# CONTENTS

Introduction ix

## Chapter 1

**An Overview** 1

- The Decision to Retain an Expert 2
- Role of the Expert Witness 3
- Consulting and Testifying Experts 6
- Expert Qualifications 6
- Admissibility of Testimony 7
- Disclosure of Witness Materials 10
- Expert Compensation 11
- Standard of Review 11

## Chapter 2

**The Legal Framework** 13

- Common Law 13
- Early Evidence Rules 14
- Courts as Gatekeepers 18
- Other Evidentiary Rules 22
- Discovery of Experts 23
- Attorney-Client Privilege 24
- Appropriate Standard of Review 24
Chapter 3
Supreme Court Decisions

The Daubert Opinion
The Kumho Tire Opinion
The Joiner Opinion

Chapter 4
Rules of Discovery

Discovery of Consulting Experts
Disclosure of Experts
Discovery of Testifying Experts
The Privilege Dilemma
Expert Report

Chapter 5
Rules of Evidence

Fact Witnesses and Expert Witnesses
Admission of Expert Testimony (Rule 702)
Bases of Expert Testimony (Rule 703)
Ultimate Issues (Rule 704)
Underlying Facts and Data (Rule 705)
Court-Appointed Experts (Rule 706)
Learned Treatises (Rule 803(18))
Reversible Error

Chapter 6
Selecting Experts

Whether to Retain an Expert
When to Hire the Expert
Locating the Best Candidates
Presenting the Case
Early Communications with the Expert
Chapter 9
Depositions of Experts

Deposing Your Opponent’s Expert 113
Preparing Your Expert for Deposition 117

Chapter 10
Direct Examination of Experts

The Underlying Theme 125
Foundational Aspects of the Opinion 126
Role of the Examiner 127
Preparing Your Expert for Direct Examination 127
Direct Examination of Your Expert 129

Chapter 11
Cross-Examination of Experts

Discovering the Expert’s Reliability 146
Foundational Evidence 147
Pretrial Preparation for Cross-Examination 147
Challenges Facing the Cross-Examiner 148
Reasonable Degree of Certainty 148
Basis of the Opinion 148
Discrediting the Witness 150
Effective Cross-Examination Style 151
Constructive versus Destructive 153
Attacking the Expert’s Credentials 154
Information Admitted into Evidence 154
Information Not Admitted into Evidence 155
Statistics 156
Learned Treatises 157
Exposing Personal Bias or Interest 157
Exposing Materials Reviewed by the Expert 158
Preparing Your Witness for Cross-Examination 159
Courtroom Simulation 161
Retaining Control 162
<table>
<thead>
<tr>
<th>Contents</th>
<th>vii</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responding to Questions about Bias</td>
<td>163</td>
</tr>
<tr>
<td>Responding to Questions about Treatises</td>
<td>164</td>
</tr>
<tr>
<td>Responding to Questions about Fees</td>
<td>164</td>
</tr>
<tr>
<td>Responding to Questions about Income</td>
<td>164</td>
</tr>
<tr>
<td>Chapter 12</td>
<td>Persuading the Fact Finder</td>
</tr>
<tr>
<td>Chapter 13</td>
<td>Case Studies</td>
</tr>
<tr>
<td>Pharmaceutical Drug Litigation</td>
<td>169</td>
</tr>
<tr>
<td>Infant Car Seat Litigation</td>
<td>181</td>
</tr>
<tr>
<td>Breast Implant Litigation</td>
<td>200</td>
</tr>
<tr>
<td>Appendix A</td>
<td>Cases</td>
</tr>
<tr>
<td>Appendix B</td>
<td>Rule 26 of the Federal Rules of Civil Procedure</td>
</tr>
<tr>
<td>Appendix C</td>
<td>Rules 701 to 706 of the Federal Rules of Evidence</td>
</tr>
<tr>
<td>About the Author</td>
<td>343</td>
</tr>
<tr>
<td>Index</td>
<td>345</td>
</tr>
</tbody>
</table>