# EXPERT WITNESSES IN EMPLOYMENT LITIGATION

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## In Federal Court at Least Seven (7) Applicable Rules of Evidence

i. **Rule 104: Preliminary questions**
ii. **Rule 702: Testimony by experts**
iii. **Rule 703: Bases of opinion testimony by experts**
iv. **Rule 704: Opinion on ultimate issue**
v. **Rule 705: Disclosure of facts or data underlying expert opinion**
vi. **Rule 401: Definition of relevant evidence**
vii. **Rule 403: Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time**

- **Same rules apply in Texas state courts**

# Four Requirements for Admission of Expert Witness Testimony

1) **Qualified expert**
2) **Reliability of opinions**
3) **Relevance of testimony**
4) **Probative value outweighs prejudice**

*See Watkins v. Telsmith, Inc.*, 121 F.3d 984 (5th Cir. 1997).



# Standard for Qualification of Experts – Little Changed in 40 Years

1) **Specialized knowledge, skill, experience, training or education**

**AND**

2) **Which will assist judge or jury to understand the evidence or determine a fact in issue.**

***See* Fed. R. Evid. 702; Tex. R. Evid. 702.**

# Reliability Standards Have Undergone Dramatic Changes Since Three Supreme Court Decisions

i. ***Daubert v. Merrell Dow Pharmaceuticals***

ii. ***General Electric Co. v. Joiner***

iii. ***Kumho Tire Co. v. Carmichael***



# *Daubert* Standard

- Pronounced "Dow-burt," 43 Emory L.J. 867 (1994).
- 1993 case in which plaintiff alleged a drug caused birth defects.
- Prevalent standard for admissibility of expert testimony was "general acceptance" in the field, under the *Frye* test from *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)
- Plaintiff's expert's opinion was based on studies which had not gained "general acceptance."
- Supreme Court rejected *Frye's* "general acceptance" test, expanding admissible testimony to include any that is based on a **reliable methodology**. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

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