

## **Rule 55 - Expert Opinion**

### **55.02 Report required**

A party may not offer an expert opinion at the trial of an action or hearing of an application unless an expert's report, or rebuttal expert's report, is filed in accordance with this Rule.

### **55.03 Deadline for filing report**

- (1) A party to an action who wishes to offer an expert opinion, other than in rebuttal of an expert opinion offered by another party, must file the expert's report no less than six months before the finish date, or by a deadline set by a judge.
- (2) A party to an action who receives an expert's report stating an opinion the party contests, and who wishes to offer a rebuttal expert opinion, must file a rebuttal expert's report no more than three months after the day the expert's report is delivered to the party, or by a deadline set by a judge.
- (3) A party to an application who wishes to offer an expert opinion, or a rebuttal expert opinion, must file an expert's report, or a rebuttal expert's report, before the deadline set by the judge who gives directions and appoints a date for the hearing of the application.
- (4) Despite Rules 55.03(1), to (3), in a family proceeding reports must be filed at either of the following times, unless a judge directs otherwise:
  - (a) an expert's report, the day before a conference at which a judge appoints the date for the hearing of the proceeding;
  - (b) a rebuttal expert's report, no more than thirty days after the day of the conference.

### **55.04 Content of expert's report**

- (1) An expert's report must be signed by the expert and state all of the following as representations by the expert to the court:
  - (a) the expert is providing an objective opinion for the assistance of the court, even if the expert is retained by a party;
  - (b) the witness is prepared to testify at the trial or hearing, comply with directions of the court, and apply independent judgment when assisting the court;

- (c) the report includes everything the expert regards as relevant to the expressed opinion and it draws attention to anything that could reasonably lead to a different conclusion;
- (d) the expert will answer written questions put by parties as soon as possible after the questions are delivered to the expert;
- (e) the expert will notify each party in writing of a change in the opinion, or of a material fact that was not considered when the report was prepared and could reasonably affect the opinion, as soon as possible after arriving at the changed opinion or becoming aware of the material fact.

**(2) The report must give a concise statement of each of the expert's opinions and contain all of the following information in support of each opinion:**

- (a) details of the steps taken by the expert in formulating or confirming the opinion;**
- (b) a full explanation of the reasons for the opinion including the material facts assumed to be true, material facts found by the expert, theoretical bases for the opinion, theoretical explanations excluded, relevant theory the expert rejects, and issues outside the expertise of the expert and the name of the person the expert relies on for determination of those issues;**
- (c) the degree of certainty with which the expert holds the opinion;**
- (d) a qualification the expert puts on the opinion because of the need for further investigation, the expert's deference to the expertise of others, or any other reason.**

**(3) The report must contain information needed for assessing the weight to be given to each opinion, including all of the following information:**

- (a) the expert's relevant qualifications, which may be provided in an attached resumé;**
- (b) reference to all the literature and other authoritative material consulted by the expert to arrive at and prepare the opinion, which may be provided in an attached list;**

- (c) **reference to all publications of the expert on the subject of the opinion;**
- (d) **information on a test or experiment performed to formulate or confirm the opinion, which information may be provided by attaching a statement of test results that includes sufficient information on the identity and qualification of another person if the test or experiment is not performed by the expert;**
- (e) **a statement of the documents, electronic information, and other things provided to, or acquired by, the expert to prepare the opinion.**

#### 55.05 Content of rebuttal expert's report

A rebuttal expert's report must be signed by the expert and provide all of the following:

- (a) representations and information required in an expert's report;
- (b) the name of the expert with whom the rebuttal expert disagrees and the date of that expert's report;
- (c) a quotation of the statement of opinion with which the rebuttal expert disagrees;
- (d) a statement that the rebuttal opinion is strictly confined to the same subject as the quoted opinion;
- (e) the rebuttal opinion and further opinion

#### 55.11 Questioning expert in writing

- (1) A party may not obtain a discovery subpoena for or deliver interrogatories to an expert witness, but a party may interview or discover an expert if the expert and the party who delivers the expert's report agree.
- (2) A party who receives an expert's report, or a rebuttal expert's report, may, no more than thirty days after the day the report is delivered, deliver to the other party written questions to be answered by the expert.
- (3) **The questions may only call for information that is not privileged and is relevant to one of the following:**

- (a) **the expert's qualifications;**
  - (b) **a factual assumption made by the expert;**
  - (c) **the basis for an opinion expressed in the expert's report.**
- (4) The party who receives written questions must deliver them to the expert immediately.
  - (5) **The expert must fully answer the questions in writing, sign the answer, and deliver it to each party no more than thirty days after the day the questions are delivered to the expert.**
  - (6) A party may not submit supplementary questions, unless the parties agree or a judge allows otherwise.
  - (7) A party who receives written questions may make a motion to set aside or limit the questions.
  - (8) The opinion of an expert who fails to answer questions in compliance with this Rule 55.11 is inadmissible, and the party who asks the questions may make a motion for an order that the opinion is inadmissible on that ground.

#### 55.14 Treating physician's narrative

- (1) A party who wishes to present evidence from a physician who treats a party may, **instead of filing an expert's report, deliver to each other party the physician's narrative, or initial and supplementary narratives, of the relevant facts observed, and the findings made, by the physician during treatment.**
- (2) A narrative, or initial and supplementary narratives, must be delivered within the following times:
  - (a) no more than thirty days after the day pleadings close in an action, if the treatment occurs before the action is started;
  - (b) within a reasonable time after treatment is provided during the course of an action and no later than the finish date;
  - (c) as directed by a judge in an application.
- (3) A party who receives a narrative, initial narrative, or supplementary narrative expressing a finding may, within a reasonable time, file a rebuttal report that conforms with Rule 55.05.

- (4) A party may not obtain a discovery subpoena for, deliver interrogatories to, deliver written questions to, or obtain an order for discovery of a treating physician who provides a narrative rather than an expert's report.
- (5) A party who calls a treating physician at a trial, or presents the affidavit of a treating physician on an application, **may not advance evidence from the physician about a fact, finding, or treatment not summarized in a narrative or covered in an expert's report.**
- (6) A judge who presides at the trial of an action, or the hearing of an application, or who makes a determination under Rule 55.15 must exclude expert opinion evidence of a treating physician who provides a narrative instead of an expert's report, unless the party offering the evidence satisfies the judge that the other party received information about the opinion, and about the material facts upon which it is based, sufficient for the party to determine whether to retain an expert to assess the opinion and prepare adequately for cross-examination of the physician.