

Recent Developments In Ethics, Credentials, Standards And Disclosure

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In January of this year, the Federal Judicial Center published a Reference Manual on Scientific Evidence, including a module entitled, "Reference Guide on Estimation of Economic Losses in Damage Awards" by Robert E. Hall and Victoria A. Lazear. The Federal Judicial Center is a part of the judiciary branch of the federal government. Under its charter, copies of this reference manual were mailed to all federal judges. Copies cannot be obtained directly from the Federal Judicial Center, but are available through the Superintendent of Documents, Shepherd's and most other law publishing series (e.g., West's) at various prices, ranging from \$13 to about \$32. As a document of the federal government, it is in the public domain and can be reprinted by anyone wishing to do so. It is a "must read" for any practicing forensic economist—or forensic expert in any other field for that matter.

This publication was not anticipated by the Board of Directors of the National Association of Forensic Economics (NAFE), but proved the wisdom of a major NAFE project that was already well underway when the Reference Manual on Scientific Evidence was published. The ESQD (Ethics, Standard, Qualifications and Disclosure) Committee of NAFE was already working on a series of modules whose goal was to provide the judiciary with some guidance in determining whether a given report of economic loss had been done in a qualified manner. This project was undertaken to provide an alternative to a process of establishing credentials for economic experts themselves.

The NAFE membership has continued to indicate major opposition to a direct process of establishing credentials for economic experts in litigation contexts [see Adams, Brookshire and Slesnick, 1993]. This opposition to a credentialing process is shared by the NAFE Board of Directors and members of the ESQD Committee not on the NAFE Board of Directors. As a result, the ESQD Committee had committed itself to the development of modules that would be concerned with helping judges determine the qualifications of a report as compared with determining the qualification of the expert compiling the report. This was the exact approach taken by the Federal Judicial Center with its Reference Manual on Scientific Evidence.

Just prior to the January 1995 meeting of the NAFE Board of Directors, the past, present and incoming presidents of NAFE and the chair of the ESQD committee met with Dr. Joe Cecil, project director for the Reference Manual, to discuss the direction of the NAFE module project. At that time, the project consisted of preliminary work being done on a module being written by myself on Personal Injury and the authorization of a module on Business Valuation to be prepared by Robert Trout. These projects (and a

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decision to prepare a Wrongful Death module that would be similar to the Personal Injury Module) had been authorized at the July 1994 meeting of the NAFE Board of Directors.

After hearing reports of the meeting with Joe Cecil, the NAFE Board of Directors decided to solicit additional offers to develop modules in Employment Discrimination and Commercial Litigation. Michael Piette was authorized to work on developing the Employment Discrimination module. After the July meeting of the NAFE Board of Directors Pat Gaughan was authorized to develop a Commercial Litigation module. As of this writing, a second draft has been prepared for the Personal Injury module, a first draft is almost completed for the Employment Discrimination module, and work is currently underway on the Wrongful Death Module. In addition, the Business Valuation module has been sent to Dr. Cecil for his comments and review.

The goal of this activity is to develop a set of modules for distribution to federal judges. Modules developed by NAFE could not have the direct sanction of the Federal Judicial Center, but Joe Cecil of the FJC has given NAFE encouragement in the development of NAFE modules. Dr. Cecil also indicated that modules developed by NAFE might affect decisions made by the FJC with respect to its development of a volume on economic damages in a second edition of the Reference Manual on Scientific Evidence. At the end of the completion of the first edition, there was considerable sentiment within the Federal Judicial Center for doing so.

The goal of NAFE modules is to cover the range of issues that should be considered by a qualified expert in the area treated by a module. It is not to set up a "best way" for various controversial issues to be treated. Both the NAFE Board's desires, and Joe Cecil's advice, pointed at making the modules as "neutral" as possible with respect to controversial issues in methodology. All NAFE Board members are committed to this objective, and all board members will be involved in the reviewing process as modules continue to be developed.

It has also been decided to divide the work of developing the modules from other ongoing responsibilities of the ESQD Committee. At the July meeting the NAFE Board of Directors created a three person committee to be in charge of the module project. The committee consists of Stephen Horner, Jim Rodgers and myself. Charles W. de Seve took over chairing other ongoing work of the ESQD Committee as of the July.

This approach is being tentatively supported, pending review, by the Board of Directors of the American Academy of Economic and Financial Experts. My term on the NAFE Board of Directors expired in January, 1995, but I am a new member of the AAEFE Board of Directors, and close cooperation between the two organizations is anticipated in the development of this approach to the challenges posed by the *Daubert v. Merrill Dow* decision and the December, 1993 changes in the Federal Rules of Evidence.

Reference

- Adams John, Michael Brookshire and Frank Slesnick. "1993 Survey: Qualifications, Ethics and Procedures for Forensic Economics Practitioners." *Journal of Forensic Economics*, 7(1): pp. 1-24