

Experts and Disqualifications

The Honorable Judge Jeffrey Brown
United States District Court Judge
Southern District of Texas

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What we will cover:

Building strong expert testimony

- Practical strategies for planning expert testimony from day 1

Deposing experts

- Practical strategies for preparing to take and defend expert depositions

Making and defending expert challenges

- Practical strategies for *Robinson* and *Daubert* motions

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Building Strong Expert Testimony

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Typical expert “planning”

Determine you need certain subject matter expert.

Find expert.

Preliminary discussion with expert.

Serve general and boilerplate expert disclosure.

Prepare expert analysis **right before or while** (1) writing report or (2) preparing for deposition.

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The typical approach creates problems.



Often, you are missing critical facts that you did not realize the expert needed for his assumptions.



Attorney and expert realize that certain facts are bad for expert's opinion.



The expert needs additional documents you never asked for.



Your expert misses good facts that support assumptions because he lacks information you have.

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Expert Opinions Need Strong Factual Basis

Expert opinions must be based on assumptions grounded *in facts, not speculation*.

- You must develop the key facts in discovery to support expert's opinion.
- Evidence concerning profitability of company contracts **generally** does not support lost profits opinion about profitability of **particular employee's** contracts sold. *Horizon Health Corp. v. Acadia Healthcare Co., Inc.*, 520 S.W.3d 848, 863-64 (Tex. 2017).

Don't forget to address controverting facts.

- Expert's opinion about causation improperly relied on assumptions that varied from uncontroverted facts. *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499-500 (Tex. 1995).
- "[I]f an expert's opinion is based on certain assumptions about the facts, we cannot disregard evidence showing those assumptions were unfounded." *City of Keller v. Wilson*, 168 S.W.3d 802, 813 (Tex. 2005).

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First appeared as part of the conference materials for the 43rd Annual Page Keeton Civil Litigation Conference session "Experts and Disqualifications"