

Expert Testimony Without an Expert Report

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Some practitioners may be surprised to learn that not all experts are required to submit expert reports.

Rule 26 of the Federal Rules of Civil Procedure only requires that expert reports be submitted by experts who are “retained or specially employed to provide expert testimony in the case or one whose duties as the party’s employee regularly involve giving expert testimony.”

This language implies that some experts are not required to prepare reports; specifically, an employee of a party whose duties do regularly involve giving expert testimony or someone who is not specially retained by a party to provide expert testimony.

The rule goes on to clarify what is expected of this category of “witnesses who do not provide a written report.”

Unlike the more stringent disclosure requirements for specially-retained experts (sometimes referred to as “non-retained” or “non-reporting” experts), this provision allows for experts who are not required to submit written reports to disclose only (1) the “subject matter” they expect to give opinion testimony on and (2) “a summary of the facts and opinions to which the witness is expected to testify.”

Courts are not uniform as to the level of detail required, however, though the trend appears to require a clear statement of the expert’s opinion.

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