

Will-Challenge Litigation: Forensic Expert Cross-Examination

March 26, 2026

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Estate litigation rarely turns on a single moment, but an effective cross-examination of the other side's forensic document examiner may be one's best shot at that "Perry Mason moment." When a will's authenticity is in dispute, the expert's testimony is counted on to provide the foundation upon which one's entire case rests. Successfully reducing their document authenticity evidence to a mere guess based on conjecture can provide that Jenga-like moment of removing that pivotal piece and watching the tower of blocks come crashing to the floor. And while jurists routinely remind us that experts are "advisory," anyone who has tried one of these cases knows that a confident expert with a clean narrative can carry enormous weight. The inverse is equally true: a shaky expert can unravel a proponent's case in minutes.

The Real Work Begins Before the First Question

Effective cross-examination starts long before the expert takes the stand. Forensic document analysis is a discipline built on methodology, not mystique. Every document authenticity opinion, whether about signatures, ink, paper, toner, or page substitution, rests on a chain of decisions made by, or in some situations, forced upon the expert: what they examined, what they ignored, what they assumed, and what they concluded. Mapping that chain is the key to exposing weak or even missing links.

Several pre-trial "to dos" can be expected to pay consistent dividends:

- **Pin down the expert's universe of materials.** What known samples of the author's handwriting, known as "exemplars," were used? Who selected them? Were they contemporaneous with the questioned handwriting? Were they originals or scans?
- **Identify methodological "shortcuts."** Did the expert deviate from published standards? Did they rely on subjective impressions or conduct objective testing?
- **Trace the chronology.** When did the expert receive the documents? Were they sealed? Was the chain of custody documented? Did the expert know the litigation posture before forming opinions?

By the time cross-examination begins, one's goal should not be to surprise the document examiner. If properly prepared, there won't be one of those "gotcha moments" as there was on every single episode of Perry Mason. The goal rather, should be to walk the court through the expert's own process and let the weaknesses reveal themselves.

Where Forensic Opinions Tend to Break Down

Most will-challenge cases involve one or more of the following: (i) handwriting analysis; (ii) ink and/or paper dating; (iii) indentation analysis; (iv) spectral imaging; and/or (v) digital or toner evaluation. Each offers its own pressure points, which if

sufficiently exploited, can be expected to reveal a lack of reliability.

- Handwriting and signature analysis often falters on the quality and quantity of exemplars. An expert's reliance on a narrow or non-representative sample, exposes vulnerabilities which any good forensic expert already knows. The smaller the sample size and the less representative of the decedent's handwriting at the time of the document being challenged, the less reliable the opinion regarding authenticity.
- Ink and paper dating can be powerful, but only when the expert can articulate the limits of the testing. Many methods can rule out a date but cannot confirm one.
- Indentation and page-sequence analysis is only as strong as the expert's documentation. Missing photographs, incomplete notes, or ambiguous impressions create fertile ground for doubt when appropriately exposed.
- Spectral imaging can detect alterations, but courts expect the expert to explain what the imaging cannot show. Overstatements are often more damaging than gaps.
- Digital forensics requires a clear explanation of how the expert distinguished between original signatures and those that have been scanned or mechanically reproduced. Ambiguity here tolls the death knell.

Cross-examination succeeds when it forces the expert to concede the limits of their discipline without appearing combative. Most judges will tend to appreciate clarity over theatrical "A-ha!'s."

The Most Persuasive Cross-Examinations Share a Common Structure

The strongest cross-examinations in will-challenge litigation tend to follow a predictable arc:

- Establish the expert's own standards. Let the expert define what "reliable methodology" means.
- Demonstrate where the expert departed from those standards. Even small deviations can undermine confidence.
- Highlight what the expert did not do. Courts understand that omissions matter as much as findings.
- Expose assumptions. Many forensic conclusions rest on untested premises, e.g., about timing, custody, or exemplar authenticity.
- Return to the ultimate opinion. By the time the expert restates it, the court should already see its fragility.

The goal is not to "win" a battle of experts. It is to give the court a principled reason to discount the soundness of the other party's process underpinning the conclusion the expert ultimately reached.

Why This Matters in Today's Estate Litigation Landscape

Modern will contests increasingly involve blended families, high-value estates, and digital documents. Consequently, powerful forensic testimony is often the centerpiece of probate-related document authenticity disputes. Courts expect practitioners to understand not only the legal standards, but also the scientific ones. A well-executed cross does more than weaken an opposing expert. It reinforces the broader narrative, i.e., that the proponent of an alleged will or other testamentary document bears the burden of establishing authenticity, and that doubts grounded in methodical, fact-driven questioning are legally significant.

Weighing Conflicting Forensic Reports in Will Contests

Conflicting forensic reports are no longer the exception in will-challenge litigation; they are the norm. As estates grow more complex and documents increasingly blend handwritten, printed, and digital elements, courts are routinely asked to choose between dueling experts who appear equally credentialed and equally confident. Navigating the conflict is far more structured than many litigants appreciate. Understanding that structure is essential to presenting (or defending against) a challenge to a will's authenticity.

What Judges Look for First: Methodology, Not Conclusions

When two experts disagree, courts do not start with the bottom-line opinion. The starting point, appropriately, ought to be the methodologies relied upon to get there. Harken back to grade school math class with me for a moment. It wasn't enough to tell the teacher the answer was "12." You had to show your work if you expected the credit. How you got to 12 was more important than the correct answer, in fact, objectively, "12." The difference, of course, is that forensic document examination still relies on expert opinion, even if the discipline is built principally on SWGDOC and ANSI/ASB standards, OSAC-reviewed standards under NIST, relevant ASTM standards, and generally accepted forensic document examination methodology, including validated testing techniques and reproducible procedures. For a trier-of-fact, judge or jury, to trust an expert's subjective opinion in this context, the extent of one's gray-haired "eminence grise" and years of relevant experience will likely count for something, sure, but scrutinizing the objective path taken to reach the subjective conclusions may prove to be the only differentiator upon which the fact-finder may be forced to rely. If two seemingly equally credentialed experts have reached opposing conclusions, strict adherence to process is necessarily relevant and ought, therefore, to be critically scrutinized so as to appreciate the full extent to which the expert or experts:

- Consistently applied recognized standards
- Documented each step of the examination
- Used appropriate exemplars and controlled conditions
- Avoided assumptions about timing, authorship, or custody

An expert who followed a disciplined, transparent process will almost always be favored over one who relied on subjective impressions or incomplete testing, even if the latter's conclusion appears more definitive. So be critical of your own expert, seeming to fall too easily into the trap of giving you precisely the answer you want to hear. Assess the foregoing factors in his or her work prior to finalizing the expert's disclosure and/or report. Imagining the ease with which you, yourself, would elicit such weaknesses on cross-examination should provide more than sufficient fodder for "rehabilitating" your own witness well before they ever need it.

The Weight of "Negative" Findings

Courts often give greater weight to findings that rule out authenticity than to those that merely support it. For example:

- Ink that post-dates the decedent's death
- Paper inconsistent with the claimed execution period (or inconsistent pages within the document itself)
- Toner or printer characteristics that did not exist at the time
- Indentation patterns showing pages were added or substituted

Evidence of any one of these findings may prove dispositive. As difficult as they are to explain away, a single disqualifying inconsistency can undermine an entire document.

How Courts Evaluate Competing Signature Opinions

Handwriting analysis remains the most commonly contested component of will-challenge litigation. I'm not aware of any statistical analyses, but my own limited research efforts confirm that it is much easier to find published cases challenging signature authenticity above all other factors. Perhaps this is more a factor of which types of cases are more likely to settle when expertly identified. With that in mind, it is fair to anticipate a high probability that cases coming before the court for resolution involve experts on both sides reaching different conclusions about signature authenticity.

With conflicting opinions regarding the signature itself, key potentially distinguishing factors include the following:

- The number and quality of exemplars each expert used

- Whether the expert relied on originals or degraded copies
- The expert's ability to articulate and exemplify specific stroke-level comparisons
- Whether the expert acknowledged natural variation in the decedent's writing

Judges are going to be wary of conclusory statements like “the signature is consistent with the writer's hand” unless supported by detailed, observable features. In other words, simply saying it, does not make it so no matter how many gray hairs on the expert's head or letters after their name. When presenting one's case, one must assure that the expert provides articulable evidence of both consistencies and inconsistencies.

The Role of Chain of Custody and Document History

Even the strongest forensic opinion can be weakened if the document's history is murky and/or if the document reflects a significant change of course from the decedent's previously documented planning for the benefit of a beneficiary who is also the source and proponent of the document. Courts scrutinize the following:

- Who possessed the will and when
- Whether the document was sealed or stored securely
- Whether any party had the opportunity to alter or replace pages
- Whether the expert knew the litigation posture before forming an opinion

A clean chain of custody enhances credibility; a compromised one amplifies doubt.

When Experts Cancel Each Other Out

In some cases, the court finds both experts credible but inconclusive. When that happens, judges must shift their focus to the surrounding circumstances:

- The decedent's prior estate-planning patterns
- The relationship between the decedent and the beneficiaries
- Evidence of undue influence, isolation, or last-minute changes
- Testimony from witnesses to the execution
- The presence (or absence) of earlier, consistent wills

Forensic science informs the ultimate decision, but the broader factual landscape often decides it.

The Practical Reality: Courts Want a Reason to Trust One Expert

Judges are not expecting perfection or 100% certainty. They are looking for credibility, consistency, and restraint. An expert who acknowledges limitations, explains uncertainties, and grounds every conclusion in documented observations is typically far more persuasive and effective than one who overreaches and speaks only in terms of “all or nothings” (e.g., refuses to acknowledge anomalies and/or steadfastly claims to a high degree of certainty).

In will-challenge litigation, the most effective strategy is not to “win the science,” but to “trust the process” and give the court a principled, fact-driven basis to trust your expert's path to the conclusion. To that end, cross-examination should be directed at establishing grounds to distrust the other side's process, the totality of which will include more than just their expert. One would do well to prepare for expert cross-examination in this context, as exposing not only the weaknesses in the expert's process but recognizing, as well, that the expert's ultimate conclusions are only as strong and trustworthy as the weakest link in their opinion chain.

