



W. EDWIN DENMAN
District Judge
412th Judicial District
Brazoria County, Texas

LAWYER'S GUIDE FOR ROBINSON/KELLY/DAUBERT HEARING
per
Rule 104 Tex. R. Evid.
Motion To Quash/Strike Expert Witness, Civil and Criminal

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 presentation.

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 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 the procedure.

GENERAL PROCEDURES:

- 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 and expert witness' testimony, and the failure of a party to be reasonably responsive to inquires and attempts to confer will be interpreted against the party that violates this instruction.
- 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 to expert to form the opinion and organize the evidence under it in support of the opinion. Movant is required to join issue and address each opinion separately as exactly stated by the proponent of the opinion.
- E. Prior evidence can be adopted for subsequent dependent 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(31), 703(32), 401(34), 402(35) and 403(36), 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.