

NO. _____

IN THE COUNTY COURT

Plaintiff(s),

V.

Defendant(s).

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AT LAW NO. 1

ELLIS COUNTY, TEXAS

EXPERT WITNESS HEARING CHECKLIST

Unless otherwise ordered by the Court, the attorneys are required to prepare and present the evidence for this hearing in accordance with the procedures set forth in this checklist. These procedures apply to both oral and written presentations.

Each opinion is to be stated separately and distinctly and each will be considered separately by the Court. The evidence supporting and opposing each opinion must be presented following the statement of the opinion.

If live witnesses are produced, the direct examination will be followed immediately by cross-examination on each separate opinion. Opposing experts must testify in sequence on each opinion and opposing opinion. No “voir dire” examination of the witness will be permitted except in extraordinary circumstances.

The language of this checklist is taken from the Rules of Evidence and the case decisions. It is a generic one size fits all checklist that can be modified to suit the particular type of expert and expert opinion. The format prescribed by this checklist should nevertheless be viable for any type of expert testimony with common sense variations.

The Court recognizes the burden of preparation, but these procedures are necessary in order to educate the Court properly, to prepare a proper record for the appellate court and to produce a proper ruling.

Stipulations are encouraged so as to shorten and simplify this procedure.

I. GENERAL RULES:

- A. The burden of proof is on the proponent of the opinion testimony to prove by a preponderance of admissible evidence.
- B. The parties must confer prior to filing a Motion to Quash/Strike an expert witness's testimony.
- C. The parties are urged to enter reasonable stipulations to facilitate the hearing by the Court.
- D. The proponent should state each opinion of each expert separately, state what qualifications are necessary to enable the expert to form the opinion and organize the evidence under it in support of the opinion.
- E. Prior evidence can be adopted for subsequent dependant or overlapping opinions.
- F. As to a hearing with live witnesses, the Court will seek suggestions of the attorneys as to the logical order in which to consider the opinions.
- G. Be aware that if either the Motion to Quash or Suppress expert testimony or the Reply to the Motion has no reasonable current basis in fact or law, or through reasonable extension of present law, the Court will consider the imposition of sanctions.
- H. Rules 702, 703, 704, 401, 402 and 403, Texas Rules of Evidence, govern this hearing.
- I. Any party desiring a deviation from this format must file an appropriate motion with the Court showing good cause for the deviation.

II. IDENTIFY AND QUALIFY THE WITNESS

- A. Name, Address
 - B. Profession, Licenses, Certifications
 - C. Education, Experience, Post School Education, Specialties
 - D. Honors, Achievements, Publications, Seminars
 - E. Knowledge of Applicable Practices and Standards
 - F. When and Why Witness was retained
- If live witness:
- G. Do you have your entire file with you? If not, why not?
 - H. State the relevant history in this case that supports your opinion(s).

III. PRESENT THE OPINION FOR CONSIDERATION

- A. State the Exact Opinion to be Considered
 - Each opinion is to be stated and considered separately
 - Material deviations from the report will not be permitted in absence of good cause

B. Fields of Expertise

1. Is the field of expertise a legitimate one?
2. What areas of expertise are required to form the opinion?
3. What principles were relied upon for the opinion?
4. What qualifications are required to form the opinion?

C. Bases of Opinion

1. State the factual basis and history that supports the opinion. (A written summary citing exact references in support is recommended)
2. What discovery was used to form the opinion?
 - a. current case discovery that is unobjected?
 - i. depositions
 - ii. interrogatories
 - iii. admissions
 - iv. disclosures
 - v. authenticated documents
 - b. former testimony?
 - i. is declarant unavailable
 - ii. was the testimony given as a witness or deponent in another hearing
 - iii. as to using the testimony for/against the target party in this case, did the target party and/or a third party in the other hearing have a similar interest and motive to develop the testimony by direct, cross or redirect examination
3. What inadmissible evidence was relied upon that is reasonably used by other experts?
4. What other printed, written and electronic sources were relied upon?
5. What experiments and tests were relied upon?
6. What factual evidence suggests the theory or technique may be wrong and why was it rejected?

D. Is the Theory or Technique Reliable?

1. What theory and/or technique was used to form the opinion?
2. What are the competing theories and/or techniques?
3. Have conclusions been verified by independent tests?
4. To what extent is the theory or technique used to form the opinion?
5. What variances from standard techniques or applications were

used?

6. To what extent are the results of the test duplicable?
7. Has there been any peer review?
8. What other experts use the same method(s)?
9. What economic interest does the expert have?
10. Who has duplicated the test?
11. Are the underlying theories or techniques generally accepted or rejected by the relevant scientific community?
12. Is the opinion based upon reasonable probability?
13. Disinterested publication(s) that share and dissent from the opinion
 - a. Type and name?
 - b. Peer reviewed?

E. How Does the Opinion Connect to this Case?

1. Studies
 - a. human tests
 - b. animal tests
 - c. epidemiological studies
 - d. other tests
2. Duplication of results
 - a. known margin or error
 - b. potential rate of error

F. Relevancy

1. Does the evidence have any tendency to make any fact of consequence more or less probable?
2. Balancing test (Rule 403)
 - a. Is the evidence
 - i. substantially outweighed by danger of unfair prejudice?
 - ii. substantially outweighed by confusion of the issues?
 - iii. substantially outweighed by misleading the jury?
 - iv. substantially outweighed by considerations of undue delay?
 - v. a needless repetition of cumulative evidence?

G. Can Laypersons make the Determination without Expert Help?

IV. COURT'S FINDINGS

A. QUALIFICATIONS – the witness is / is not qualified to render the opinion

- B. ASSIST TRIER OF FACT- the opinion will / will not assist the trier of fact
- C. RELEVANCY- the opinion is / is not based upon sufficient facts or data
- D. RELIABILITY- The opinion is/is not the product of reliable principles or techniques. The opinion properly/improperly applies the principles and techniques to the facts of this case