



Jurisprudence Section - 2012

E34 Ethical Implications for the Trial Judge Faced With Disingenuous Expert Testimony

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After attending this presentation, attendees will learn the ethical implications for the trial judge when encountering disingenuous testimony. Judicial sanctions may result from the judge having an ethical responsibility to report the lawyers and their experts providing disingenuous testimony. Case examples will be shared.

This presentation will impact the forensic science community by alerting forensic experts that trial judges are active gatekeepers of scientific evidence whether in a *Frye* or *Daubert* jurisdiction and must take action in the case at hand and report the lawyers and experts who provide disingenuous testimony when appearing before the court.

The United State judicial system relies on reliable and relevant expert testimony to reach the truth of the matter before the courts. In the United States, we have state trial court jurisdictions which vary as to whether a state trial court is a *Frye* or *Daubert* jurisdiction or some version of both. The gatekeeper function of the judge differs as to what admissibility standards exist for admitting scientific evidence which is relevant and reliable. Most experts provide valuable testimony and assistance to the courts with honesty and integrity; however, there are always exceptions unfortunately with experts who are disingenuous before the court. Disingenuous experts provide reports and testimony lacking in candor and by doing so give a false appearance of frankness in a calculating fashion. Lawyers have numerous ethical requirements with respect to the experts they bring before the court. State trial court judges in the United States have ethical responsibilities as evidenced in the Judicial Code of Ethics or Judicial Code of Conduct in each of their respective states. Each state has had the benefit of reviewing the American Bar Association's Model Code of Judicial Conduct and adopting a version of this model code with modifications tailored to the needs of their own state jurisdictions. Judicial ethical responsibilities include a disciplinary responsibility to report misconduct from the professional parties appearing before the court including lawyers and experts. Lawyers have a responsibility to ensure that the experts appearing before the court are properly credentialed and their reports do not include false testimony. If a lawyer discovers that an expert has falsified information or has been disingenuous, what duty, if any, does a lawyer have to disclose that new information to the tribunal he or she is appearing before? What is the duty, if any, to opposing counsel? What is the ethical duty of the judge to report lawyers who provide experts having disingenuous testimony? How does a judge handle this situation if the judge finds the expert is not properly qualified to render such a report but has been accepted as qualified for years by fellow judicial colleagues within the same jurisdiction? Examples of cases will be shared where these ethical dilemmas have appeared and how judges have approached these situations.

Judicial Expectations, Ethical Responsibilities, Expert Testimony