

77-17-13 Expert testimony generally -- Notice requirements.

- (1)
 - (a) If the prosecution or the defense intends to call any expert to testify in a felony case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or 10 days before the hearing.
 - (b) Notice shall include the name and address of the expert, the expert's curriculum vitae, and one of the following:
 - (i) a copy of the expert's report, if one exists; or
 - (ii) a written explanation of the expert's proposed testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony; and
 - (iii) a notice that the expert is available to cooperatively consult with the opposing party on reasonable notice.
 - (c) The party intending to call the expert is responsible for any fee charged by the expert for the consultation.
- (2) If an expert's anticipated testimony will be based in whole or part on the results of any tests or other specialized data, the party intending to call the witness shall provide to the opposing party the information upon request.
- (3) As soon as practicable after receipt of the expert's report or the information concerning the expert's proposed testimony, the party receiving notice shall provide to the other party notice of witnesses whom the party anticipates calling to rebut the expert's testimony, including the information required under Subsection (1)(b).
- (4)
 - (a) If the defendant or the prosecution fails to substantially comply with the requirements of this section, the opposing party shall, if necessary to prevent substantial prejudice, be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony.
 - (b) If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions. The remedy of exclusion of the expert's testimony will only apply if the court finds that a party deliberately violated the provisions of this section.
- (5)
 - (a) For purposes of this section, testimony of an expert at a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the expert, the expert's qualifications, and a report of the expert's proposed trial testimony as to the subject matter testified to by the expert at the preliminary hearing.
 - (b) Upon request, the party who called the expert at the preliminary hearing shall provide the opposing party with a copy of the expert's curriculum vitae as soon as practicable prior to trial or any hearing at which the expert may be called as an expert witness.
- (6) This section does not apply to the use of an expert who is an employee of the state or its political subdivisions, so long as the opposing party is on reasonable notice through general discovery that the expert may be called as a witness at trial, and the witness is made available to cooperatively consult with the opposing party upon reasonable notice.

Amended by Chapter 290, 2003 General Session