### CHAPTER 1. EVOLUTION OF GEORGIA AND FEDERAL LAW REGARDING EXPERT **TESTIMONY**

§ 1:1	Georgia law historically; elimination of civil-criminal
	dichotomy in standards for admissibility
§ 1:2	Federal law—Historical overview of federal law
§ 1:3	—Daubert v. Merrell Dow

- § 1:4 —General Electric Co. v. Joiner
- § 1:5 -Kumho Tire Co. v. Carmichael
- § 1:6 —The 2000 amendments to Federal Rule 702
- —The 2000 amendments to Federal Rule 703 § 1:7
- 2023 Amendments to Federal Rule 702 § 1:8
- Georgia statutory law—Adoption of Rule 702: O.C.G.A. § 1:9 § 24-7-702
- —Adoption of Rule 703: O.C.G.A. § 24-7-703 § 1:10
- § 1:11 —Pretrial hearings: O.C.G.A. § 24-7-702(d)
- § 1:12 —Professional negligence cases: O.C.G.A. § 24-7-702(e)
- § 1:13 —Medical negligence cases: O.C.G.A. § 24-7-702(c)

### CHAPTER 2. GENERAL PRINCIPLES PERTAINING TO EXPERT TESTIMONY IN **GEORGIA**

- § 2:1 Proper method of analyzing admissibility of expert testimony under current Georgia Evidence Code
- § 2:2 Georgia's three-part inquiry for admissibility of expert testimony
- § 2:3 Qualification of the expert
- § 2:4 Helpfulness of expert testimony
- § 2:5 —Expert testimony on the ultimate issue
- § 2:6 —Legal conclusions
- § 2:7 -Credibility
- § 2:8 Facts, data, and opinions upon which an expert may rely as basis of opinion
- § 2:9 Reliability of expert opinion testimony
- § 2:10 —Sufficiency of facts and data underlying opinions
- § 2:11 —Reliability of principles and methods underlying methods
- § 2:12 -Reliable application of principles and methods to the facts of the case
- Can opposing counsel call your non-testifying expert? § 2:13 Attorney-client privilege and expert testimony

### CHAPTER 3. ADMISSIBILITY DETERMINATIONS BY THE FEDERAL COURTS

§ 3:1	General considerations
§ 3:2	Qualifications
§ 3:3	Reliable methodology
§ 3:4	—Testing and error rate
§ 3:5	—Peer review and publication
§ 3:6	—General acceptance
§ 3:7	—Sufficiency of facts and data upon which opinions are based
§ 3:8	—Reliable application of methodologies to the case—Specific facts
§ 3:9	Helpfulness
§ 3:10	Differential etiology and differential diagnosis
§ 3:11	When an expert opinion goes too far: expressions of
	confidence in opinion given

# CHAPTER 4. PROCEDURAL CONSIDERATIONS

- § 4:1 Pleading-stage expert affidavits in professional malpractice actions § 4:2 —Professional defendants to whom O.C.G.A. § 9-11-9.1 applies § 4:3 —Determining when a § 9-11-9.1 affidavit is required; interplay with § 24-7-702 -Procedural concerns for affidavits filed with § 4:4 complaints § 4:5 Expert affidavits at the summary judgment stage Pretrial discovery and hearings on the admissibility of § 4:6 expert testimony and scheduling concerns Direct examination of experts at trial—Hypothetical § 4:7 questions
- § 4:8 Timing of expert disclosures
- § 4:9 Challenging expert testimony via motion for directed verdict
- § 4:10 Appeal of issues pertaining to expert testimony
- § 4:11 Sanctions for violation of trial court order on expert testimony

#### CHAPTER 5. PRODUCT LIABILITY

- § 5:1 Overview
- § 5:2 Manufacturing defects
- § 5:3 Design defects

- § 5:4 Warning defects
- § 5:5 Causation testimony

#### CHAPTER 6. TOXIC TORTS

- § 6:1 Overview
- § 6:2 Evolution of Georgia law in toxic tort cases
- § 6:3 Causation
- § 6:4 Epidemiological studies and causation
- § 6:5 Toxicological and pharmacological research as a means of showing causation
- § 6:6 Medical case reports and causation
- § 6:7 Differential diagnosis as a means of demonstrating specific causation

## CHAPTER 7. ACTIONS INVOLVING REAL PROPERTY

- § 7:1 Overview
- § 7:2 Premises liability actions—Generally
- § 7:3 —Building codes and industry standards
- § 7:4 Environmental contamination of property; nuisance; trespass
- § 7:5 Negligent design and construction
- § 7:6 Termite inspections
- § 7:7 Tree cases
- § 7:8 Condemnation and eminent domain cases
- § 7:9 Foreclosure cases
- § 7:10 Other testimony regarding market value

## CHAPTER 8. MEDICAL AND PROFESSIONAL MALPRACTICE

- § 8:1 Overview
- § 8:2 Qualifications of experts—The preliminary battleground
- § 8:3 —The licensure requirement in professional malpractice actions other than medical malpractice
- § 8:4 —The active practice or teaching requirement in medical malpractice actions
- § 8:5 —The same profession requirement in medical malpractice actions
- § 8:6 —Table
- § 8:7 Standard of care—Necessity of expert testimony
- § 8:8 ——Cases not involving the exercise of professional judgment
- § 8:9 ——"Informed consent" cases

§ 8:10	Defining the applicable standard of care
§ 8:11	Standard of care; expert's methodology
§ 8:12	Standard of care; sufficiency of expert testimony
§ 8:13	Expert testimony on causation
§ 8:14	Procedural requirements—Professional's affidavit to be filed with complaint; timeliness of disclosure of expert testimony
§ 8:15	—Reliance on medical records and opinions of others not in evidence
§ 8:16	Cross-examination of experts
§ 8:17	Legal malpractice cases
§ 8:18	Emergency medical service (EMS) negligence

#### CHAPTER 9. MOTOR VEHICLE ACCIDENTS

- § 9:1 Overview§ 9:2 Establishing roadway design and maintenance standards
- § 9:3 Accident reconstruction
- § 9:4 Police officer testimony regarding events leading to crash; ultimate issue
- § 9:5 Accident reconstruction: sufficiency of factual basis
- § 9:6 Expert testimony on damages—Establishing injuries were caused by accident
- § 9:7 —Evidence of seatbelt use
- § 9:8 —Establishing property damage to vehicle
- § 9:9 Commercial motor carriers

# CHAPTER 10. EXPERT TESTIMONY IN PERSONAL INJURY CASES

- $\S~10:1$  When expert testimony is required to establish medical causation for physical injuries
- § 10:2 Use of medical narrative reports to introduce expert medical testimony, including causation
- § 10:3 Medical bills and expert testimony
- § 10:4 Future pain and suffering and medical expenses
- § 10:5 Attorneys' fees and expenses in personal injury claims involving offers of judgment

## CHAPTER 11. COMMERCIAL AND BUSINESS-RELATED DISPUTES

- § 11:1 Overview
- § 11:2 2007 tort reform brought enhanced scrutiny of expert testimony in commercial disputes
- § 11:3 The 2013 Georgia rules carve out exception to need for experts to show market value

§ 11:4	Qualification of experts
§ 11:5	Methodology employed by experts
§ 11:6	—Basis of the testimony (sufficient facts or data)
§ 11:7	—Reliable principles and methods
§ 11:8	—Application to the facts of the case
§ 11:9	—A note about "dueling experts"
§ 11:10	Testimony must be helpful to the trier of fact
§ 11:11	—Expert testimony helpful
§ 11:12	—Expert testimony not helpful
§ 11:13	Expert testimony on ultimate issues in employment
	law cases

## **CHAPTER 12. FAMILY LAW CASES**

- § 12:1 Valuation of assets
- § 12:2 Forensic experts in family law cases

# CHAPTER 13. CRIMINAL CASES IN GEORGIA

§ 13:1	Federal <i>Daubert</i> standard applies to expert testimony
	in criminal cases; expert testimony must comply
	with U.S. Constitutional Law
§ 13:2	Threshold question: is the witness testifying as a lay witness, an expert witness, or a hybrid?
§ 13:3	Testimony of psychiatrists and psychologists in criminal cases
§ 13:4	Gang profiling expert testimony
§ 13:5	Bloodstain pattern analysis expert testimony
§ 13:6	Shaken baby syndrome
§ 13:7	Polygraph evidence
§ 13:8	Fingerprint comparison
§ 13:9	Digital forensic evidence expert testimony
§ 13:10	Expert testimony in DUI cases
§ 13:11	Pre-trial discovery of expert opinions or information
§ 13:12	Court-appointed experts for indigent defendants
§ 13:13	Ineffective assistance of counsel for the admission (or not) of expert testimony
§ 13:14	Sequestration of experts in state court

# CHAPTER 14. PRIVACY AND CONFIDENTIALITY CONSIDERATIONS

- § 14:1 Privacy issues when client and third party data submitted to experts, generally
- § 14:2 Health records; requirement for business associate agreements

- § 14:3 Georgia's Trade Secrets Act
- § 14:4 Attorney-client privilege; communications with experts
- § 14:5 Importance of written expert engagement agreement addressing handling of confidential information

## CHAPTER 15. VIRTUAL EXPERT DEPOSITIONS

- § 15:1 Virtual depositions are the new norm; preparation
- § 15:2 Scheduling orders and deposition notices
- § 15:3 Privacy considerations
- § 15:4 "BYOD" and other quality control and efficiency measures
- § 15:5 Dress for success
- § 15:6 Practice makes perfect
- § 15:7 Reading and signing depositions; remote notarization

#### APPENDICES

- Appendix A. Georgia Expert Testimony Comparison Chart (Former Code, New Code, Federal)
- Appendix B. Summary of Federal Rule 26 Deadlines Affecting Experts
- Appendix C. Expert Testimony Checklist For Civil Cases
- Appendix D. Expert Testimony Checklist For Criminal Cases
- Appendix E. Georgia Expert Testimony Rules under the 2013 Georgia Evidence Code (O.C.G.A. §§ 24-7-701 to 24-7-707, Effective January 1, 2013)
- Appendix F. O.C.G.A. § 9-11-9.1 (Georgia Expert Affidavit Rule)
- Appendix G. O.C.G.A. § 17-16-4
- Appendix H. Former Georgia Expert Testimony Rules (Former O.C.G.A. §§ 24-9-67 and 24-9-67.1, Replaced Effective January 1, 2013)
- Appendix I. Georgia Laws 2022, Act 743 (Amending O.C.G.A. § 24-7-702 and Repealing O.C.G.A. § 24-7-707 Effective July 1, 2022)
- Appendix J. Federal Expert Testimony Rules (Federal Rules of Evidence 701 to 705)
- Appendix K. 2023 Amendment to Federal Rule of Evidence 702 and Advisory Committee Notes
- Appendix L. Federal Expert Procedural Rule (Federal Rule of Civil Procedure 26)

Appendix M.	Federal Rule of Criminal Procedure 16
Appendix N.	Local Rule 26.2(C) for the Northern District of Georgia
Appendix O.	Sample Subpoena <i>Duces Tecum</i> for Deposition of Expert
Appendix P.	Sample State Court Civil Scheduling Order
Appendix Q.	Sample State Court Criminal Scheduling Order
Appendix R.	Sample Expert Retainer Agreement
Appendix S.	Sample Business Associate Agreement Regarding Protected Personal Health Information

Table of Laws and Rules
Table of Cases

Index