

Deposition Outline for Expert - *Daubert* Issues

I. Qualifications

- A. Define subject matter(s) of expertise on specific topic of testimony
- B. What specialized knowledge does the expert possess in this subject matter?
 - 1. Training/education
 - a. Where, how long, hours of coursework, degrees
 - 2. Professional organizations
 - a. Memberships
 - b. Leadership positions
 - 3. Certifications
 - a. Identify those available for this subject matter
 - b. Identify which ones the expert has
 - c. Identify any the expert has tried for and not gotten
 - 4. Articles published
 - 5. Research studies
- C. Prior testimony
 - 1. Prior testimony (deposition, affidavit, or in court) in the subject matter
 - a. List of cases within the preceding 4 years now required under Federal Rule 26(a)(2)(B)
 - b. Deposition, affidavit, or at trial
 - c. Get court, opposing counsel, dates

2. How many times has the expert been qualified as an expert in this subject matter
 3. Opinions ever excluded on any ground?
 4. Ever not survive a Daubert/Robinson challenge?
 5. Ever not qualified as an expert?
- D. Bias
1. Work done for plaintiffs only/defendants only?
 2. What percentage of work done is for plaintiffs/defendants

II. Methodology

- A. What are the accepted methodologies used in the subject matter of the expert's opinion? (i.e. statistics for economist)
1. For each, what training has the expert had?
- B. What methodology did the expert use in formulating his or her opinions?
1. Describe methodology and reasoning process in detail
 2. Identify authoritative source for that methodology
 - a. Who developed and when?
 - b. Where documented?
- C. Testability Factor
1. Has that methodology been tested?
 - a. By whom? How many times? When? What were circumstances?
 - b. What population was the object of the testing - E.g.,
 - (1) For medical studies, were there any tests on human populations

(2) For social science studies, were the tests done solely on college students

2. Known or Potential Rate of Error Factor

a. What is the known or potential rate of error – i.e., what is the probability that another expert could replicate the analysis and achieve the same results?

b. Known or potential rate of error in the application of the methodology – i.e. mistakes?

(1) What procedures/safeguards should be used to maximize accuracy and reliability of results

(2) Source of that information

c. If has not been tested, could it be? How?

3. Peer Review and Publication Factor

a. Has the theory been subjected to peer review and publication in academic journals or other respected periodicals? If not, why not?

(1) What journals, when, authors

(2) Results of that review

b. If not, would you submit to peer review process? If not, why not?

c. Unsuccessful efforts to publish?

D. General Acceptance Factor

1. Has the methodology been “generally accepted?” On what do you base your conclusion about that?

- a. Who has accepted it? Who uses it? Is it taught in any recognized authoritative treatise or school?
 - b. Any school of thought opposing the reliability or validity of this approach? Who, when?
2. Is there a recognized minority of experts in the field who recognize it?

E. Independence Factor

1. Non-litigation uses of the methodology
 - a. Was it developed for use outside the courtroom?
2. Were experts' opinions formulated solely for purposes of litigation?

F. Subjectivity Factor

1. What standards exist for the application of this methodology and interpretation of the results?
 - a. Are they written? Where could they be found?
 - b. Define and describe any element of subjectivity in the application and/or interpretation of the results
 - (1) Define those elements of the analysis that involve interpretation, judgment, or inference
 - c. Did the expert depart from those standards in any respect

G. Prior use of methodology by the expert

1. Where and how learned?
2. How often applied?
3. Under what circumstances?

4. Ever used outside the courtroom?
5. Ever published on it

III. Relevance

- A. How does opinion relate to a relevant legal proposition?
- B. Assumptions
 1. Identify assumptions made by the expert and bases for them
 2. Does methodology describe what assumptions can/should be made? Source of basis for any assumptions?
 3. If evidence varies from assumptions, how does that change expert's opinion?