



# STEPHENS ANDERSON & CUMMINGS

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## *Let's Win This!*

A Monthly Newsletter - What You Need to Know  
About Personal Injury Law

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May 2019 - Issue 15



The Merry Month of May.

It brings to mind sunshine, mild temperatures, flowers, and the prospect of long, lazy summer days. For some, it's their favorite month of the year.

That's clearly a matter of personal opinion. But is it admissible in court?

Last time I "hosted" *Let's Win This!* I said the next installment of the Evidence series would be the start of our discussion about expert witnesses. And here we are.

One of the things that makes expert testimony different – and powerful – is that experts are permitted to testify about their *opinions* rather than simply the facts.

Everyone has opinions about all kinds of things. What makes some opinions admissible and some not? That's where this month's discussion starts.

So, read on. And, if you have any questions about what you read – or about anything else to do with personal injury law – give us a shout. We'll be happy

to help.



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## It's a Matter of Opinion

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*"Opinion is the medium between knowledge and ignorance."*

*--Plato*

Everyone has opinions. And, often, people aren't shy about sharing them.

In court, however, the focus usually is on facts. The oath, after all, is that the witness will "tell the truth, the



whole truth, and nothing but the truth." Generally speaking, opinions are "the truth" only for the person – or people – holding them.

## Lay Opinion vs Expert Opinion

The law recognizes a distinction between opinion testimony from "experts" – people who are "qualified" by education, experience, or training to give their opinions about their field of expertise – and lay people – just folks testifying as to personal knowledge.

The rules and court decisions dealing with expert witnesses are voluminous and complicated. Before we dive into them, let's talk about lay testimony to get a feel for how courts view opinion evidence, in general.

### What's the Weather?

Let's say that it's 80 degrees (Fahrenheit) outside. That the temperature is 80 degrees is a fact. Whether or not 80 degrees is hot is a matter of opinion.

Most of us here in north Texas would not be of the opinion that 80 degrees is "hot." People in the Shetland Islands off the northern coast of Scotland would disagree. (Let's ignore for a moment that they probably would express the same temperature as somewhere between 26 and 27 degrees Celsius.)

If one of those Shetland Islanders were to testify that "It was sweltering hot" when the temperature was 80, they would be telling the "truth" of their opinion.

But would it be the "truth" for native Texas? Probably not.

From the judge's viewpoint, would it be *admissible*?

### What's the Purpose of the Testimony?

Remember when we began the Evidence series, we talked about one of the judge's main jobs being to decide if testimony is worthy of consideration – i.e., whether it's admissible into evidence? (If you missed that issue, [find it here](#).) Well, whether a judge would consider the Scot's testimony about the weather admissible would depend upon the context – why is it being offered?

Texas judges have a guide to help them decide if lay opinion testimony is admissible: Rule 701, Texas Rules of Evidence. It says:

**IF A WITNESS IS NOT TESTIFYING AS AN EXPERT, TESTIMONY IN THE FORM OF AN OPINION IS LIMITED TO ONE THAT IS:**

**A) RATIONALLY BASED ON THE WITNESS'S PERCEPTION; AND**

**B) HELPFUL TO CLEARLY UNDERSTANDING THE WITNESS'S TESTIMONY OR TO DETERMINING A FACT IN ISSUE.**

No doubt, the Shetland Islander's opinion that an 80-degree day is hot is rationally based upon the witness's perception.

But is it helpful in clearly understanding the testimony or to determining a fact in issue? That's the crux of the question the judge needs to decide and it depends upon why the testimony is being offered.

If, for instance, it is offered as an explanation for why the witness stopped to rest and had an opportunity to see something happen, then it would be admissible.

If it is offered to prove that the weather was, in fact, "hot," then it likely would not be admissible.

## **Opinions and Expert Witnesses**

Reading Rule 701, you see immediately that the considerations are different when the witness is "testifying as an expert."

The general rule about who qualifies as an expert and what they may testify to is Rule 702. That rule reads:

**A WITNESS WHO IS QUALIFIED AS AN EXPERT BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY TESTIFY IN THE FORM OF AN OPINION OR OTHERWISE IF THE EXPERT'S SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE WILL HELP THE TRIER OF FACT TO UNDERSTAND THE EVIDENCE OR TO DETERMINE A FACT IN ISSUE.**



There is a lot packed into that rule – and into the three rules that follow it, dealing with specific aspects of expert testimony. So much so that literally thousands of pages of appellate court opinions have been devoted to the issues of when a person may be permitted to testify as an expert witness and what testimony they may be allowed to give.

And that's where we'll pick up in the next issue of *Let's Win This!* devoted to Evidence.

In the meantime, if you have any questions about anything related to personal injury law, give us a call, shoot us an email, or chat through the website.

*We're here to help.*

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## *Stephens Anderson & Cummings Spotlight on the Texas Legislature*

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### **Representative Charlie Geren Fighting for Texans**

The Texas Legislature meets every two years (unless the Governor calls a "special session"). Typically - at least for the past few decades - whenever the Legislature was in session, ordinary people had reason to be frightened for

their rights.

This session, Representative Charlie Geren, Tarrant County, District 99, authored and passed through the House of Representatives a bill (HB 1739) that, if passed by the Senate and signed by the Governor, will bring Texas into line with 48 other states in the way the courts deal with UM/UIM claims.

[You can get a refresher on UM/UIM coverage and why you should have it [HERE](#).]

For years, the law in Texas has been that, in order to require your insurance company to process and pay your UM/UIM claim, you had to go *all the way through a lawsuit and obtain a judgment* against the other driver.

You paid your premiums for UM/UIM coverage. It makes absolutely no sense for you to have to go through the hassle and expense of suing someone to get the benefit of something you've already bought and paid for.

Representative Geren's bill - which passed the House 105 to 32 - would remove that ridiculous burden.

Now, it's up to the Senate to protect Texas citizens by passing this bill out of the Senate - and then to the Governor to sign it into law.

Stephens Anderson & Cummings urges you to contact your Senator and tell them that you support - and expect them to vote FOR - HB 1739. You can look up your Senator's contact information on the website [Texas Legislature Online](#).

[And, by the way, you can find out who voted for and who voted against the bill in the House [here](#). Which list is your Representative on?]

SAC congratulates Representative Geren for passing this bill out of the Texas House of Representatives and thanks him for his work on behalf of all Texans.

***Let's Win This!***

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At Stephens Anderson & Cummings, every single client is unique; every single client is important. We pay personal attention to every single one.

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