

Establishing Expertise as an Ethical Expert Witness –

Experts and Lawyers Collaborating to Help Victims

DAUBERT QUESTIONS FOR EXPERT WITNESSES

1. EXPERT QUALIFICATIONS:

- △ Name?
- △ Address?
- △ Occupation?
- △ Present employment?
- △ Past employment?
- △ Educational background?
- △ Current professional involvement?
- △ Membership in professional societies?
- △ Field of expertise?
- △ Purpose and nature of consultation?
- △ Research?
- △ What scientific testing did you undertake?
- △ Findings and opinions?
- △ Definitions?

2. PROPOSED TESTIMONY IS SUFFICIENTLY TIED TO FACTS OF CASE SO THAT IT WILL AID THE FINDER OF FACT IN RESOLVING A FACTUAL DISPUTE:

- △ What does your testimony concern?
- △ In your opinion, how does that testimony relate to the nature of this suit (or it's underlying issues)?
- △ Do you believe the research you have done could have been done by the average lay-person (without your type of education or experience)?
- △ Do you consider the research you have done to be decipherable by the average lay-person?
- △ Do you feel your testimony will better aid the finder of fact to understanding the work you will present?

3. TESTING OF THE THEORY OR TECHNIQUE (FALSIFIABILITY):

- △ What theory/technique did you use in your research?
- △ How often do you use this theory/technique?
- △ Do you use this theory/technique in other subject areas, or is it unique to the subject matter addressed in this case?
- △ How did you test this theory/technique?

- △ Did you use the same testing method every time to test for accuracy?
- △ Did anyone, other than you, test your theory/technique for accuracy?
- △ What test did that person use?
- △ When did that person do his/her testing?
- △ What were the results?

4. EXTENT TO WHICH THE TECHNIQUE RELIES UPON THE SUBJECTIVE INTERPRETATION OF THE EXPERT:

- △ Does the technique you used generally require subjective or objective interpretation among others in the field?
- △ Was the technique used in your research interpreted subjectively or objectively?
- △ Do you feel another person in your field would have interpreted your technique in the same you have?
- △ Is there a way to cross-check the subjective interpretation for accuracy?
- △ Did such cross-checking take place?
- △ What were the results?

5. WHETHER THE THEORY/TECHNIQUE HAS BEEN SUBJECTED TO PEER REVIEW OR PUBLICATION:

- △ Has your theory/technique been published?
- △ Where was it published?
- △ When was it published?
- △ Were there any criticisms?
- △ What were the nature of the criticisms?
- △ Has your theory/technique been reviewed by your peers?
- △ By whom was it reviewed?
- △ When was it reviewed?
- △ What was their opinion of your technique after having reviewed it?

6. THE THEORY/TECHNIQUE'S KNOWN OR POTENTIAL RATE OF ERROR:

- △ Does your theory/technique have a known or potential rate of error?
- △ What is that rate of error?
- △ How did you arrive at that rate of error?
- △ Is that rate of error common for the theory/technique you used?
- △ Did you carefully consider alternative causes or theories?
- △ What makes yours the best to use or most reliable?

7. GENERAL ACCEPTANCE OF THE THEORY/TECHNIQUE BY THE RELEVANT SCIENTIFIC COMMUNITY:

- △ Have you used this theory/technique outside the purposes of litigation?
- △ In what instances?
- △ When?
- △ Where?
- △ Was the theory/technique used, consistent from those instances until now?
- △ Was the theory/technique altered this time because of the litigation?



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