

**Vocational Expert Testimony: What We Have Learned During the Post-Daubert Era**

*Timothy F. Field*

**Abstract :** This review revisits the critical paper by Feldbaum (1997) in light of a decade of developments related to the admissibility issue of vocational expert testimony. In addition to discussing critical issues inherent to *Daubert*, *Kumho* and the *Federal Rules of Evidence*, over forty cases involving forensic rehabilitation consultants in federal courts are reviewed for purposes of identifying how the courts are treating rehabilitation (soft science) testimony. Conclusions are made regarding the evolution of testimony from *Daubert* to the present.

**Determining Diminished Future Earning Capacity in State Workers' Compensation: The California Model**

*Eugene E. Van de Bittner*

**Abstract:** California's new workers' compensation law has changed the standard for determining permanent disability from diminished capacity to competing for jobs in the open labor market to diminished future earning capacity. A new *Schedule for Rating Permanent Disabilities*, with an adjustment factor for diminished future earning capacity, has been developed, and has attracted substantial challenges on the adequacy of permanent disability benefits by employees, unions, and applicants' attorneys. Vocational experts have been asked by attorneys to evaluate the actual diminished future earning capacity as compared with the adjustment for diminished future earning capacity included in the new *Schedule*. Three formulas are presented for evaluating diminished future earning capacity under the new law. Implications for practice by rehabilitation counselors and vocational experts are presented for California as well as for other states.

**Understanding Worklife Expectancy**

*A.M. Gamboa, Jr. and Linda L. Jones*

**Abstract:** While no expert can measure future lost earnings with scientific certainty, vocational experts can offer expertise to the trier of fact by combining statistical data, training, and experience. Government data and independent research show that, when compared to persons without a work disability, persons with a work disability typically experience lower levels of employment, are more likely to become unemployed when working, and are less likely to find employment when unemployed. Use of worklife expectancy statistics requires expertise. When combining the individual's unique characteristics with statistical data, an appropriate fit between probability data and the individual can be achieved.

**The Vocational Expert and Ethics**

*Rebecca S. Curtis, E. Davis Martin, Jr., C. Michael Graham, and Larry L. Sinsabaugh*

**Abstract:** A review of the purpose of ethics is presented from the perspective of values and valuing along with a discussion of principle and virtue ethics as related to the role of the vocational expert practitioner. Guidelines for the resolution of dilemmas are noted. The American Board of Vocational Experts' Code of Ethics preamble is presented and discussed introducing the concept that the client is, in the forensic practice arena, the referral source. It is concluded that the vocational expert is professionally obligated to apply principle and virtue ethics to the referral source's client as well as to operate from a spirit of fair play, honesty, and integrity. The American Board of Vocational Experts' Code of Ethics provides a platform that guides the practitioner in doing exactly that.

