FOLLOWING COURT PROCEDURES

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COURT REQUIREMENTS

- Courts have requirements that all parties to a case must follow.
- Most court cases have deadlines for discovery, for mediation and for trial.
- Lower courts such as state district courts usually do not have discovery and they are more informal.

COURT REQUIREMENTS

- Anyone can bring a case to state courts such as Small Claims Court .
- Circuit Courts and Federal Courts are best handled by an attorney.
- Federal District Courts are the most formal.

FEDERAL COURTS

- The federal courts are composed of many different courts. Some are:
  - Immigration Court,
  - Court of Federal Claims,
  - Tax Court

There are 94 Federal Judicial Districts plus territorial courts.

FEDERAL COURTS

- There are specialized federal courts as well.
  - Court of International Trade,
  - Foreign Intelligent Surveillance Court,
  - Alien Terrorist Removal Court.
  - Article 1 Tribunal
  - Bankruptcy Court.
  - Article 4 Tribunal

FEDERAL COURTS

- Appellate Courts on the Federal Level.
  - Court of Appeals for Veteran's Claim,
  - Court of Appeals for the Armed Forces,
  - District of Columbia Court of Appeals.
  - The Supreme Court

WRITS OF CERTIORARI

- Writs of Certiorari are a type of **writ**, meant for rare use, by which an appellate court decides to review a case at its discretion. The word **certiorari** comes from Law Latin and means "to be more fully informed." A **writ of certiorari** orders a lower court to deliver its record in a case so that the higher court may review it.

STATE COURTS

There are roughly 1,662 state courts in the USA.

Every state has at least one state court.

Texas has 457, the most state courts.

Most states had less than 50 state courts.

STATE COURTS

- There are two levels of state courts.
  - District Court
  - Circuit Court
- There are two types of cases.
  - Civil cases between two private parties.
  - Criminal cases.

STATE COURTS

- District Court Cases usually do not require pre-trial activities.
- District Court Cases can be scheduled with other cases or they may be specially set.
- Litigant can bring cases without attorneys.
- District Court verdicts can be appealed to the Circuit Court.

STATE COURTS

- Criminal Cases in District Court are tried by a judge.
- Defendants who want a jury trial will be sent to Circuit Court.

STATE COURTS

Circuit Courts are more formal.

- Criminal Defendants can request a jury in this court.
- Rules are enforced.
- Using the services of an attorney is highly recommended when one has a case in Circuit Court.

COURT REQUIREMENTS

- Circuit Courts requirements vary.
  - There is a scheduling conference to set deadlines.
  - Discovery Deadlines include:
    - Written Report
    - Naming expert with proffer of testimony
    - Deposition testimony
    - Presenting exhibits

FRYE VERSUS DAUBERT

For the past seventy years the Frye Rule set the standards for qualifying expert witnesses until Daubert v Merrell Dow Pharmaceuticals, Inc. in 1993. Daubert requires that expert testimony have a reliable foundation based upon scientifically valid principles.

FRYE VERSUS DAUBERT

- The ***Frye* standard**, ***Frye* test**, or **general acceptance test** is a test to determine the admissibility of scientific evidence. It provides that expert opinion based on a scientific technique is admissible only where the technique is generally accepted as reliable in the relevant scientific community.
- Some jurisdictions still follow the Frye test.

FRYE VERSUS DAUBERT

- An expert opinion is a declaration by an expert witness that must meet two tests. The opinion expressed must be admissible at trial under FRE 702 (expert qualifications) and FRE 703 (factual basis for the opinion.)

FRYE VERSUS DAUBERT

- As a result of the Daubert Rule, document examiners are being challenged in court on two fronts. First the validity of handwriting identification as a science is being challenged and second, document examiners are being attacked because they lack certain credentials.

FEDERAL RULES OF CIVIL PROCEDURE

- 35 state courts follow the Federal Rules of Civil Procedure.
- Ask your client if the case requires that you follow the Federal Rules of Civil Procedure so that you know to provide your exhibits at the beginning of the case and not shortly before court.

FEDERAL RULES OF CIVIL PROCEDURE

- Rule 26. Duty to Disclose; General Provisions Governing Discovery
- (a) **Required Disclosures.**
  - (1) *Initial Disclosure.*
    - (A) *In General.* Except as exempted by Rule 26(a)(1)(B) or stipulated or ordered by the court, a party must provide to the other parties.
      - (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

FEDERAL RULES OF CIVIL PROCEDURE

- (B) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:
  - (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
  - (ii) the facts or data considered by the witness in forming them;

FEDERAL RULES OF CIVIL PROCEDURE

- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

FEDERAL RULE 702

- If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise if, the testimony is based upon sufficient facts or data.

FEDERAL RULE 703

- The testimony is the product of reliable principles and methods.
- Basic Principles of Handwriting Identification state that a handwriting sample must contain similar characteristics when compared to known documents.

PRINCIPLES OF HANDWRITING IDENTIFICATION

- Identification It is always a two-fold process.
- If there are any unexplainable fundamental differences than it is a different writer.
- It must be a significant difference.

PRINCIPLES OF HANDWRITING IDENTIFICATION

- Significant differences include line quality, pressure patterns, rhythm, method of construction, skill level, pen strokes, or subtle subconscious handwriting characteristics. Differences in letter forms are also significant but not always fundamental differences.

FEDERAL RULE 703

- The witness has applied the principles and methods reliably to the facts of the case.
- Standards from the Scientific Working Group for DOCuments (SWGDOC) should be followed for cases involving handwriting.
- SWGDOC standards are available on line under www:SWGDOC.org.

FEDERAL RULE 703

- The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

PRINCIPLES OF HANDWRITING IDENTIFICATION

- *The process is always a double operation, positive and negative, and if error is to be avoided neither part of the process should be overlooked. In order to reach the conclusions of identity of two sets of writings there must not be present significant and unexplained divergences. These divergences must, however, be something more than mere trivial variations that can be found in almost any handwriting."* (Albert Osborn, *Questioned Documents p. 262).*

PRINCIPLES OF HANDWRITING IDENTIFICATION

- A fundamental difference is an irreconcilable difference. Fundamental difference in handwriting that are significant include: differences in line quality, pressure patterns, method of construction, skill level, pen strokes, or subtle subconscious handwriting characteristics. Differences in letter forms are also significant but not always fundamental differences.

FEDERAL RULE 702

- The following factors must be considered in determining admissibility of scientific evidence:
  - whether the theory can or has been tested;
  - whether the theory has been subjected to peer review in publication;
  - the known or potential rate of error;
  - the extent of acceptance in the relevant scientific community;

FEDERAL RULE 702

- compliance with the hearsay exception;
- balance of probative value versus prejudicial effect.
- reliable (grounded on scientific methods and procedures supported by appropriate validation): and
- relevant (sufficiently tied to the facts of the case to be helpful to the jury)

FEDERAL RULE 702

- In determining whether an expert's declaration meets the requirement of reliability, the court will consider such factors as:
  - that the expert's testimony grows out of pre-litigation research (the most persuasive method): or
  - that the expert's (post-litigation) research has been subjected to scientific scrutiny through peer review and publication in scientific journals, or

FEDERAL RULE 702

- a precise explanation of how the experts reached their conclusions in sufficient detail to allow the district court to determine reliability of the research (by pointing to some objective source or scientific journal to show they followed a method practiced by at least a recognized minority of scientists in their field).

PRETRIAL MEETING

- Always check with client attorney regarding deadlines.
- Have a pre-trial meeting with attorney to discuss case.
  - If it is not possible to meet with the attorney before court or deposition, then conduct a telephone conversation and let the attorney know that you have exhibits that you will be bringing to court.

PRETRIAL MEETING

- Always send your qualifying questions to the attorney in advance of your court or deposition testimony.
- Inform the attorney of the exhibits that you plan to use in court.
- Prepare several copies of your exhibit based upon the number of participants plus one for yourself and one for the court.

TERMINOLOGY

Discovery: method of obtaining information of a case prior to going to trial.

Deposition: out-of-court statements of witnesses under oath posed by the opposing counsel for the purpose of discovery recorded by a court reporter.

Forensic: pertaining to a court of law or a public debate.

Forensic science: is the application of scientific techniques to detect and prosecute crime.

TERMINOLOGY

- **Impeach**: Attack on the credibility of a witness challenging the witness' testimony.
- **Motion**: Formal request made to a judge pertaining to an issue in a lawsuit.
- **Interrogatories**: questions to be answered by the opposing party in a lawsuit for the purpose of discovery.

TERMINOLOGY

- **Motion in limine**: Request to exclude testimony or a witness.
- **Writ of certiorari** is a writ seeking judicial review.
- It is issued by a superior court, directing an inferior court, tribunal, or other public authority to send the record of a proceeding for review.
- **Stipulation**: agreement made in court by both parties pertaining to the authenticity of certain facts or the expertise of an expert witness.

MEETING DEADLINES

- Following proper procedures will lead to a favorable relationship with your client's attorney.