant. *See* Ch. 2.

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