

FOLEY & LARDNER

Fear and Loathing in Legalville: You - The Professional - As A Witness

Randall S. Rapp
Foley & Lardner - Chicago
(312) 755-2506
rrapp@foleylaw.com

Chicago Section AIHA

November 9, 1999

Issued by the
UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS

DANIEL JONES,

Plaintiff,
 v.

MEGA CORPORATION,

Defendant.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 99 C 1343
 Judge Rebecca B. Pallmeyer

TO: Robert D. Saik
 Saik Technology, Inc.
 728 W. Jackson Blvd #1212
 Chicago, Illinois 60661

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case. [REDACTED]

PLACE OF TESTIMONY [REDACTED]	COURT ROOM [REDACTED]
	DATE AND TIME [REDACTED]

YOU ARE COMMANDED to appear at the place, date and time specified below to testify in the above case. [REDACTED]

PLACE OF DEPOSITION FOLEY & LARDNER, 330 N. Wabash, Suite 3300, Chicago, Illinois [REDACTED]	DATE AND TIME December 15, 1999 10:00 a.m.
--	--

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects). Any and all documents retained in any way in your possession) for professional services by Mega Corporation for the years 1997 and 1998.

PLACE FOLEY & LARDNER, 330 N. Wabash, Suite 3300, Chicago, Illinois [REDACTED]	DATE AND TIME December 15, 1999 10:00 a.m.
--	--

YOU ARE COMMANDED to permit inspection of the following processes at the date and time specified below. [REDACTED]

PROCESSES [REDACTED]	DATE AND TIME [REDACTED]
-------------------------	-----------------------------

Any organization or person in this subpoena is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICE (FEDERAL COURTS AND COURTS OF COMMON PLEAS) OR CLERK OF COURT (FEDERAL COURTS ONLY) Aurora City of David Jones	DATE November 4, 1999
--	--------------------------

ISSUING OFFICE (FEDERAL COURTS, COURTS AND COURTS OF COMMON PLEAS) Randall S. Baupp (312) 755-1900	Foley & Lardner 330 N. Wabash, Suite 3300 Chicago, Illinois 60611
--	---

202.75.1 (See Rule 45 Federal Rules of Civil Procedure Para C & Das Koverac)

¹ Case is pending in docket number then docket of issuance, time docket under case number.

Forums For Testimony

- ◆ Lawsuit
 - ❖ Deposition
 - ❖ Trial
 - ❖ Pretrial Hearings
- ◆ Arbitration
- ◆ Administrative Hearings
- ◆ Legislative Hearings

What Kind of Witness

- ◆ Occurrence
- ◆ Opinion
 - ❖ Non-expert opinions
 - ❖ Expert opinions

Federal Rule of Evidence 701

- ◆ If the witness is not testifying as an expert, the witness testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness testimony or the determination of a fact in issue.

Expert Witness

- ◆ Purpose for Retaining Experts
- ◆ Reports
- ◆ Attorney-Client Privilege Issues
- ◆ Science v. Junk Science

Federal Rule of Evidence

- ◆ 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.
- ◆ 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.

Foundation for Expert Testimony

- ◆ Federal Court gatekeeping requirement:

The objective of that requirement is to ensure the reliability and relevancy of expert testimony. It is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.

Daubert v. Merrell Dow Pharmaceuticals, Inc. 113 S. Ct. 2786 (1993)

Foundation for Expert Testimony

Reliability proceedings. Kumho Tire Company Ltd. v. Carmichael, 119 S. Ct. 1167 (1999)

On July 6, 1993, the 5-year old right rear tire on Carmichael's minivan blows out and the van overturns - one death and survivors badly injured. Carmichael and the survivors sued Kumho, the tire manufacturer.

Case depended on Dennis Carlson, Jr., ME, with 10 years work at Michelin America, Inc. Carlson testified that the tire blew out because of a manufacturing defect.

The trial court had to decide whether this particular expert had sufficient specialized knowledge to assist the jurors in deciding the particular issues in the case.

Issued by the
UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS

DANIEL JONES,

Plaintiff,
 v.

MEGA CORPORATION,

Defendant.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 99 C 1343
 Judge Rebecca B. Pallmeyer

TO: Robert D. Saik
 Saik Technology, Inc.
 728 W. Jackson Blvd #1212
 Chicago, Illinois 60661

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case. [redacted]

PLACE OF TESTIMONY [redacted]	COURTROOM [redacted]
	DATE AND TIME [redacted]

YOU ARE COMMANDED to appear at the place, date and time specified below to testify in the above case. [redacted]

PLACE OF DEPOSITION FOLEY & LARDNER, 330 N. Wabash, Suite 3300, Chicago, Illinois [redacted]	DATE AND TIME December 15, 1999 10:00 a.m.
--	--

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (that documents or objects): Any and all documents related in any way to your engagement(s) for professional services by Mega Corporation for the years 1997 and 1998.

PLACE FOLEY & LARDNER, 330 N. Wabash, Suite 3300, Chicago, Illinois [redacted]	DATE AND TIME December 15, 1999 10:00 a.m.
--	--

YOU ARE COMMANDED to permit inspection of the following processes at the date and time specified below. [redacted]

PROCESS [redacted]	DATE AND TIME [redacted]
-----------------------	-----------------------------

Any organization or person in this subpoena is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICE (FEDERAL COURTS AND COURTS OF COMMON PLEAS) OR CLERK OF COURT (FEDERAL COURTS ONLY) Aurora City for David Jones	DATE November 4, 1999
---	--------------------------

ISSUING OFFICE (FEDERAL COURTS, COURTS AND COURTS OF COMMON PLEAS) Randall S. Baupp (312) 755-1900	Foley & Lardner 330 N. Wabash, Suite 3300 Chicago, Illinois 60611
--	---

202.75.1 (See Rule 45 Federal Rules of Civil Procedure Parts C & D on Reverse)

¹ If cause is pending in district other than district of issuance, state district under case number.

How Your Testimony Can Be Used

- ◆ Evidence
- ◆ Impeachment
- ◆ Negotiations
- ◆ Motions

Technology and The Witness

- ◆ Court reporters
- ◆ Realtime reporting
- ◆ Videotaping
- ◆ Courtroom/trial presentations
 - ❖ Evidence
 - ❖ Demonstrative evidence
 - ❖ Presentation

Preparation

- ◆ Should you call a lawyer?
- ◆ Do you review documents?
- ◆ Do you take notes?
- ◆ What do you do to prepare physically?
- ◆ What do you wear?

The Do's and Don't's for Testifying

- ◆ Do not assume
- ◆ Do not be argumentative
- ◆ Do not guess
- ◆ Do not fall victim to the friendliness of opposing counsel

The Do's and Don't's for Testifying

- ◆ Do not reveal communications between you and your attorneys
- ◆ Do not volunteer information, except
- ◆ Do not expand on yes , no , I don t recall or I don t know

The Do's and Don't's for Testifying

- ◆ Do not let opposing counsel put words in your mouth
- ◆ Do pause before answering
- ◆ Do answer questions audibly and orally

The Do's and Don't's for Testifying

- ◆ Do be willing to admit uncertainty on minor points
- ◆ Do review documents thoroughly
- ◆ Do listen
- ◆ Do answer questions truthfully

Instructions

Chicago Section AIHA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

M. Stephens

East Lyme, Connecticut.

Q. As you heard, I'm Randy --
Randall Rapp, and I represent Pioneer.

If, during the course of today's
questioning, I ask you a question that you do
not understand, I would ask you to stop me and
ask me to restate it in a way that you do
understand. Okay?

A. Uh-huh.

Q. I'm sorry. One of the other
rules is you have to answer "yes" or "no" --

A. Yes, I understand.

Q. -- or verbally. The reporter
cannot get down an "uh-huh" or a nonverbal
response.

If you need a break today, let me
or your attorney know, and after we finish the
question/answer we're involved with, we'll
take a break.

And if you find the previous
answer needs any clarification or correction,
feel free to ask me to return to that, and
let's correct it.

Do you understand all that?

Instructions: Oral Answers

- ◆ Q. All your responses must be oral, OK?
What school did you go to?
- ◆ A. Oral.

OBJECTIONS

31

1 Do you recall that?
2 A. You pointed out it was twice.
3 Q. Well, it was in fact more than -- it
4 was several times, was it not?
5 MR. RAPP: Objection. Leading.
6 Foundation.
7 MR. BROWN: Objection. Vague.
8 A. I don't recall.
9 Q. Well, you recall a line called PH1?
10 A. Yes.
11 MR. VAN DYKE: Objection. Leading.
12 Q. PH2?
13 MR. RAPP: Objection. Foundation.
14 A. Beyond that I was more immersed in my
15 project, so I don't recall specifically those.
16 Q. Do you recall CB2?
17 A. No.
18 MR. VAN DYKE: Objection. Leading.
19 Objection to form. It's beyond the scope.
20 Q. You don't recall Met-1?
21 MR. VAN DYKE: Objection. Leading.
22 Objection to form. Beyond the scope.
23 MR. O'SHAUGHNESSY: Objection. Asked
24 and answered.
25 A. I do recall Met-1.

The End

- ◆ Q. Doctor, before you performed the autopsy, did you check for a pulse?
- ◆ A. No.
- ◆ Q. Did you check for blood pressure?
- ◆ A. No.
- ◆ Q. Did you check for breathing?
- ◆ A. No.
- ◆ Q. So, then it is possible that the patient was alive when you began the autopsy?
- ◆ A. No.
- ◆ Q. How can you be so sure, Doctor?
- ◆ A. Because his brain was sitting on my desk in a jar.
- ◆ Q. But could the patient have still been alive nevertheless?
- ◆ A. It is possible that he could have been alive and practicing law somewhere.