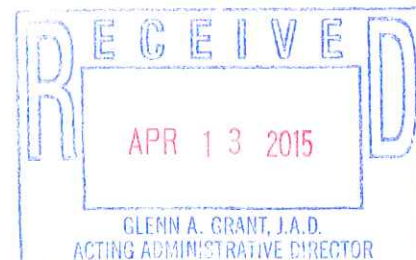


210 Lake Drive East, Suite 200
Cherry Hill, NJ 08002-1163
TEL 856.761.3400
FAX 856.761.1020
www.ballardspahr.com

John B. Kearney
Tel: 856.761.3482
Fax: 856.761.1020
kearneyj@ballardspahr.com

April 9, 2015



Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Re: 2013-2015 Report of the Supreme Court Committee on The Rules of Evidence, Part II,
January 15, 2015 and N.J.R.E. 702 Subcommittee Report

Dear Judge Grant:

Please accept this letter as a comment to the January 15, 2015 Report of the Supreme Court Committee on the Rules of Evidence, Part II, with specific reference to the Court's N.J.R.E. 702 Subcommittee Report.

I have been practicing law in New Jersey since 1977. I am an active member of the New Jersey State Bar Association, including a past term as the Chair of the Products Liability and Toxic Tort Section. I am also a Trustee of the Association of the Federal Bar of New Jersey. I have handled a variety of civil litigation over the course of my career, with most, but not all, of my work representing defendants in federal and state court actions in New Jersey, Pennsylvania, New York and Massachusetts. My comments in this letter are my own, and not those of any clients or anyone else in my law firm.

While the Report of the N.J.R.E. 702 Subcommittee seems to downplay differences between the New Jersey standard and Daubert and its progeny, my experience has been that our state court trial judges believe there is a significant difference, and thereby ignore the large body of case law on Daubert that has developed over time which could be of great assistance to them as trial judges who must rule on the admissibility of expert testimony on a regular basis.

In addition, the conclusion of some members of the Subcommittee, set out at P.16 of the Subcommittee Report, that "there might be some benefit to trial judges and practicing lawyers if the court, in its discretion, were to choose to enhance the clarity of the rule by making the present

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case-law criteria more explicit within the text of the rule itself” is a good one, but it does not go far enough in effectuating the change that is needed.

While I note the caveat in the Report that the Subcommittee’s task was to do fact-finding rather than propose a rule change, the simple fact is that a rule change is what is needed. By aligning N.J.R.E. 702 with Daubert, there would be a consistent rule on expert admissibility that was not dependent on whether you were in the Camden County Courthouse at 4th and Market or in the federal courthouse just a few blocks away.

Our busy and overburdened trial judges do not have the luxury of time to reflect upon and write opinions about expert admissibility issues that they face week after week, thereby depriving their colleagues on the bench of the benefit of their rulings and reasoning on these issues. By adopting Daubert, our state court trial judges would have the ability to draw on the extensive case law both in the District of New Jersey and across the entire federal system that has interpreted and applied Daubert and its progeny since its adoption years ago. Our state court trial judges, for example, have the benefit of a large body of federal law on FRCP 23 when dealing with class actions, as our Rule 4:32 mirrors the federal rule. In addition, were the Daubert rule adopted, our state court trial judges could draw upon the resources of the Federal Judicial Center’s Manual for Complex Litigation in handling expert admissibility issues.

It is time for New Jersey to join the overwhelming number of other states which have adopted the Daubert approach to the admissibility of expert testimony.

Thank you for your consideration of my comments.

Respectfully,

A handwritten signature in black ink that reads "John B. Kearney". The signature is written in a cursive, flowing style with a long, sweeping underline.

John B. Kearney

JBK/jam