**2017 Professional Liability Roundtable**

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**CLE Materials for 1st Session**

**“Use of Expert Testimony in Professional Liability”**

**EXPERT TESTIMONY IN PROFESSIONAL LIABILITY CASES**

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1. **INTRODUCTION**

Litigation against licensed and learned professionals will nearly universally require the development and exploration of expert testimony. These materials attempt to provide a broad overview of some of the common themes that arise in such cases. Where appropriate, it tries to compare and contrast rules from various jurisdictions to illustrate tipping points that can lead to successful litigation. However, while an attempt has been made to provide a broad overview, this is not intended as a thorough survey of national rules.

1. **AFFIDAVIT OR CERTIFICATE OF MERIT**

In professional malpractice claims, twenty-nine jurisdictions statutorily require plaintiffs to include an affidavit or certificate showing a credible basis for the complaint. This threshold requirement is intended to decrease or limit meritless claims against professionals. However, the specific components of the affidavit or certificate, as well as the category of professionals it encompasses, vary by state.

1. Licensed Professionals

Eleven jurisdictions require an affidavit or certificate for claims against licensed professionals. These jurisdictions are: Arizona,[[1]](#footnote-1) Colorado,[[2]](#footnote-2) Georgia,[[3]](#footnote-3) Kansas,[[4]](#footnote-4) Maryland,[[5]](#footnote-5) Minnesota,[[6]](#footnote-6) New Jersey,[[7]](#footnote-7) Oregon (real estate licensee),[[8]](#footnote-8) Pennsylvania,[[9]](#footnote-9) and South Carolina.[[10]](#footnote-10)

In Pennsylvania, for example, the plaintiff or his attorney must file a certificate of merit with the complaint or within sixty days after the filing of the complaint. The certificate must contain either: (1) confirmation that an “appropriate licensed professional” has supplied a written statement that there is a reasonable probability that the care, skill, or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm, (2) a claim that the defendant professional deviated from an acceptable professional standard based solely on allegations that other licensed professionals the defendant supervised deviated from an acceptable professional standard, or (3) a statement that expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim.

The “appropriate licensed professional” does not need to be the same person who will testify as an expert witness at trial. However, to qualify as an “appropriate licensed professional,” his credentials are held to the same standards as an expert witness at trial. Furthermore, for vicarious liability claims, an “appropriate licensed professional” must provide a statement regarding the professionals the defendant supervised.

1. Architects, Engineers, and Design Professionals

California’s statute applies only to architects, engineers, and land surveyors.[[11]](#footnote-11) Hawaii[[12]](#footnote-12) and Oregon’s[[13]](#footnote-13) statutes apply to design professionals as a whole, while Nevada’s statute defines design professional as engineers, land surveyors, architects, and landscape architects.[[14]](#footnote-14)

Texas,[[15]](#footnote-15) for example, requires plaintiffs to file an affidavit contemporaneously with the complaint when the defendant is a licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor. A failure to file an affidavit will result in dismissal of the complaint, possibly with prejudice.

The affiant must be competent to testify, hold the same professional license or registration as the defendant, and knowledgeable in the area of the defendant’s practice. The affiant’s testimony ought to be based on his knowledge, skill, experience, education, training, and practice. He must also be licensed or registered in Texas and actively engaged in the practice of architecture, engineering, or surveying. His affidavit shall set forth specific facts and legal theories for each claim.

1. Health Care Professionals

Twenty-one states have distinct requirements for medical malpractice claims: Arizona,[[16]](#footnote-16) Arkansas,[[17]](#footnote-17) Connecticut,[[18]](#footnote-18) Delaware,[[19]](#footnote-19) Florida,[[20]](#footnote-20) Hawaii,[[21]](#footnote-21) Illinois,[[22]](#footnote-22) Maryland,[[23]](#footnote-23) Michigan,[[24]](#footnote-24) Minnesota,[[25]](#footnote-25) Mississippi,[[26]](#footnote-26) Missouri,[[27]](#footnote-27) Nevada,[[28]](#footnote-28) New York,[[29]](#footnote-29) North Dakota,[[30]](#footnote-30) Ohio,[[31]](#footnote-31) Tennessee,[[32]](#footnote-32) Utah,[[33]](#footnote-33) Vermont,[[34]](#footnote-34) and West Virginia.[[35]](#footnote-35)

1. No Requirement

Twenty-two jurisdictions, however, do not require an affidavit or certificate. They are: Alabama, Alaska, District of Columbia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, South Dakota, Virginia, Washington, Wisconsin, and Wyoming.

**II. QUALIFICATIONS OF EXPERTS**

A witness offering opinions derived from specialized knowledge or expertise must be qualified as an expert. In addition, counsel must provide advance written notice that the expert will testify and the contents of the expert’s testimony. An expert can present opinions on ultimate issues,[[36]](#footnote-36) such as the standard of care or standard practice, but cannot opine on legal standards or draw legal conclusions. Otherwise, the expert will invade the provinces of the judge, who instructs the jury on the law, and the jury, who serves as factfinder and applies the facts to the law. Furthermore, an expert may provide the factfinder with tools to determine another witness’s credibility, such as explanations regarding a particular syndrome or reasons for behavior, but may not offer opinions regarding whether he believes a witness is credible; this is common in cases involving battered spouses and child abuse.

Expert witnesses must satisfy five requirements in order to testify: 1) have proper qualifications, 2) the testimony will assist the factfinder, 3) have a sufficient basis for the opinion, 4) use relevant and reliable principles or methods to arrive at the opinion, and 5) the proffered testimony survives a Federal Rule of Evidence 403[[37]](#footnote-37) test.[[38]](#footnote-38)

First, a witness may qualify as an expert in a particular area if the judge deems the witness’s knowledge, skill, experience, training, or education to be sufficient. Experts are not required to have “particular credentials” nor must they be “academics or PhDs.”[[39]](#footnote-39) “Anyone with relevant expertise enabling him to offer responsible opinion testimony helpful to judge or jury may qualify as an expert witness.”[[40]](#footnote-40) Second, the testimony must assist the factfinder by introducing knowledge beyond his ken. Whether the testimony consists of expert knowledge is a matter of common sense.

Third, the expert’s opinion must be based on sufficient facts or data.[[41]](#footnote-41) “Unless the court orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.”[[42]](#footnote-42) An opinion is excluded if it rests entirely upon an underlying source so lacking in probative force and reliability that no reasonable expert could base an opinion on that source. If the expert is providing his opinion based on personal observations before trial, such as a fiber analyst who tested a piece of torn clothing, or facts perceived or made known to the expert during trial from other testimony and exhibits, the basis is sufficient.

If, however, the basis constitutes inadmissible evidence, such as reports or facts with hearsay issues, the evidence must be something that experts in the field reasonably rely upon to form conclusions. The expert witness can then identify the source he relied upon, but is not allowed to state the substance the source contains unless the probative value of the information substantially outweighs the risk of unfair prejudice. The probative value is only assessed as to the extent the information assists the jury in understanding and evaluating the reliability of the opinion. In this situation, it is advisable to request a limiting instruction so that the jury will not accept the information as the truth of the matter. Even if the information is inadmissible during direct examination, opposing counsel may question the basis of the expert’s opinion on cross-examination. This is usually done to impugn the credibility of the opinion.

The most difficult and controversial determination is whether an expert used relevant and reliable principles or methods to arrive at his opinion. “A witness who invokes ‘my expertise’ rather than analytic strategies widely used by specialists is not an expert as Rule 702 defines that term.”[[43]](#footnote-43) The United States Supreme Court established the applicable standards regarding scientific expert testimony in *Daubert v. Merrell Dow Pharmaceuticals*, 516 U.S. 869 (1995). The Court weighed five factors to determine reliability: 1) whether the technique can be tested or has been tested in the past, 2) whether the technique has been subject to peer review and publication, 3) the known or potential rate of error, 4) the existence and maintenance of standards governing the technique’s operation and whether they were used, and 5) the general acceptance of the technique in the relevant scientific community.

“A district court enjoys broad latitude both in deciding how to determine reliability and in making the ultimate reliability determination.”[[44]](#footnote-44)

Reliability, however, is primarily a question of the validity of the methodology employed by an expert, not the quality of the data used in applying the methodology or the conclusions produced. “The soundness of the factual underpinnings of the expert’s analysis and the correctness of the expert’s conclusions based on that analysis are factual matters to be determined by the trier of fact, or, where appropriate, on summary judgment.” “Rule 702’s requirement that the district judge determine that the expert used reliable methods does not ordinarily extend to the reliability of the conclusions those methods produce—that is, whether the conclusions are unimpeachable.” The district court usurps the role of the jury, and therefore abuses its discretion, if it unduly scrutinizes the quality of the expert’s data and conclusions rather than the reliability of the methodology the expert employed.[[45]](#footnote-45)

“This is not to say that an expert may rely on data that has no quantitative or qualitative connection to the methodology employed.”[[46]](#footnote-46) “Rule 702’s requirement that expert opinions be supported by ‘sufficient facts or data’ means ‘that the expert considered sufficient data to employ the methodology.’”[[47]](#footnote-47) “Experts commonly extrapolate from existing data. But nothing in either Daubert or the Federal Rules of Evidence requires a district court to admit opinion evidence which is connected to existing data only by the ipse dixit of the expert.”[[48]](#footnote-48)

Assuming a rational connection between the data and the opinion . . . an expert’s reliance on faulty information is a matter to be explored on cross-examination; it does not go to admissibility. “Our system relies on cross-examination to alert the jury to the difference between good data and speculation.”[[49]](#footnote-49)

“The principle of Daubert is merely that if an expert witness is to offer an opinion based on science, it must be real science, not junk science.”[[50]](#footnote-50) Although

opinion evidence of reputable scientists is admissible in evidence in a federal trial even if the particular methods they used in arriving at their opinion are not yet accepted as canonical in their branch of the scientific community . . . [t]he scientific witness who decides to depart from the canonical methods must have grounds for doing so that are consistent with the methods and usages of his scientific community.[[51]](#footnote-51)

A judge or jury is not equipped to evaluate scientific innovations. If, therefore, an expert proposes to depart from the generally accepted methodology of his field and embark upon a sea of scientific uncertainty, the court may appropriately insist that he ground his departure in demonstrable and scrupulous adherence to the scientist’s creed of meticulous and objective inquiry.[[52]](#footnote-52)

Ultimately,

[t]he Daubert inquiry is “a flexible one” and is not designed to serve as a “definitive checklist or test,” but rather to ensure “that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.”[[53]](#footnote-53)

In addition to reliability, the expert’s technique must be relevant to the specific facts of the case.

The Supreme Court then expanded the *Daubert* analysis to technical, as opposed to scientific, knowledge in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). However, the general acceptance factor weighs much more in technical cases. As a result, how an attorney defines an expert is extremely important since that will also define the identity of the expert community. The best way to ensure that the expert’s testimony is admissible is to narrow his expertise; for example, define him as a forensic expert in burn paths instead of a general forensic expert or forensic arson expert, or define him as an expert pediatrician who specializes in sudden infant death syndrome rather than a general pediatrician. Conversely, opposing counsel would want the expert defined as broadly as possible in order to preserve objections to testimony that may be deemed too specialized to fall within the scope of a general expert. The appellate court reviews *de novo* whether a district court followed the proper framework for evaluating expert testimony, and reviews the district court’s decision to admit or exclude expert testimony for abuse of discretion.[[54]](#footnote-54)

Finally, even if the expert satisfies the first four elements, he may still be prevented from testifying if the probative value of his testimony is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.[[55]](#footnote-55)

Ultimately, how an attorney defines an expert is extremely important. Because of this, opposing counsel must always be alert in case the expert is testifying outside of his expertise. Furthermore, the best trial strategy is to question the methodology for each piece of evidence separately and distinctly; do not assume that the entire testimony is admissible just because a portion of the testimony is admissible.

1. **EXPERTS’ NEED TO BE FAMILIAR WITH THE LOCALITY IN QUESTION**

One of the most common (and critical) issues in applying these general rules to professional liability matters is the extent to which an expert is required to be familiar with the locality in question. For example, in the legal malpractice context, while “[a]ll courts acknowledge the standard of care with which all attorneys must comply and that is: they are held to that degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer.”[[56]](#footnote-56) However, certain states abide by a locality rule.

For example, California attorneys are held to the standard of members in their profession “‘in the same or a similar locality under similar circumstances. The duty encompasses both a knowledge of law and an obligation of diligent research and informed judgment.”[[57]](#footnote-57) Thus, a “lawyer holding himself out to the public and the profession as specializing in an area of the law must exercise the skill, prudence, and diligence exercised by other specialists of ordinary skill and capacity specializing in the same field.”[[58]](#footnote-58) Idaho also subscribes to a “local standard of care [for] an attorney.”[[59]](#footnote-59)

Louisiana, likewise, agrees that “[t]he standard of care that an attorney must exercise in the representation of a client is that degree of care, skill, and diligence that is exercised by prudent practicing attorneys in his locality.”[[60]](#footnote-60) However, “[t]he legal standard of care may vary depending upon the particular circumstances of the relationship. For example, [the] courts have recognized that the extent of an attorney’s duty to a client may depend, in part, on the client’s particular circumstances and situation.”[[61]](#footnote-61)

In North Dakota,

[i]t is [an attorney’s] further duty to see that care and skill ordinarily exercised in like cases by members in good standing of his profession engaged in the same line of practice in the same or similar locality under similar circumstances, and to be diligent in an effort to accomplish the purpose for which he is employed. A failure to perform any such duty is negligence.[[62]](#footnote-62)

North Dakota, like most states, usually requires expert testimony to prove the elements of legal malpractice. However, courts also allow “opinions and conclusions of lay witnesses on subjects which are within the common knowledge and comprehension of laymen possessed of ordinary education, experience and opportunities for observation.”[[63]](#footnote-63) An issue must be “sufficiently complex so that the applicable standard of care must be established by expert testimony.”[[64]](#footnote-64)

North Carolina, on the other hand, “does not mandate introducing expert testimony in a legal malpractice action”[[65]](#footnote-65) but considers it “helpful” in establishing the standard of care in the same or similar legal community.[[66]](#footnote-66)

Vermont is perhaps the most varied of the jurisdictions. Although it also follows the locality rule, the courts

reject the notion that the practice of the majority of attorneys conclusively establishes the standard of care. While the standard of care is based on the “degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent” Vermont lawyer, the conduct of the majority of Vermont lawyers does not define “reasonableness” per se. It is ultimately the role of the courts to define this standard. “Courts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission.”[[67]](#footnote-67)

Furthermore, no expert testimony is required “when an attorney’s lack of care under the circumstances [i]s . . . apparent.”[[68]](#footnote-68)

At the other end of the spectrum, states rarely place such locality requirements on design professionals, for reasons that seem apparent. While, states uniformly hold that testimony from an expert witness is required to establish the standard of care for a design professional when it is not within the common knowledge and experience of ordinary people.[[69]](#footnote-69) “Just as in cases dealing with an alleged breach of a duty by an attorney, a doctor, or any other professional, unless the breach is so obvious that any reasonable person would see it, then expert testimony is necessary in order to establish the alleged breach.”[[70]](#footnote-70) Courts will more readily permit opinions to cross jurisdictional borders, which can become problematic in design/construction matters implicating specific weather and climate concerns.

1. *See* A.R.S. § 12-2602. [↑](#footnote-ref-1)
2. *See* C.R.S. § 13-20-602. [↑](#footnote-ref-2)
3. *See* O.C.G.A. § 9-11-9.1. [↑](#footnote-ref-3)
4. *See* K.S.A. § 60-3502. [↑](#footnote-ref-4)
5. *See* Md. Code § 3-2C-02. [↑](#footnote-ref-5)
6. *See* Minn. Stat. § 544.42. [↑](#footnote-ref-6)
7. *See* N.J. Rev. Stat. § 2A:53A-27. [↑](#footnote-ref-7)
8. *See* O.R.S. § 31.350. [↑](#footnote-ref-8)
9. *See* Pa. R. Civ. P. § 1042.3. [↑](#footnote-ref-9)
10. *See* S.C. Code § 15-36-100. [↑](#footnote-ref-10)
11. *See* C.C.P. § 411.35. [↑](#footnote-ref-11)
12. *See* H.R.S. § 672B-6. [↑](#footnote-ref-12)
13. *See* O.R.S. § 31.300. [↑](#footnote-ref-13)
14. *See* N.R.S. § 40.6884. [↑](#footnote-ref-14)
15. *See* Tex. C.P.R.C. § 150.002. [↑](#footnote-ref-15)
16. *See* A.R.S. § 12-2603. [↑](#footnote-ref-16)
17. # *See* A.C. § 16-114-209.

    [↑](#footnote-ref-17)
18. *See* C.G.S. § 52-190a. [↑](#footnote-ref-18)
19. *See* 18 Del. C. § 6853. [↑](#footnote-ref-19)
20. *See* Fla. Stat. § 766.104. [↑](#footnote-ref-20)
21. *See* H.R.S. § 671-12.5. [↑](#footnote-ref-21)
22. *See* 735 I.L.C.S. § 5/2-622. [↑](#footnote-ref-22)
23. *See* Md. Code § 3-2A-04. [↑](#footnote-ref-23)
24. *See* M.C.L. 600.2912d. [↑](#footnote-ref-24)
25. *See* Minn. Stat. § 145.682. [↑](#footnote-ref-25)
26. *See* Miss. Code § 11-1-58. [↑](#footnote-ref-26)
27. *See* Mo. Rev. Stat. § 538.225. [↑](#footnote-ref-27)
28. *See* N.R.S. § 41A.071. [↑](#footnote-ref-28)
29. *See* C.P.L.R. § 3012-a. [↑](#footnote-ref-29)
30. *See* N.D. Code § 28-01-46. [↑](#footnote-ref-30)
31. *See* Ohio R. Civ. P. 10(D)(2). [↑](#footnote-ref-31)
32. *See* T.C.A. § 29-26-122. [↑](#footnote-ref-32)
33. *See* Utah Code § 78B-3-423. [↑](#footnote-ref-33)
34. *See* 12 V.S.A. § 1042. [↑](#footnote-ref-34)
35. *See* W. Va. Code § 55-7B-6. [↑](#footnote-ref-35)
36. *See* Fed. R. Evid. 704 (“An opinion is not objectionable just because it embraces an ultimate issue.”). [↑](#footnote-ref-36)
37. *See* Fed. R. Evid. 403 (“The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”). [↑](#footnote-ref-37)
38. *See* Fed. R. Evid. 702 (“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: (a) 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; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.”). Indiana’s evidence rule regarding expert witness testimony is slightly different. *See* Ind. R. Evid. 702(a) (“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.”); Ind. R. Evid. 702(b) (“Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles.”). [↑](#footnote-ref-38)
39. Tuf Racing Prods., Inc. v. Am. Suzuki Motor Corp., 223 F.3d 585, 591 (7th Cir. 2000). [↑](#footnote-ref-39)
40. *Id.* [↑](#footnote-ref-40)
41. *See* Fed. R. Evid. 703 (“An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.”). [↑](#footnote-ref-41)
42. Fed. R. Evid. 705. [↑](#footnote-ref-42)
43. Zenith Elecs. Corp. v. WH-TV Broad. Corp., 395 F.3d 416, 419 (7th Cir. 2005). [↑](#footnote-ref-43)
44. Bryant v. City of Chi., 200 F.3d 1092, 1098 (7th Cir. 2000). [↑](#footnote-ref-44)
45. Manpower, Inc. v. Ins. Co. of Pa., 732 F.3d 796, 806 (7th Cir. 2013) (internal citations omitted). [↑](#footnote-ref-45)
46. *Id*. at 808. [↑](#footnote-ref-46)
47. *Id*. [↑](#footnote-ref-47)
48. *Zenith Elecs.*, 395 F.3d at 420. [↑](#footnote-ref-48)
49. *Manpower*, 732 F.3d at 809 (internal citations omitted). [↑](#footnote-ref-49)
50. Tuf Racing Prods., Inc. v. Am. Suzuki Motor Corp., 223 F.3d 585, 591 (7th Cir. 2000). [↑](#footnote-ref-50)
51. Braun v. Lorillard Inc., 84 F.3d 230, 234 (7th Cir. 1996). [↑](#footnote-ref-51)
52. *Id.* at 235. [↑](#footnote-ref-52)
53. Bryant v. City of Chi., 200 F.3d 1092, 1098 (7th Cir. 2000) (internal citation omitted). [↑](#footnote-ref-53)
54. *Manpower*, 732 F.3d at 805. [↑](#footnote-ref-54)
55. *See* Fed. R. Evid. 403. [↑](#footnote-ref-55)
56. Sun Valley Potatoes v. Rosholt, 981 P.2d 236, 239 (Idaho 1999). [↑](#footnote-ref-56)
57. Wright v. Williams, 121 Cal. Rptr. 194, 199 (Cal. Ct. App. 1975) (internal citations omitted). [↑](#footnote-ref-57)
58. *Id.* [↑](#footnote-ref-58)
59. Bishop v. Owens, 272 P.3d 1247, 1252 (Idaho 2012). [↑](#footnote-ref-59)
60. Leonard v. Reeves, 82 So. 3d 1250, 1257 (La. Ct. App. 2012). [↑](#footnote-ref-60)
61. *Id.* [↑](#footnote-ref-61)
62. Lenius v. King, 294 N.W.2d 912, 913 (S.D. 1980). [↑](#footnote-ref-62)
63. *Id.* at 914. [↑](#footnote-ref-63)
64. *Id.* [↑](#footnote-ref-64)
65. Progressive Sales, Inc. v. Williams, Willeford, Boger, Grady & Davis, 356 S.E.2d 372, 375 (N.C. Ct. App. 1987). [↑](#footnote-ref-65)
66. Rorrer v. Cooke, 329 S.E.2d 355, 366 (N.C. 1985). [↑](#footnote-ref-66)
67. Fleming v. Nicholson, 724 A.2d 1026, 1029 (Vt. 1998) (internal citation omitted). [↑](#footnote-ref-67)
68. *Id.* at 1028. [↑](#footnote-ref-68)
69. *See, e.g.,* Simon v. Drake Constr. Co., 621 N.E.2d 837, 839 (Ohio Ct. App. 1993) (“Whether an architect exercises reasonable care in the preparation of designs depends upon the standard of care which licensed architects must follow. Expert testimony is required to establish the standard of care, unless the lack of skill or care of the professional is so apparent as to be within the comprehension of a layperson and requires only common knowledge and experience to understand.”). [↑](#footnote-ref-69)
70. Watson, Watson, Rutland/Architects, Inc. v. Montgomery Cty. Bd. of Edu., 559 So. 2d 168, 173 (Ala. 1990). [↑](#footnote-ref-70)