



Questioned Documents Section - 2015

J23 Addressing Admissibility Challenges to Forensic Document Examination From Both a Federal and a State Examiner's Perspective

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After attending this presentation, attendees will have gained an understanding of the discovery requirements of witnesses in federal criminal or civil cases with respect to Rules 16 and 26. Examples of required information will be given in addition to material that can be helpful in thwarting an admissibility challenge. *Daubert* and *Frye* states will be identified and recent admissibility rulings will be discussed.

This presentation will impact the forensic science community by providing samples of discipline-specific information that can be appended to required material to preclude an admissibility challenge. This information will also assist in educating the legal community on the questioned documents discipline's recent history of challenges and provide the basis for how the discipline meets the factors found in *Daubert*.

The questioned documents discipline was the focus of many reliability challenges in the mid- to late-1990s and early 2000s. Those same challenges are still being utilized by defendants, although to a lesser extent, even though Federal Appeals Courts in every circuit have ruled in favor of admitting this type of testimony. The presentation will address the latest and most popular wording in motions that have been filed in the hopes of challenging some of these appellate rulings by creating new areas of doubt. It will provide guidance in the prevention of these challenges through preliminary discovery filings as well as providing material for formal responses to those motions that have already been received. Recent rulings will also be given to include, one in the state of Florida which adopted the *Daubert* standard for admissibility in 2013. Language from the ruling in this case, which is the first challenge of this type since the adoption of the standard in Florida, will be discussed including that court's observance that the *Daubert* standard was intended to be more flexible than the *Frye* standard with respect to scientific testimony. Although not required, other states have adopted the *Daubert* standard in recent years and a current list of those will be presented.

This study will present useful tools for potential witnesses to preclude a challenge, including material in Discovery and Inspection Rule 16 that requires copies of written reports and a written summary of any testimony that the government or the defendant intends to present under Federal Evidence Rules 702, 703, or 705. Rule 26 of the Federal Rules of Civil Procedure, General Provisions Regarding Discovery, will also be explained and the differences between the two highlighted. Every witness must be familiar with these rules and other requirements in these rules such as the witness's qualifications and any visual aids that are intended to be used at trial. Too often, prosecutors and witnesses alike fail to provide this information in discovery. An example of an expanded Rule 16, which provides more-than-required discovery material for the opinions and the methodology used, will be offered. Often, the education of opposing counsel as to how the witness intends to address and explain admissibility factors can be enough to preclude challenges of this type. One of the most difficult tasks facing the examiner is to ensure that their counsel is not only educated on the history of these challenges, but also understands the importance of preparation and comprehensive written responses.

Questioned Documents, Admissibility, Rule 16 and Rule 26