


Winter 1996

Establishing a Prima Facie Case Involving Multiple Chemical Sensitivity: A Threshold Approach, 29 J. Marshall L. Rev. 441 (1996)

Merilyn Brown

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>

 Part of the [Civil Rights and Discrimination Commons](#), [Disability Law Commons](#), [Health Law and Policy Commons](#), [Housing Law Commons](#), [Jurisprudence Commons](#), and the [Legislation Commons](#)

Recommended Citation

Merilyn Brown, Establishing a Prima Facie Case Involving Multiple Chemical Sensitivity: A Threshold Approach, 29 J. Marshall L. Rev. 441 (1996)

<https://repository.law.uic.edu/lawreview/vol29/iss2/6>

This Article is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

ESTABLISHING A PRIMA FACIE CASE INVOLVING MULTIPLE CHEMICAL SENSITIVITY: "A THRESHOLD APPROACH"

MERILYN BROWN*

INTRODUCTION

Establishing a prima facie case involving Multiple Chemical Sensitivity (MCS) or Environmental Illness (EI) has been enveloped in controversy due to significant obstacles. The legal issues began to take center stage when four federal agencies recognized MCS as a handicap within the meanings of their respective statutes. These agencies were the Social Security Administration, the Department of Transportation, the Department of Education and the Department of Housing and Urban Development (HUD). This article will only address the legal framework of MCS as it pertains to the Fair Housing Act (ACT)¹ and HUD's implementing regulation.²

Part I will outline the two major obstacles an MCS claimant encounters when trying to establish a prima facie case involving MCS. Part II will discuss the requirements that a claimant must establish under the Act. Finally, Part III will examine the judiciary's refusal to allow expert witness testimony in MCS cases, which prevents recovery by MCS claimants.

I. TWO MAJOR OBSTACLES TO MCS COMPLAINTS

To successfully prove MCS, a complainant must confront two major obstacles. The first obstacle MCS complaints encounter is the lack of a proper name for the illness.³ The second obstacle, following closely on the heels of the first, is based on the fact that no uniform definition of the illness itself exists. Conventional

* The author is currently the Director of the Fair Housing Enforcement Division in the Office of Investigation for the Department of Housing and Urban Development. She formerly acted as Administrative Director of the John Marshall Law School Fair Housing Center. The author obtained her B.A. from Western Illinois University and her J.D. from The John Marshall Law School.

1. 42 U.S.C. § 3602(h) (1988).

2. 24 C.F.R. § 100.201 (1995).

3. MCS is known by other names such as total allergy syndrome, environmental or ecological illness, physiology, hypersusceptibility environmental-induced illness, twentieth century disease, chemical hypersensitivity syndrome, food and chemical sensitivity and chemical sensitivity.

medicine, located at the heart of this controversy, has historically failed to recognize that MCS exists. No scientific evidence has supported the contention that the illness is a disease, nor have sufficient diagnostic tests and treatments had any therapeutic value in the medical community.⁴ Moreover, laypersons and experts in the field have not adopted a uniform definition of the illness Multiple Chemical Sensitivity.⁵ Several courts, though, have utilized the term "chemical sensitivity" in one form or another.⁶

This author elects to use the term "Multiple Chemical Sensitivity" for two reasons. First, previous courts have captured or coined this term as the proper name. Second, based upon the following definition, the proper name should reflect the many causes and symptoms associated with this illness. MCS is an abnormal state of health characterized by intensified and adverse responses to components found in food, air, water or physical surroundings of a person's environment.⁷ The symptoms involve multiple organs in the neurologic, endocrine, genitourinary and immunologic systems.⁸ These symptoms illustrate the practicality of using the term "multiple chemical sensitivity" as the proper name of the illness.

Leading experts on this illness have stated:

Humans have many biochemical scavenger systems that protect them from damage caused by chemically altered cells and proteins. However, since we are now exposed to much higher concentrations of natural chemicals, as well as massive amounts of synthetic chemicals to which our ancestors were never exposed, it is easy to see that, with regard to chemical exposures, our protective resources are taxed to a much greater extent than theirs.⁹

When a person who suffers from MCS is exposed to low doses of chemicals, called "triggers,"¹⁰ the MCS sufferer's immune sys-

4. *Bradley v. Brown*, 852 F. Supp. 690, 698-700 (N.D. Ind.), *aff'd*, 42 F.3d 434 (7th Cir. 1994); *La-z-Boy Chair Co. v. Reed*, 778 F. Supp. 954, 955 (E.D. Tenn. 1990), *aff'd*, 936 F.2d 573 (6th Cir. 1991).

5. Bette Hileman, *Multiple Chemical Sensitivity*, CHEMICAL & ENG. NEWS, July 22, 1991, at 26, 27.

6. *Kouril v. Bowen*, 912 F.2d 971, 974 (8th Cir. 1990); *Kyles v. Workers' Compensation Appeals Bd.*, 240 Cal. Rptr. 886, 888 (Cal. Ct. App. 1987); *Reuther v. State*, 455 N.W.2d 475, 476 n.1 (Minn. 1990); *Lincoln Realty Mgmt. Co. v. Pennsylvania Human Relations Comm'n*, 598 A.2d 594, 596 (Pa. Commw. Ct. 1991).

7. Gerald H. Ross, *History and Clinical Presentation of the Chemically Sensitive Patient*, 8 TOXICOLOGY & INDUS. HEALTH 21, 21 (July-Aug. 1992).

8. *Id.*

9. Alan S. Levin & Vera S. Byers, *Environmental Illness: A Disorder of Immune Regulation*, in STATE OF THE ART REVIEWS: OCCUPATIONAL MEDICINE WORKERS WITH MULTIPLE CHEMICAL SENSITIVITIES 699 (Mark R. Cullen, MD, ed., 1987).

10. This Article will refer to low level toxic chemicals found in everyday society as triggers to which the MCS sufferer's immune system responds. These triggers

tem responds, even though other people can normally tolerate these doses in everyday life. Once MCS sufferers have some of the more chronic disorders affecting their body, the disorders can manifest themselves in various forms.¹¹

Although MCS is supposedly an acquired disorder, the cause and treatment of the illness remains controversial.¹² Physicians may suspect MCS and diagnose the illness on the basis of history and physical examination. Also, physicians may confirm the condition by removing the offending agents from the MCS patients' environments, and rechallenging them by reintroducing the offending agent under properly controlled conditions. The improvement of symptoms after removal of the suspected substances and the recurrence or worsening after a specific, low-level challenge are highly indicative of environmental hypersensitivity, and in this context, Multiple Chemical Sensitivity.¹³

Various authors, however, have stated that "commonly, detailed medical evaluation discloses no objective physical or laboratory abnormalities that would account for the reported symptoms."¹⁴ This same controversy, whether physicians may actually identify MCS, has demonstrated itself in the courts.¹⁵ Despite these controversies and obstacles, the fact remains that under the Act, MCS is a viable legal issue with regards to discrimination in housing.

are found in: new carpets, flooring adhesive, ventilation systems which curtail intake of outside air, carbonless copy paper forms, perfumes, scented personal care products, paint, building maintenance products, cleansers, electro magnetic fields from ventilation, wiring, computers and printers, industrial emissions, building formaldehyde, certain molds and dust, biological contaminates, pesticides, food additives, petroleum fumes, combustion appliances such as gas appliances, construction material, moth balls, polyesters, acrylics, leather goods, plastics, particle board, solvents, detergents, paper and cosmetics.

11. Some of the more chronic disorders affecting the body can take the form of the following: anxiety, sudden anger, chest pain, chronic fatigue, irritability, nervous tension, drowsiness, muscle spasm, gas pain, irritated eyes/itching, sleep disturbances/insomnia, food craving, black spots, ear ringing, incoherent speech, seizures, severe diarrhea, constipation, skin rashes, depression, bloating, asthma, eczema, burning, shortness of breath, unusual high T-cell count, pancreas damage, memory loss, headache and nasal congestion.

12. Gregory E. Simon et al., *Immunologic, Psychological, and Neuropsychological Factors in Multiple Chemical Sensitivity*, 19 ANNALS OF INTERNAL MED. 97, 97 (1993).

13. Ross, *supra* note 7, at 21.

14. Hileman, *supra* note 5, at 40.

15. *Bradley v. Brown*, 852 F. Supp. 690, 698-700 (N.D. Ind. 1994); *Kyles v. Workers' Comp. Appeals Bd.*, 240 Cal. Rptr. 886, 887-89 (Cal. Ct. App. 1987); *Kent State Univ. v. Ohio Civil Rights Comm'n*, 581 N.E.2d 1135, 1137-39 (Ohio Ct. App. 1989).

II. REQUIREMENTS THAT A CLAIMANT MUST ESTABLISH UNDER THE FAIR HOUSING ACT

Section 804(f)(2) of the Act provides that it shall be unlawful to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling because of a handicap.¹⁶ Accordingly, Congress included an affirmative obligation in the Act's language in Section 804(f)(3) by stating that a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling, is a violation of the Act.¹⁷ Thus, MCS complainants must start by establishing that they meet the definition of handicap.

The Act defines handicap in the same way it is defined in Section 504 of the Rehabilitation Act of 1973.¹⁸ With respect to a person, "handicap" under the Act means "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) a record of having such an impairment; or (3) being regarded as having such an impairment."¹⁹ This Section will focus upon the first method a person may use to show he or she is handicapped, and each subsection will discuss the elements required for this method.

A. Physical or Mental Impairment

MCS complainants must show that their impairment is based upon an actual physical or mental condition. The Act does not define the terms "physical or mental impairment," but the Department's regulations define the terms as follows:

Physical or mental impairment includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder, such as . . . emotional or mental illness. . . . The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as . . .

16. 42 U.S.C. § 3604(f)(2) (1988).

17. 42 U.S.C. § 3604(f)(3) (1988).

18. 29 U.S.C. § 701 (1982).

19. 42 U.S.C. § 3602(h).

visual, speech and hearing impairments, . . . [and] emotional illness. . . .²⁰

Thus, MCS complainants can show that they have a handicap if they denote their condition as physiological or psychological.²¹

B. Substantial Limitation of a Major Life Activity

Neither the Act itself nor HUD's implementing regulations provide clear guidance as to what constitutes a "substantial limitation." Case law, however, does provide some guidance.²² The Fourth Circuit Court of Appeals, in *Forrisi v. Bowen*,²³ ruled that under the Rehabilitation Act, in order for an impairment to substantially limit a major life activity, "the impairment must be a significant one."²⁴ In *Pridemore v. Legal Aid Society of Dayton*,²⁵ the court found that the person's condition did not impair his ability to walk and talk and thus did not substantially limit any major life activity.²⁶ The case *Gomez v. Department of the Air Force*,²⁷ also discussed what constitutes "substantial limitation." The court held that an employee showing hypersensitivity to paint fumes and other toxic chemicals was not handicapped because his hypersensitivity did not disqualify him from other

20. 24 C.F.R. § 100.201.

21. MCS complainants prefer to categorize their injury physiological rather than psychological.

22. *Kouril v. Bowen*, 912 F.2d 971 (8th Cir. 1990); *Kornock v. Harris*, 648 F.2d 525 (9th Cir. 1980); *Rosiak v. United States Dep't of the Army*, 679 F. Supp. 444 (M.D. Pa. 1987), *aff'd*, 845 F.2d 1014 (3d Cir. 1988); *Vickers v. Veterans Admin.*, 549 F. Supp. 85 (W.D. Wash. 1982); *County of Fresno v. Fair Emp. & Hous. Comm'n*, 277 Cal. Rptr. 557 (Cal. Ct. App. 1991); *Kallas Enterprises v. Ohio Civil Rights Comm'n*, No. 14282, 1990 WL 55896 (Ohio Ct. App. May 2, 1990); *Kent State Univ. v. Ohio Civil Rights Comm'n*, 581 N.E.2d 1135 (Ohio Ct. App. 1989); *Lincoln Realty Mgmt. Co. v. Pennsylvania Human Relations Comm'n*, 598 A.2d 594 (Pa. Commw. Ct. 1991).

23. 794 F.2d 931 (4th Cir. 1986).

24. *Id.* at 933. The plaintiff in *Forrisi* was a utility system repairer and operator with acrophobia (fear of heights). *Id.* at 932. He did not allege that his acrophobia substantially limited his major life activities or that he had a history of such an impairment. *Id.* at 933. Rather, he alleged that he had a handicap because his employer regarded him as handicapped and had discriminated against him on that basis. *Id.* The court found that the employer did not regard him as substantially limited in his major life activity of working and did not regard his condition to "foreclose generally the type of employment involved." *Id.* at 934. The court also found that the employer "never doubted the plaintiff's ability to work in his chosen occupation of utility repair. The employer merely saw him as unable to exercise his acknowledged abilities above certain altitudes in this . . . plant." *Id.* Thus, the court concluded that the plaintiff did not establish that his employer regarded him as handicapped and he did not have a handicap. *Id.*

25. 625 F. Supp. 1171 (S.D. Ohio 1985).

26. *Id.* at 1175.

27. 869 F.2d 852 (5th Cir. 1989).

jobs and drastically reduce his employability.²⁸ Also, in the case of *Wright v. Tisch*,²⁹ a court held a postal employee who was hypersensitive to dust was not handicapped because her condition only limited her ability to work in unusually dusty environments, not in ordinary working environments.³⁰

In contrast, in *Joyner v. Department of the Navy*, the Merit Systems Protection Board ruled that a Navy mechanic was severely limited in his ability to lift, carry, climb, work on ladders or scaffolding, stoop, twist, bend, push and pull and, therefore, was substantially limited in his ability to work.³¹

The Act also does not define the term "major life activity." However, HUD regulations define it as "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."³² MCS complainants can have one or more of these major life activities affected by their condition.

Although MCS complainants need to show impairments that are somewhat drastic to prove substantial limitation under the Act, they do have a wide variety of activities to choose from to show a major life activity. The problem is, however, that MCS complainants must show both. Accordingly, ordinary allergies do not constitute a handicap under the Act because even though such reactions do affect major life activities, they do not substantially limit them.

C. Applying the Fair Housing Act to MCS Complainants

The National Academy of Sciences believes that patients must have symptoms or signs related to chemical exposure at levels not tolerated by the population at large to be handicapped.³³ A chemical exposure associated with the onset of the condition, however, does not have to be identified and pre-existent or concurrent. MCS symptoms may wax and wane with exposure and may be expressed in one or more organ systems. MCS research should exclude reactions to allergens such as molds, dusts and pollens. In contrast, conditions such as asthma, arthritis or depression should not exclude patients. This point is best illustrated in a decision under the Social Security Act, in the case of *Slocum v.*

28. *Id.* at 857.

29. 45 F.E.P. 151 (E.D. Va. 1987).

30. *Id.*; see also *Torres v. Bolger*, 781 F.2d 1134, 1138 (5th Cir. 1986) (dealing with left-handedness not being an impairment); *Cohen v. Department of Navy*, 46 M.S.P.B. 369, 375 (1990) (concluding that post-traumatic stress disorder only impaired the employee from doing a particular job at a particular location).

31. *Joyner v. Department of Navy*, 47 M.S.P.B. 596, 599-600 (1991).

32. 24 C.F.R. § 100.201.

33. Hileman, *supra* note 5, at 32.

Califano:³⁴

Everyone knows someone with an allergy. If allergic to eggs, don't eat eggs and you will be fine. If you do eat an egg, have some kleenex available. But, the person with MCS represents the extreme. These extreme cases in the past were either ignored, sent to a psychiatrist, let die, or treated for other ailments. It has been only recently that the medical profession itself has recognized the degree of the problem and the number of persons involved. . . . A severe exposure, of the MCS person to the elements reacted from, causes us to reach not for a kleenex box but for the telephone to summons an ambulance. . . .³⁵

III. CHALLENGES TO MCS LITIGANTS IN FAIR HOUSING CASES INVOLVING MCS

Considering only impairments which substantially limit one or more major life activities, plaintiffs have had some success in other areas of law. However, some MCS complainants in Fair Housing cases have suffered new challenges. As stated previously, MCS presents a legal issue enveloped in controversy. This controversy reaches its peak where the conventional medical field does not recognize the condition, the causes or the treatment. This controversy becomes particularly clear when courts state that the known experts in the field of MCS do not to meet the requirements of Federal Rule of Evidence 702.

A. *Rule 702 Requirements and Courts' Failures to Qualify MCS Experts Under the Rule*

Rule 702 governs expert testimony when the contested issue needs either scientific, technical or other specialized knowledge to assist the trier of fact in understanding the evidence or determining a fact in issue.³⁶ A party may qualify a witness as an expert either by knowledge, skill, experience, training or education.³⁷ As an expert, a witness may testify in the form of an opinion or otherwise.³⁸

In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the United States Supreme Court recognized that the trial judge has the gatekeeping responsibility to insure that any and all scientific testimony or evidence admitted in court is not only relevant, but

34. No. 77-0298 (D. Haw. Aug. 27, 1979).

35. *Id.* The reader should note that the Social Security Act's definition of disability is more limited than the Fair Housing Act's definition of handicap. The Act's definition is broader and more inclusive.

36. FED. R. EVID. 702.

37. *Id.*

38. *Id.*

reliable.³⁹ "The reliability standard is established by Rule 702's requirement that an expert's testimony pertain to 'scientific . . . knowledge.'"⁴⁰ The adjective "scientific" implies a grounding in scientific methods and procedures, and "knowledge" connotes a body of known facts or ideas inferred from such facts or accepted as true on good grounds.

The Rule's requirement that the testimony "assist the trier of fact in understanding the evidence or determining a fact in issue" goes primarily to relevance and demands a valid scientific connection to the pertinent inquiry as a precondition to admissibility. Thus, courts, when discussing MCS, must require a party to follow Rule 702 and to base expert testimony upon technical or other specialized knowledge which can assist the trier of fact to understand the evidence or determine a fact in issue.

The Court of Appeals for the District of Columbia best noted the evidentiary complexity of Multiple Chemical Sensitivity when it stated: "Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of a principle must be recognized. . . ."⁴¹

In *Bradley v. Brown*,⁴² the plaintiffs sought recovery from the defendant for negligently applying pesticides at their place of employment.⁴³ As a result of the pesticides, the plaintiffs maintained that they suffered headaches, breathing difficulties, dizziness and nausea.⁴⁴ Moreover, they claimed this exposure incident caused them to contract an MCS disorder.⁴⁵ In order to meet their burden with regards to causation on the MCS damages, the plaintiffs attempted to admit into evidence the depositions of Drs. William J. Rea and Alfred R. Johnson, Multiple Chemical Sensitivity experts.⁴⁶ The defendant challenged this evidence based upon the single issue of whether the doctors' testimonies about MCS were based upon scientific knowledge.⁴⁷ The court applied the *Daubert* standard and excluded the expert testimony.⁴⁸ On appeal, the Seventh Circuit court upheld the ruling stating:

[T]he problem the court faces here is that Rea and Johnson's opinions about MCS's causes are, at best, hypothetical at this point. Looking to the evidence submitted by the plaintiffs, the [trial] court

39. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786, 2795 (1993)

40. *Id.* at 2790.

41. *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).

42. 852 F. Supp. 690 (N.D. Ind.), *aff'd*, 42 F.3d 434 (7th Cir. 1994).

43. *Id.* at 690.

44. *Id.* at 693.

45. *Id.* at 697.

46. *Id.*

47. *Id.* at 697-98.

48. *Id.* at 698-99.

found that Rea and Johnson could not provide testimony explaining why a particular individual contracts a chemical sensitivity; the method leading to their conclusions was merely anecdotal. The [trial] court concluded that "Drs. Rea and Johnson's opinions regarding whether the plaintiff's exposure caused their symptoms would be entirely too subjective and speculative [and] . . . a far cry from the tested hypotheses foreseen as the basis of 'scientific knowledge' testified to under Rule 702."⁴⁹

The plaintiffs in *Bradley* failed because clinical ecology has generally been the basis of MCS. Clinical ecology is an alternative form of medicine enacted by several hundred physicians in North America and Great Britain. However, no American medical school teaches clinical ecology.⁵⁰ Thus, courts do not find MCS experts qualified under Rule 702 because they generally are not satisfied that the expert possesses the proper knowledge, skill, experience, training or education within clinical ecology. If MCS complainants could properly qualify a MCS expert under Rule 702, that expert could testify based upon his or her opinion where an inference could be drawn from applying their technical or specialized knowledge to the facts. The solution to this dilemma is for MCS complainants to know the appropriate questions to ask the MCS expert to properly qualify him or her under Rule 702.

B. Suggested Questions for MCS Complainants to Properly Qualify MCS Experts Under Rule 702

The initial questions an MCS complainant should ask an MCS expert concern his or her credentials as a physician. These would include such questions as:

1. What is your profession?
2. Are you currently licensed to practice medicine in this state?
3. When did you receive that license?
4. Are you currently licensed to practice medicine in any other state?
5. When did you receive that license?

Next, an MCS complainant should ask about the expert's medical education and training, asking questions such as:

6. What medical school, or schools, did you attend?
7. Is that an accredited medical school?

49. *Bradley v. Brown*, 42 F.3d 434, 438 (7th Cir. 1994).

50. Sbba T. Terr, *MCS Immunological Critique of Clinical Ecological Theories and Practice*, in *STATE OF THE ART REVIEWS: OCCUPATIONAL MEDICINE WORKERS WITH MULTIPLE CHEMICAL SENSITIVITIES* 683 (Mark R. Cullen ed., 1987).

8. By whom is it accredited?
9. When did you graduate?
10. Upon graduation, what degree did you receive?
11. Following receipt of your degree, did you serve a period of internship?
12. Where did you serve your internship?

Then, an MCS complainant should inquire whether the expert has any specialized training, practices in a specialty or is a Board certified specialist. These questions may include:

13. During your internship, did you specialize in any particular area?
14. After your internship, did you receive further specialized training in the field? When and where?
15. Have you personally received certification as a specialist?
16. From whom?
17. In what year did you receive your certification?
18. Since you received your certification, have you practiced any particular medical specialty?
19. In that practice, do you have a specialty?
20. Where is your office located?
21. Please describe your field of specialization.
22. When you received your certification, did you confine your practice entirely to that field?

An MCS complainant may also wish to ask an expert about any professional honors and publications that he or she may have received. These questions would include:

23. Do you currently belong to any professional groups?
24. If so, please name them.
25. Have you written any books or articles that have been published in the field of MCS?
26. Please describe those books or articles in terms of their titles, publication dates and, briefly, content.

Most importantly, an MCS complainant must inquire about the expert's familiarity with MCS as an illness, its diagnosis and its treatment. A court should ask questions including, but not limited to the following:

27. In the course of your practice, have you had occasion to treat or diagnose patients suffering from MCS?
28. Have you personally evaluated more than ten patients over a two year period? When? If ten or fewer over a ten year period, when?

29. How many times have you personally seen this person?
When?
30. Did you conduct an in-person examination of this person?
When?
31. Did you conduct a thorough comprehensive history on this person? Why or why not?
32. Did you personally evaluate this person for MCS?
33. Did you actually make a diagnosis of MCS or an MCS-like syndrome?
34. Did you complete an occupational history on this person?
Why or why not?
35. Did you take a complete environmental exposure history on this person? Why or why not?
36. Did you ask detailed questions about the home environment of this person? Why or why not?
37. Did you attempt to identify a specific "sensitizing" event?
 - a. Did you inquire about previous reactions to medication and drugs?
 - b. Did you inquire about stress?
 - c. Did you inquire about food intolerance?
 - d. Was the exposure in this person's environment internal or external?
38. Did you obtain a psychological history of this person?
39. Did you obtain a standard blood chemistry for this person?
40. Did you perform standard allergy tests on this person?
41. Did you obtain special blood tests to detect immune system changes in this person?
42. Did you order special brain scans such as PET, SPECT, EEG and BEAM on this person? When? Why or why not?
43. Was a neuropsychiatric assessment performed on this person?
44. Did you consult with psychiatrists, psychologists, neurologists or allergists with regards to evaluating this person?
45. Did you get environmental sampling data with regards to this person?
 - a. Did you visit the home? When? How long? What did you do on your site visit?
46. What are the specific exposures that have triggered this person's symptoms?
 - a. What was the period of exposure prior to each reaction?
 - b. Are there related exposures to which, based on your assessment, you believe this person would have an adverse reaction?
47. What are the specific symptoms of this person once they are exposed? (begin with the most troublesome or most disabling in terms of ability to function normally)
48. Do the symptoms represent impairments that substantially

- limit a major life activity? What are the impairments specifically?
49. Did this person keep a log of illness reactions? Have you seen it? Does it contain such information as:
 - a. Date of each illness reaction (symptom onset or if this person is chronically ill, what are the significant symptoms that have become worse).
 - b. Type of reaction.
 - c. Duration.
 - d. Severity of exposures that preceded the illness reactions.
 - e. Whether this person used control management measures where repeated patterns were observed or reactions were accompanied by symptoms that interfered with this person's ability to function normally in the home or at work.
 - f. Medications or beverages containing alcohol ingested.
 - g. Presence of smoke or other combustion products.
 50. Is this person making clinical progress? Is any improvement slow or quick? What is this person's current prognosis?
 51. Did this person provide you a list of home-use products that contain the chemical(s) to which they are sensitive or did you provide the person with a list of products that contain the chemical(s) to which they are sensitive? Name the chemical(s).
 52. Did you counsel this person to avoid exposure to the suspected offending agents on a trial basis? For what period? Results of avoidance?
 53. Did you offer ongoing support to this person via return visits? Briefly describe. Did this person return?
 54. Did you suggest biofeedback from this person? Why or why not?
 55. Did you suggest psychological counselling to this person? Why or why not?
 56. Did you suggest behavioral techniques? Briefly describe.
 57. Did you prescribe drugs or medications? Briefly describe.
 58. Did you suggest nutritional counselling? Why or why not?
 59. Did you suggest work restrictions? Why or why not?
 60. Did you suggest a trial period away from work or home? If so, briefly describe the trial period and the results.
 61. Did you suggest changes in the home environment? If so, briefly describe the trial period and the results.
 62. Did you ask this person if they had a recommendation regarding environmental intervention? If so, briefly describe the results.
 63. Did you offer this person alternative therapy such as detoxification, provocation or neutralization? Why or why not?

This list of questions is in no way exhaustive of what an MCS complainant could ask an expert. However, a court using these questions should be able to obtain information from the person testifying to meet the requirements for qualifying the person as an MCS expert under Rule 702. By using an MCS expert to assist the trier of fact, an MCS complainant can establish elements of his or her prima facie case. Additionally, the MCS expert can explain this complicated illness to the trier of fact and help them understand the implications that this illness has on the MCS sufferer's life.

CONCLUSION

Multiple Chemical Sensitivity does not have to be a mystery. With appropriate preparation and environmental controls, MCS can be investigated and diagnosed in a scientific and reproducible manner. MCS advocates must look to the medical community in order to best serve their ill clients. Medical experts can achieve success in fair housing by applying the appropriate preparation (for themselves and their patients) and recommending sound environmental controls.

The questions suggested in this Article are a starting point to establish an appropriate preparation for all those concerned. A court can take the force of a principle's evidence out of the twilight zone when it allows expert opinions based on particular firmly grounded facts. The issue then becomes focused on the weight and not the admissibility of the expert's opinion. Only through proper direct and cross-examination will an opinion reveal a true factual basis. When there is little or no factual basis the testimony can be stricken. The line between experimental and demonstrable stages can only be bridged where experts apply their technical or specialized knowledge to the facts.

