

GAL DISABILITIES TRAINING CONFERENCE:

QUALIFYING A WITNESS AS AN EXPERT USING THE DAUBERT STANDARD



Florida Rule of Evidence 90.702 - Testimony by experts

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion **or otherwise, if:**

- (1) The testimony is based upon sufficient facts or data;**
- (2) The testimony is the product of reliable principles and methods; and**
- (3) The witness has applied the principles and methods reliably to the facts of the case.**

The amendment rejected the admission of “pure opinion” testimony based simply on the expert’s experience and training where there are not sufficient safeguards to determine the reliability of the opinion.

(1) Sufficient facts or data:

Does the expert have enough information to make the opinion reliable? The quantity of the information necessary to support the conclusion is what matters.

(2) Reliable Principles:

What is the theory underlying the expert’s opinion and why is it reliable generally?

(3) Reliable Methods:

What processes and/or procedures to arrive at the opinion and why are these processes and procedures reliable?

- why is it logical or how does it fit into established protocol
- Publication or peer review
- Known or knowable error rate
- General acceptance by practitioners in the field
- Professional standards
- Testability- would different practitioners arrive at the same result if following the same protocol?
- Use of methodology for non-litigation purpose

(3) Reliable application of the principles and methods to the facts of the case:

Did the expert apply the principles and methodology to the facts or data in a reliable manner?

RELATED CASE LAW:

- A. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 588-94 (1993).
- B. *Gen. Elec. Co. v. Joiner*, 522 US 136, 141 (1997).
- C. *US v. Brown* 415 F3d 1257, 1265, 1068 (11th Cir 2005).
 - a. Quoting *US v. Jernigan*, 341 F.3d 1273, 1285 (11th Cir.2003).
 - b. Quoting *Burford v. US*, 532 US 59, 65 (2001).
 - c. Quoting *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1310 (11th Cir. 1999).
 - d. Quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 588 (1993).
 - e. Referencing *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).
 - f. Referencing *GE v. Joiner*, US 522 U.S. 136, 142 (1997).
- D. *Kumho Tire Co., Ltd. v. Carmichael*, 526 US 137, 150-51, 152-53, 156 (1999).
- E. *Tyus v. Urban Search Mgmt*, 102 F.3d 256, 263 (7th Cir. 1996).
- F. *Brown v. Crown Equip. Corp.*, 181 S.W.3d 268, 275 (Tenn. 2005).
- G. *David E. Watson, P.C. v. US*, 668 F.3d 1008, 1015 (8th Cir. 2012).
- H. *Tussey v. ABB, Inc.* 2014 WL 1044831 (8th Cir. 2014).
- I. *United States v. Hall*, 93 F.3d 1337, 1343 (7th Cir. 1996).