

## The *Daubert* Series: Part II. “The Expert Deposition”

*Any attorney worth his salt knows the importance of expert deposition preparation. In the age of Daubert, however, that preparation, whether from a plaintiff or defense perspective, must entail a thoughtful contemplation of the expert’s qualifications and methodologies. What should you look out for? Bear in mind these items when preparing for your next deposition...*

- As questioner, is the fire expert “certified”? Spend some time having the expert testify as to the qualifications that he/she is lacking. As defense counsel, does certification matter? What experience or other qualifications does the expert bring to the table?
- Determine the field of expertise appropriate to the task and then ascertain whether the expert fits the bill. For example, does the well-credentialed fire investigator also have the expertise to render an opinion about how a particular appliance *caused* the fire? Perhaps an electrical engineer or some other expert is in order.
- Does the expert view NFPA 921 as a “guide” or a “standard”? If the expert has not followed NFPA 921, can the expert justify the deviations?
- What methodology did the expert follow? With respect to one’s own expert witnesses, demonstrating that the scientific method has been thoroughly understood and adhered with every step the expert has taken only serves to enhance the client’s position. With respect to an opposing expert, challenging the reliability of that expert’s opinion for failing to adhere to the scientific method is made easier due to the fact that NFPA 921 endorses the concept.
- Is the expert comfortable with the applicable fire science terms? A laundry list of unknown scientific principles in a *Daubert* motion will quickly demonstrate the “expert’s” incompetence.
- Do you need to use re-direct to bolster the expert’s qualifications? To clarify the expert’s reasoning? Don’t be forced to save these points for your reply brief to a *Daubert* motion.
- The expert deposition, whether it’s your expert or that of your opponent, can be a turning point in the litigation of a fire case. This is particularly true when either the deponent or the questioning attorney have their eyes fixed on a potential *Daubert* challenge.