



Strengthening Forensic Science : Daubert Issues

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What is Expert Testimony?

- A special kind of court testimony under Rule 26 of US Civil Procedure which allows the court to hear and understand issues and opinions which are highly specialized in nature.
- The expert is an aid to the court in understanding these issues and is not expected to be an advocate for the party that calls the expert to the stand.
- The judge is the determiner of whether your testimony is of sufficient technical merit for the court or the jury to hear.

Exclusion Process

Daubert is the name of a US Supreme Court case (*Daubert v. Merrell Dow Pharmaceuticals*) in which the Court established the standards for expert testimony.

- Judge is gatekeeper
- Relevance and reliability
- Scientific knowledge = scientific method/methodology
- All federal Courts use Daubert. Most State courts use Daubert but are generally more lenient in allowing experts to testify. Some States use an older (simpler) test call Frey.
- Either side may challenge an expert by presenting a Daubert motion to the court.

Daubert Motion Process

- One side challenges the other side's expert usually after depositions.
- Exchange of briefings for the court. Almost always, you will be asked to assist in preparing the rebuttal to a Daubert motion against you or the Daubert motion against the other side's expert.
- May require a spate Daubert hearing, in which you may be asked to testify.
- Judge decides. Briefs and testimony must be understandable to the judge.

Daubert Factors

- Factors relevant to decision:
 - Empirical testing: whether the theory or technique is falsifiable, refutable, and/or testable.
 - Whether it has been subjected to peer review and publication.
 - The known or potential error rate.
 - The existence and maintenance of standards and controls concerning its operation.
 - The degree to which the theory and technique is generally accepted by a relevant scientific community

Hot tips

- **Define carefully what you are qualified to address and do not stray from your qualified expertise.**
- **Use standard well recognized methods (from the Guidance) and don't make any errors.**
- **Expert judgment is no longer enough.**
- **Remember your job is to inform the court or the jury about the science rather than being an advocate either for your client or your own methods. The lawyer is the advocate.**

Author at Work



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Thank you

Questions?

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