

# Judicial Branch: The Court System

## CHAPTER

# 5

The judicial branch is primarily responsible for the interpretation of legislation and policy and the development of case law. Case law is considered legal policy. The courts, through the litigation process, are a means to enforce legislative and regulatory requirements and hold others accountable to the law. In addition, the litigation process uses the courts to enforce rights and responsibilities in accordance with legal policy.

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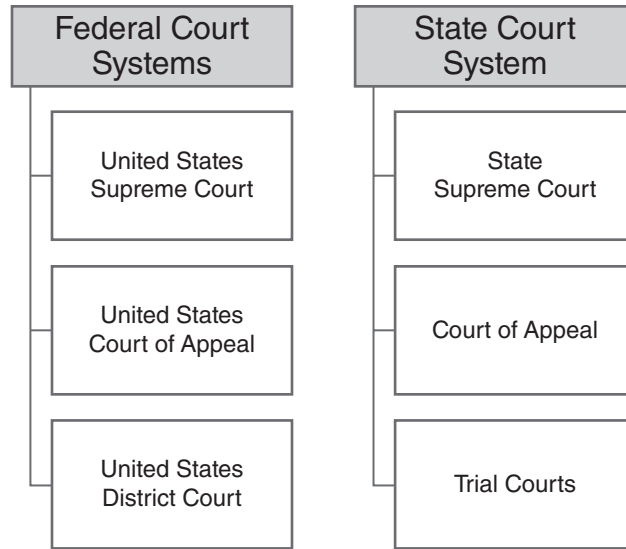
### Structure of Judicial Branch

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The judicial branch is structured into two divisions in accordance with our federalist perspective. The two judicial branch divisions are federal courts and state courts. Each division also has lower courts (**Figure 5-1**). The federal courts have jurisdiction over the U.S. Constitution and federal laws and regulations. Similarly, state courts have jurisdiction over the state constitution and state laws and regulations. The supreme courts at the federal and state level are interconnected regarding appeals. An appeal of a state Supreme Court decision may be filed with the U.S. Supreme Court. A Supreme Court decision is considered the highest legal decision and results in national policy for all citizens in our country.

### Supreme Court of the United States (SCOTUS)

The U.S. Constitution vests the judicial power of the United States in one Supreme Court. It is considered the highest tribunal in the nation for all cases and controversies that arise under the Constitution or laws of the United States. This Court serves as the final interpreter and arbiter of the law. The Supreme Court is considered the guardian and interpreter of the U.S. Constitution. This Court



Note: Cases are generally initiated in the lowest court system and appeal upward to the highest court, such as the U.S. Supreme Court or state supreme court.

**Figure 5-1 United States Court System**

renders final decisions on specific cases; it does not provide advisory opinions, but gives legal opinions in the form of final court decisions.

The term of the Supreme Court begins on the first Monday in October and lasts until the first Monday in October of the following year. Court sessions continue from October to late June or early July. The term is divided into what is known as “sittings.” During the sittings, the Justices hear cases and deliver opinions with intervening recesses, when they consider the business of the Court. Sittings and recesses alternate at about 2-week intervals. During a Supreme Court hearing, each side is provided 30 minutes of argument. There is no jury or witnesses in the hearing.

The process for appointing a Supreme Court Justice involves the president and Congress. **Box 5-1** outlines the process for the appointment of a Supreme Court Justice. The president may nominate anyone to the Supreme Court; the Constitution does not set any qualifications for service as a Justice. Justices hold office during what is called “good behavior,” which is understood to mean to serve for the remainder of their lives. Justices may resign or retire. A Justice can be removed through a congressional impeachment process (Rosdeitcher, 2009).

**BOX 5-1 SUPREME COURT JUSTICE APPOINTMENT PROCESS**

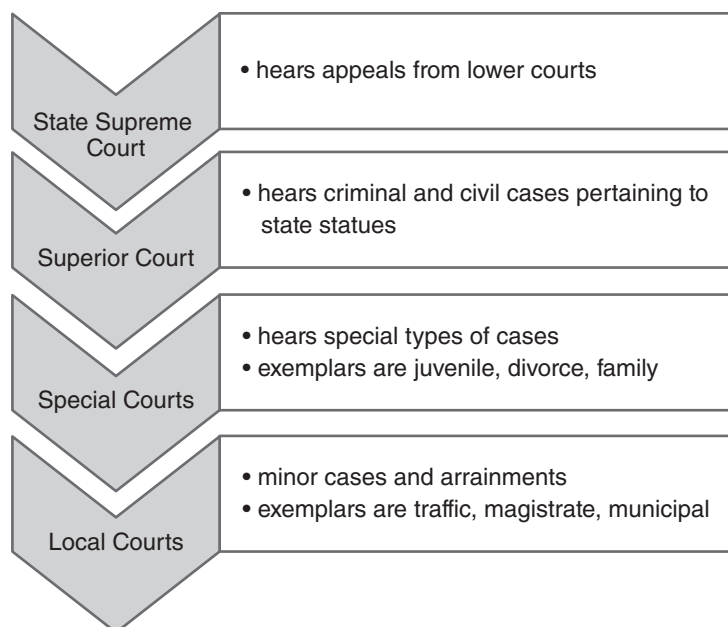
- White House staff prepares profiles of potential candidates and conducts initial vetting (such as a review of published rulings, articles, speeches, personal and professional values and beliefs).
- President nominates a candidate after review of vetted information.
- Senate Judiciary Committee vets the candidate's credentials and backgrounds (personal life, financial background, and past legal opinions/decisions).
- Senate holds confirmation hearing.
- Committee votes.
- Committee vote on candidate is sent to full Senate.
- Senate debates candidate on Senate floor.
- Nomination confirmed through Senate vote of simple majority.

**Federal Court System**

The authority to create and abolish federal courts is established through the U.S. Constitution. The only court that cannot be abolished is the Supreme Court. Generally, federal courts have jurisdiction over civil and criminal actions dealing with federal laws. The federal court is presided over by a federal judge appointee. The federal judge generally retains this appointment until death, retirement, or resignation. Federal judges are expected to execute their duties with ethical behavior in upholding the law. Failure to do so may result in impeachment for improper or criminal conduct. The federal court system is administered by a chief judge or justice. The Clerk of Court maintains the court's records and finances. In addition, the Clerk of Court also provides support services, sends communications in the form of official notices and summons, and manages court reports and interpreters.

**State Court System**

The state court system interprets and enforces state laws under the auspices of the state government structure. State governments share power with a federal government. In accordance with the Tenth Amendment to the U.S. Constitution, all governmental powers not granted to the federal court system by the Constitution are reserved for the states and counties. **Figure 5-2** presents a typical state court system structure and function.



**Figure 5-2 State Court System Structure and Function**

### Special Court Systems

The U.S. Congress has the authority to establish special legislative courts whose judges are appointed by the president and approved by the Senate for a life-long term. These special legislative courts are established through the legislative process. The two special courts that currently exist are the U.S. Court of International Trade and the U.S. Court of Federal Claims. In addition, the U.S. Attorneys or state attorneys general can exercise a unique system with which to bring forth a trial, known as a grand jury. In a grand jury, a jury convenes with government attorneys, court reporters, interpreters as needed, and witnesses to determine if there is sufficient evidence to indict an individual or “probable cause” that a suspect has committed a criminal act.

The U.S. Court of International Trade has authority over cases involving international trade and customs. The U.S. Court of Federal Claims has authority over claims for monetary damages alleged against the U.S. government, disputes over federal contracts, or the unlawful seizure of private property by the government. A grand jury may be convened for cases involving charges of a federal or state level crime.

## Jurisdiction

Jurisdiction represents the scope of authority for a case. There are several types of jurisdiction: geographic, subject matter, or personal. *Geographic jurisdiction* typically represents the geographic or political locality boundaries that are encompassed within the respective court's scope of authority. *Subject matter jurisdiction* concerns the specific area of law in which the respective court has a defined scope of authority. Lastly, *personal jurisdiction* is the extent to which a court has authority over an individual or business entity. For the purpose of disposing enforcement of legal policy on corporations, a corporation is treated as an individual in the federal and state judicial systems.

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## Litigation Process

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The litigation process consists of three stages—the pre-litigation stage; litigation stage, which extends from the period of discovery to the point at which the case is heard before the court; and the post-litigation stage that attends to rendering the court's judgment and formulating the findings into future policy as case law.

### Pre-litigation Stage

The pre-litigation stage begins when an individual, usually a plaintiff, first meets with an attorney. The initial meeting with an attorney consists of an intake process that includes the following: (1) collection of personal data; (2) discussion of the complaints and allegations; (3) completion of necessary release forms allowing the attorney to represent the plaintiff; and (4) collection of supportive evidence in relation to the allegations.

### Litigation Stage

The litigation stage is initiated when the first legal document is filed in the proper court jurisdiction. During this initial process, the case is assigned a docket number. The initial filing of documents for a legal case occurs in the court clerk's office. Typical initial documents that are filed might include a summons, a complaint, an answer, interrogatives, requests for documents, subpoenas, and various motions. **Table 5-1** presents legal policy terminology used in the litigation process. An important aspect of the litigation stage is the discovery process.

The discovery process seeks to identify the facts of the case, collect evidence, and gather other information supporting the case. It is during the discovery process that the attorney may file subpoenas, request documents, compose interrogatives, require physical or mental examinations, introduce admissions of fact, secure testimony and opinions of experts, and conduct depositions. The conducting of a deposition with the plaintiff, defendant,

**TABLE 5-1 TERMINOLOGY USED IN LITIGATION PROCESS**

Adjudicate	To make a decision, settle, or decree
Affidavit	A written declarative statement provided under oath
Allegation	A legal assertion that must be proved or supported with evidence
Alleged	Something that is claimed or asserted; charged
<i>Amicus</i> brief	An unsolicited legal opinion provided by an <i>amicus curiae</i> , or “friend of the court,” who is not party to a case. The court must grant permission for this information to be filed. This strategy is often used by advocacy groups as a tool to advance certain opinions before the court.
Answer	A reply by the defendant or the defendant’s attorney that states the manner in which the defendant intends to respond to the allegation
Appeal	A request to another court to reverse the previous court’s decision based on an error
Arbitration	A binding process in which both sides agree to permit an external nonbiased arbitrator to render a decision on the disagreement or conflict
Breach	Failure to act in accordance with a duty
Class action	A case in which a large number of plaintiffs pursue litigation under the same case and case number
Complaint	A legal document that sets forth the basic facts and reasons for the legal action
Continuance	Postponement of the proceedings in a hearing, trial, or other judicial proceeding
Cross-examination	Questioning of a witness by the opposing side
Defendant	Person, company, or institution against whom a claim or charge is filed
Depose	To have a deposition rendered
Deposition	A testimony of a witness taken based on interrogatories not in open court
Direct cause	Act or event directly resulting in the injury

**TABLE 5-1 TERMINOLOGY USED IN LITIGATION PROCESS (CONTINUED)**

Discovery	Part of the pre-trial phase of litigation; the process by which evidence from the plaintiff and defendant is identified through securing documents and testimony such as a deposition
Expungement	A process by which a record, or portion of a record, is officially erased or removed from public record
Guardian <i>ad litem</i>	A lawyer appointed to defend or prosecute a case on behalf of a party who is incapacitated by age or other condition
Indictment	A formal accusation by a prosecutor set forth in a criminal case
Injunction	A court order prohibiting a person or agency from doing something
Interrogatives	A set of written questions that must be answered
Judgment	A final decision and order of the court
Jurisdiction	The boundaries that determine the scope of judicial authority
Malpractice	Deviation from accepted professional standards, by omission or negligence, that causes harm
Mediation	A nonbinding process in which a mediator attempts to assist two opposing sides to reach a decision or settlement that is amenable to both parties
Motion	A request made to the judge by a litigant. Legal documents filed by attorneys to facilitate the litigation process that request the court leader to make a decision on the case
Motion for judgment	A plea filed by a plaintiff that sets forth the plaintiff's claim and request for a judgment in the plaintiff's favor
Motion for summary	A request that the court provide an immediate ruling judgment on behalf of the requesting party
Motion <i>in limine</i>	Motion "at the threshold"; a motion made before the start of the trial that certain evidence may or may not be presented during the litigation process

(continues)

**TABLE 5-1 TERMINOLOGY USED IN LITIGATION PROCESS (CONTINUED)**

Motion to dismiss	A request that the court decide the case or render a decision; that there is no solution that could be rendered by the court
Negligence	Failing to do something that should have been done, or doing something that should not have been done
<i>Nolo contendere</i>	Means “I will not contest it”
Petition	A formal request to a court to take a specific action on a matter
Plaintiff	A person, company, or institution who files a suit in the court
Plea	Statement by a defendant regarding guilt or innocence
Pleadings	Formal allegations by the parties of their respective claims, testimony, or request
Precedent	A previous decision or proceeding provided by another case or court decision
Probable cause	Reasonable grounds for the existence of facts that warrant investigation
Product liability	A product that is the cause of the injury that leads to litigation
Proximate cause	Causation in which an event that occurred prior to or immediately prior to an injury is associated with the injury
Request for	A written request in which one side requests the other document side to produce documents that pertain to the case production
Restitution	The act of making good, whole, or equivalent for any loss, damage, or injury
Sealed	A document or file closed from review
Statute of limitations	The period in which the potential for litigation remains an option
Subpoena	A legal document that commands someone to appear, testify, or produce a document
Subpoena <i>duces tecum</i>	A legal order for a person to appear at a deposition or trial and produce “tangible evidence” in the case



**TABLE 5-1 TERMINOLOGY USED IN LITIGATION PROCESS (CONTINUED)**

Summons	A legal document sent to the defendant that informs that individual that a legal proceeding has been initiated
Tort	A wrongful act in which another is injured, property is damaged, or reputation is harmed. Torts can be intentional or unintentional.
Tortfeasor	Person who commits a tort
Trial <i>de novo</i>	A new trial or retrial in which the whole case is retried
Venue	Location or site of the court trial
Verdict	The formal decision or finding regarding guilt or innocence

Data from Garner, B. (2014). *Black's law dictionary* (10th ed.). St. Paul, MN: Thomson West; Rudolph, E. G. (2009). *How to be a professional legal nurse consultant*. Memphis, TN: Jurex Center for Legal Nurse Consulting.

and experts is a critical element of the discovery process. A deposition is a formally structured interview process in which legal counsels from both sides are present with an individual providing the testimony under oath. A court reporter records the deposition verbatim. The deposition serves as evidence and can be entered in the court system during the litigation process (**Box 5-2** and **Box 5-3**). The deposition is a source of evidence; therefore, it is critical that any individual who is deposed carefully read and correct the transcripts of the deposition. The deposition provides further leads for the continued investigation and discovery of evidentiary facts (Garner, 2014; Gostin & Wiley, 2016; Rudolph, 2009).

Another integral component of the discovery process is the conducting of legal research. Legal research produces valuable evidence to be utilized during the court litigation process. The purpose of legal research is to identify relevant case law that can provide guidance for legal strategy, assess the merits of the case, and identify judicial precedent in similar cases. During the legal research process, the attorney or a designee conducts a comprehensive assessment of professional or scientific literature and reviews relevant case law that serves as legal policy (Aiken, 2004; Rudolph, 2009). **Box 5-4** outlines a legal research process to identify relevant legal cases.

**BOX 5-2 DEPOSITION PURPOSE**

A deposition during the litigation stage will enable the legal team to:

- Discover information regarding the facts of the case
- Evaluate the case's strengths and weaknesses
- Evaluate the knowledge of the witnesses
- Identify and develop a legal strategy
- Determine the relevance of documents to the case
- Discover the facts and circumstances of the allegation–complaint
- Preserve the testimony of a witness for a future date
- Determine the potential extent of injury
- Determine the credibility of potential witness
- Explore the extent of expert witness expertise
- Create evidence for trial

**BOX 5-3 DEPOSITION GUIDELINES**

The following are guidelines for an individual being deposed:

- Present a copy of your curriculum vitae (CV).
- Review all documents and pertinent information.
- Conduct a review of relevant literature and evidence in relation to your expert opinion.
- Review any personal documentation regarding the incident.
- Review the format of the deposition with legal counsel prior to the deposition.
- Provide an honest testimony.
- Speak slowly, with clear pronunciation.
- Maintain eye contact.
- Answer only the question; do not elaborate on any questions or provide additional information not requested. Provide concise answers.
- Ask for clarification at any point if you do not understand the question.
- Always pause before answering a question to provide legal counsel with an opportunity to object.
- If asked the same question twice, answer in the same manner or request the recorder to read your previous answer.

**BOX 5-3 DEPOSITION GUIDELINES (CONTINUED)**

- Avoid answering in an absolute manner, such as “I always . . .” or “I have never. . .”
- Follow the lead of your legal counsel in answering questions.
- Do not provide speculations; only answer factual questions.
- If you do not know the answer, state “I do not know.”
- If you do not recall or remember the events, state “I do not remember.”
- Do not argue with legal counsel.
- Thoroughly review the transcript of your testimony and correct errors.

**BOX 5-4 LEGAL RESEARCH PROCESS**

- Define the legal issue—DISPUTE is an acronym used to prepare for and frame the boundaries of the legal research:
  - ◆ Did you identify all the relevant parties in the case?
  - ◆ Is the location of the event important?
  - ◆ Some important items or objects important to the case are identified.
  - ◆ Place the events in chronological order.
  - ◆ Understand the events that gave rise to the issue involved in the case.
  - ◆ Take into consideration the potential opposing counsel’s arguments.
  - ◆ Evaluate the legal remedy or relief sought in the case.
- From the defined legal issue—identify search terms.
- Conduct a broad search on the open web (Lexis web, Google scholar, case law).
- Use primary and secondary sources.
- Search secondary authorities—law reviews, treatises, practice guidelines, and news reports.
- Search primary authorities—case law, statutes, regulations, and regulatory annotations.
- Perform final validation using a comprehensive database. Shepard’s database provides a comprehensive search on a topic with expert analysis.
- Synthesize and analyze findings.
- Write legal research brief.

The final aspect of the litigation stage is the court trial in the judicial system. The trial is the hearing of the case in the presence of a judge. In some instances, the judge may hold pre-trial hearings to shorten the trial period. During pre-trial, the judge may render rulings on issues such as the qualification of witnesses, credibility of experts, admissibility of evidence, and response to motions filed. The trial consists of several phases such as jury selection, opening statements, presentation of evidence by the plaintiff's and defendant's legal counsel, closing arguments, judge's instructions to the jury, jury deliberations and findings of case, and verdict. In some cases, the court case is tried only in the presence of a judge.

### **Post-litigation Stage**

The jury or judge renders a final decision in each court case. This decision is known as the verdict. The decision or verdict rendered in response to a specific case formulates legal policy in the form of case law.

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### **Types of Policy Formulated**

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Policy is formulated through the judicial system by the establishment of legal precedents and case law. This process is referred to as judicial policymaking. In judicial policymaking, the judge and court, acting as a collective entity, engage in an active role of policy implementation through the interpretive process. Case law in a system of jurisprudence is based on existing legal policy and judicial precedents. Case law is policy that is formulated through the judgment or verdict rendered in the judicial court system. Case law is also referred to as common law or judge-made law. Case law can define both civil and criminal policy within the respective jurisdiction of the judicial system.

A precedent is a policy that is established through an earlier judicial decision. *Stare decisis* ("let the decision stand") is the principle that establishes the basis for judicial precedence. This encourages adherence to previous case findings with substantially comparable facts and situations. Therefore, the development of case law serves as a precedent or policy by which future cases will be interpreted within the judicial system.

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### **Nurses' Role in Judicial System**

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The effect of litigation within the judicial system is the establishment, affirmation, or clarification of rights at the local, state, or national level. Nurses can use their knowledge within the judicial system to serve as a legal nurse consultant or expert witness.

## Legal Nurse Consultant

A legal nurse consultant is a professional who integrates nursing knowledge with knowledge of the legal system and process. The legal nurse consultant is as a member of the legal team. Legal nurse consultants are valuable resources who assist attorneys and judges in formulating legal policy. The duties of a legal nurse consultant include reviewing and evaluating medical-nursing legal cases, educating attorneys and clients regarding medical-nursing issues, reviewing and interpreting medical records, serving as an expert witness, testifying in a deposition or court, assessing the extent of damages, and conducting legal research (Rudolph, 2009). In addition, the legal nurse consultant can present a chronological summary of a case with an analysis of the case's merits in the form of an executive summary for the attorney or judge. This task expedites the rendering of a legal opinion or strategy.

Other healthcare professionals can integrate their discipline-specific knowledge with the legal system and processes to serve as legal consultants. The legal nurse consultant model can be used to form a legal specialization within other healthcare professional disciplines. Nurses or other healthcare professionals can engage in the legal system as consulting experts or testifying experts. Both of these roles assist the attorney in determining the merits of the case and providing consultation regarding the legal case. However, there are differences in the role requirements. The consulting expert can provide consultation regarding his or her respective discipline and other areas involving the case. The consulting expert's information is not discoverable in the legal case unless it is used by an expert witness. In contrast, the expert witness provides testimony only in the witness's scope of practice and the information is considered discoverable in a legal case. The role of the expert witness is further explained below.

## Expert Witness

Nurses and other healthcare professionals serve as expert witnesses to provide information relevant to the case. An expert witness is an individual who has an identified area of expertise based on education, skills, credentials, qualifications, and experience (Aiken, 2004). Nurses who serve as expert witnesses generally provide testimony regarding the expected nursing standard of care within a healthcare environment. To be accepted as an expert witness, the nurse's or other healthcare professional's credibility in terms of education, experience, and credentials must be demonstrated by the team's attorney. The judge, on behalf of the judicial system, may then qualify the nurse or other healthcare professional as an expert witness in the court system. **Box 5-5** presents the responsibilities of an expert witness.

**BOX 5-5 EXPERT WITNESS RESPONSIBILITIES**

- Present expert evidence that is independent and uninfluenced or biased
- State the facts or assumptions upon which the opinion is based—provide references and citations as appropriate
- Provide opinion only within the expert's area of expertise and identify questions or content that is outside that area of expertise
- Ensure that an opinion rendered on incomplete information or data is known as a provisional opinion
- Must inform the court if there is a change in opinion resulting from a change in data/evidence/information or after reviewing other litigation material
- Provide copies as evidence of information used to formulate an opinion
- Must cooperate with other parties in the dispute
- Never assume the role of advocate while in the role of expert witness
- Should not omit material facts that may detract from the concluded opinion

**Summary Points**

- The judicial system is structured into two divisions—federal and state courts.
- The federal courts have jurisdiction over the U.S. Constitution and federal laws and regulations.
- State courts have jurisdiction over the state constitution and state laws and regulations.
- An appeal of a state Supreme Court decision may be filed with the U.S. Supreme Court.
- A Supreme Court decision is considered the highest legal decision.
- The only court that cannot be abolished is the Supreme Court.
- The president nominates a Supreme Court Justice and the nominee is confirmed by the U.S. Senate.
- Justices are appointed for life but can be removed by congressional impeachment.
- Federal courts have jurisdiction over civil and criminal actions dealing with federal laws.
- The federal court is presided over by a federal judge appointee.

- A federal judge generally retains appointment until death, retirement, or resignation.
- All governmental powers not granted to the federal court system by the Constitution are reserved for the states and counties.
- In a grand jury, a jury convenes with government attorneys, court reporters, interpreters as needed, and witnesses to determine if there is sufficient evidence to indict an individual or “probable cause” that a suspect has committed a criminal act.
- Jurisdiction represents the scope of authority for a case.
- Geographic jurisdiction represents the geographic or political locality boundaries that are encompassed within the respective court’s scope of authority.
- Subject matter jurisdiction concerns the specific area of law in which the respective court has a defined scope of authority.
- Personal jurisdiction is the extent to which a court has authority over an individual or business entity.
- The litigation process occurs in three stages: pre-litigation, litigation, and post-litigation.
- The judicial system produces policy in the form of legal precedents and case law.
- A precedent is a policy established through an earlier judicial decision.
- Case law is policy formulated through the judgment or verdict rendered in the judicial court.
- A legal nurse consultant is a professional who integrates nursing knowledge with knowledge of the legal system and process.
- An expert witness is an individual who has an identified area of expertise based on that witness’s education, skills, credentials, qualifications, and experience.

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