

DAUBERT EXPERT WITNESS CHECKLIST

RELEVANCE

- The subject matter of the expert opinion [is][is not] relevant under § 904.01.
- The expert testimony [is][is not] evidence that has a tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.
- The expert testimony [will][will not] be helpful to the trier of fact.
- The subject matter of the testimony [is][is not] outside the ken (knowledge base) of the average juror.

QUALIFICATIONS OF THE EXPERT

- The expert [has][does not have] superior knowledge, skill, experience, training or education in the area he or she wishes to testify.
- The scientific or technical expertise of the expert [is][is not] commensurate with the complexity of the issues in the case.
- The expert [is][is not] qualified to render opinion testimony on [all][limited] issues in the case.

RELIABILITY

- The expert opinion [is][is not] based on personal knowledge.
- The expert opinion [is][is not] based on reliable hearsay.
- The expert opinion [is][is not] based on reliable hypothetical assumptions that have a basis in the evidence presented (or which will be presented).
- The expert opinion [is][is not] based on reliable specialized knowledge.
- The expert opinion [is][is not] based on reliable principles and methods.
- The expert [has][has not] reliably applied the accepted principles and methods to sufficient facts and data in the case-“fit”.
- The credentials of the expert [exceed][do not exceed] the generally accepted principles, reasoning or methodology.
- The expert's opinion [is][is not] reliable.

ADVISORY COMMITTEE FACTORS

- The expert's technique/theory [can][cannot] be or [has][has not] been challenged or tested in some objective sense.
- The expert's technique [is][is not] a subjective conclusion.
- The expert's conclusion [can][cannot] reasonably be assessed for reliability.
- The expert's opinion [is][is not] *ipse dixit* (because I say so).
- The expert's technique/theory [has][has not] been subject to peer review.
- The expert's technique/theory [has][has not] been subject to learned treatise or publication.
- There [is][is not] a known or potential rate of error of the technique or theory when applied to the facts.

- The expert [has][has not] disclosed the potential error rate.
- There [are][are not] in existence known accepted standards and controls.
- The technique/theory [has][has not] been generally accepted in the scientific or relevant discipline community.
- The expert [is][is not] proposing to testify about matters growing naturally and directly out of research the expert has conducted independent of the litigation.
- The expert [has][has not] developed the opinions expressly for the purpose of the litigation.
- The expert [has][has not] unjustifiably extrapolated from an accepted premise to an unfounded conclusion.
- There [is][is not] an analytical gap between the data and the opinion.
- The expert [has][has not] adequately accounted for obvious alternative explanations.
- The expert [is][is not] being intellectually rigorous as the expert would be in their regular professional work outside of paid consulting.
- The field of expertise claimed by the expert [is][is not] known to reach reliable results for the subject matter the opinion is being offered.

**COURT § 907.02(1) FACTORS THAT MUST BE ADDRESSED
IN RE COMMITMENT OF JONES, 2018 WI 44, ¶ 29**

1. Whether the scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact of issue;
2. Whether the expert is qualified as an expert by knowledge, skill, experience, training, or education;
3. Whether the testimony is based upon sufficient facts or data;
4. Whether the testimony is the product of reliable principles and methods; and
5. Whether the witness has applied the principles and methods reliably to the facts of the case.