

CHAPTER 907

EVIDENCE — OPINIONS AND EXPERT TESTIMONY

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907.01 Opinion testimony by lay witnesses. If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of his testimony or the determination of a fact in issue.

History: Sup. Ct. Order, 59 W (2d) R205.

Note: Extensive comments by the Judicial Council Committee and the Federal Advisory Committee are printed with the rules in 59 W (2d). The court did not adopt the comments but ordered them printed with the rules for information purposes.

907.02 Testimony by experts. 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.

History: Sup. Ct. Order, 59 W (2d) R206.

A chemist testifying as to the alcohol content of blood may not testify as to the physiological effect that the alcohol would have on defendant. *State v. Bailey*, 54 W (2d) 679, 196 NW (2d) 664.

Polygraph examinations constitute a reasonably reliable diagnosis of truthful and deceptive responses to questions asked, since they have attained such a degree of standing and scientific recognition that unconditional rejection of such expert testimony is no longer warranted. *State v. Stanislawski*, 62 W (2d) 730, 216 NW (2d) 8.

Exclusion of defendant's offer to take a polygraph test, was not error, since aside from its self-serving nature and the general inadmissibility of the results of such tests, the record establishes the offer was made in response to a question from the officer after his attorney had arrived and was proffered only for the purpose of tempering his earlier incriminating statements. *Hemauer v. State*, 64 W (2d) 62, 218 NW (2d) 342.

The trial court abused its discretion in ordering defendant to make its expert available for adverse examination because the agreement was for the exchange of expert reports only and did not include adverse examination of the expert retained by defendant. *Broaster Co. v. Waukesha Foundry Co.* 65 W (2d) 468, 222 NW (2d) 920.

In personal injury action, court did not err in permitting psychologist specializing in behavioral disorders to refute physician's medical diagnosis where specialist was qualified expert. Qualification of expert is matter of experience, not licensure. *Karl v. Employers Ins. of Wausau*, 78 W (2d) 284, 254 NW (2d) 255.

Standard of nonmedical, administrative, ministerial or routine care in hospital need not be established by expert testimony. Any claim against hospital based on negligent lack of supervision requires expert testimony. *Payne v. Milw. Sanitarium Foundation, Inc.* 81 W (2d) 264, 260 NW (2d) 386.

Jury may not infer permanent loss of earning capacity from evidence of permanent injury in absence of some additional expert testimony to support such loss. *Koele v. Radue*, 81 W (2d) 583, 260 NW (2d) 766.

Unstipulated polygraph exam is inadmissible. *Lhost v. State*, 85 W (2d) 620, 271 NW (2d) 121 (1978).

Where interrogation of defendant following mechanical phase of polygraph test was closely associated with the test, lack of Stanislawski stipulation would exclude confession obtained during interrogation. *State v. Schliise*, 86 W (2d) 26, 271 NW (2d) 619 (1978).

Res ipsa loquitur instructions may be grounded on expert testimony in medical malpractice case. *Kelly v. Hartford Cas. Ins. Co.* 86 W (2d) 129, 271 NW (2d) 676 (1978).

Hypothetical question may be based on facts not yet in evidence. *Novitzke v. State*, 92 W (2d) 302, 284 NW (2d) 904 (1979).

Admissibility of psychiatric testimony for impeachment purposes discussed. *Hampton v. State*, 92 W (2d) 450, 285 NW (2d) 868 (1979).

Courts should require counsel's participation before allowing suspect to stipulate to admission of polygraph examination. *State v. Craft*, 93 W (2d) 55, 286 NW (2d) 619 (Ct. App. 1979).

The psychologist as an expert witness. *Gaines*, 1973 WBB No. 2.

907.03 Bases of opinion testimony by experts. 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 him 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.

History: Sup. Ct. Order, 59 W (2d) R208.

The trial court properly admitted an opinion of a qualified electrical engineer although he relied on a pamphlet objected to as inadmissible hearsay. Comment on 907.03 and Judicial Council note. *E. D. Wesley Co. v. City of New Berlin*, 62 W (2d) 668, 215 NW (2d) 657.

An evaluation of drug testing procedures. *Stein, Laessig, Indriksons*, 1973 WLR 727.

907.04 Opinion on ultimate issue. Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

History: Sup. Ct. Order, 59 W (2d) R211.

907.05 Disclosure of facts or data underlying expert opinion. The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the

underlying facts or data, unless the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

History: Sup Ct Order, 59 W (2d) R213

907.06 Court appointed experts. (1) APPOINTMENT. The judge may on his own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The judge may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of his own selection. An expert witness shall not be appointed by the judge unless he consents to act. A witness so appointed shall be informed of his duties by the judge in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the judge or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(2) COMPENSATION. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the judge may allow. The compensation thus fixed is payable from funds

which may be provided by law in criminal cases and cases involving just compensation under ch. 32. In civil cases the compensation shall be paid by the parties in such proportion and at such time as the judge directs, and thereafter charged in like manner as other costs but without the limitation upon expert witness fees prescribed by s. 814.04 (2).

(3) DISCLOSURE OF APPOINTMENT. In the exercise of his discretion, the judge may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(4) PARTIES' EXPERTS OF OWN SELECTION. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

(5) APPOINTMENT IN CRIMINAL CASES. This section shall not apply to the appointment of experts as provided by s. 971.16.

History: Sup Ct Order, 59 W (2d) R215; Sup Ct Order, 67 W (2d) 784

907.07 Reading of report by expert. An expert witness may at the trial read in evidence any report which he made or joined in making except matter therein which would not be admissible if offered as oral testimony by the witness. Before its use, a copy of the report shall be provided to the opponent.

History: Sup Ct Order, 59 W (2d) R219