



April 30, 2026

Via Email (Comments.Mailbox@njcourts.gov)

Acting Administrative Director Michael J. Blee, J.A.D.
Administrative Office of the Courts
Attn: Evidence Rules Committee Report on NJRE 702
Hughes Justice Complex; P.O. Box 037
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RE: Comment on Mid-Year Report of the Committee on Rules of Evidence

Dear Mr. Blee:

I am writing to encourage the Supreme Court to reconsider the decision by the Committee on the Rules of Evidence to decline adoption of an amendment to New Jersey Rule of Evidence 702 that would provide needed clarity for trial courts with respect to their gatekeeping responsibilities for expert evidence. The proposal was modeled on similar amendments to Federal Rule of Evidence 702 (FRE 702) that have already been adopted by other states with similar approaches to expert evidence admissibility as New Jersey.

The purpose of rules governing the admissibility of scientific and other expert evidence is to give judges the tools for admitting only testimony that is reliable and can assist the trier-of-fact in making its factual determinations. As in New Jersey, the federal judiciary has instructed trial courts to be gatekeepers of science in their courtrooms by requiring them to assess each expert's assertions independently and assure they are based on sound scientific principles and applied in a reliable fashion. The federal judiciary recently adopted amendments to FRE 702 to clarify this responsibility and make sure courts are applying this rule uniformly. New Jersey would benefit from these same types of modernizations to state Rule of Evidence 702.

**The Amendment Reflects a Carefully Developed Approach
to Judges' Gatekeeper Duties**

As the Court is probably aware, FRE 702 is an outgrowth of the "*Daubert* trilogy"—a series of United States Supreme Court cases in the 1990s that articulated the standards for admitting expert testimony in federal court: *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,¹ *Kumho Tire Co. v.*

¹ 509 U.S. 579 (1993).

Carmichael,² and *General Electric Co. v. Joiner*.³ In 2000, the federal judiciary codified these holdings and added further safeguards to FRE 702 to ensure the reliability of expert testimony. As the advisory committee’s note accompanying the 2000 amendments explained,

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In *Daubert* the Court charged trial judges with the responsibility of acting as gatekeepers to exclude unreliable expert testimony, and the Court in *Kumho* clarified that this gatekeeper function applies to all expert testimony, not just testimony based in science. The amendment affirms the trial court’s role as gatekeeper and provides some general standards that the trial court must use to assess the reliability and helpfulness of proffered expert testimony.⁴

The federal judiciary then amended FRE 702 again in December 2023 to reinforce the trial judge’s gatekeeping role and prevent misapplication of the rule. Like the 2000 amendments, these changes were the product of years of study and deliberation.⁵ Specifically, they emphasize that a proponent of expert testimony must show that the testimony “more likely than not” meets the rule’s admissibility requirements and that “each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert’s basis and methodology.”⁶

New Jersey Rule of Evidence 702 was adopted in 1993, the same year the U.S. Supreme Court issued its *Daubert* decision, but has not had any of these modernizations. This Court has tried to “reconcile” New Jersey’s expert evidentiary standards with *Daubert* principles, recognizing that the state and federal standards share “the same common goal.”⁷ Therefore, it would make sense for New Jersey to consider the same types of amendments the federal judiciary has concluded were needed for trial courts to achieve this goal.

² 526 U.S. 137 (1999).

³ 522 U.S. 136 (1997).

⁴ Fed R Evid 702 advisory committee’s note to 2000 Amendment (internal citation omitted).

⁵ See Mark Behrens & Andrew Trask, *Federal Rule of Evidence 702: A History and Guide to the 2023 Amendments Governing Expert Evidence*, 12 Tex. A&M L. Rev. 43 (2024).

⁶ Fed. R. Evid. 702 advisory committee’s note to 2023 amendment.

⁷ *In re Accutane Litigation*, 191 A.3d 560, 564 (N.J. 2018).

Aligning New Jersey's Rules of Evidence with FRE 702 Would Also Keep New Jersey within Mainstream Jurisprudence Among the States

Many states have amended their rules of evidence to mirror, or at least more closely align with, the FRE 702 clarifications given the importance of ensuring the reliability of expert evidence in their courtrooms. Since FRE 702 was amended less than two-and-a-half years ago, at least nine states—Arizona, Kansas, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, South Dakota, and Wisconsin—have adopted amendments to follow the 2023 revisions.⁸ Additionally, the Delaware Supreme Court issued a decision last year embracing the 2023 amendments to FRE 702.⁹ Similar rule reform efforts have reportedly been initiated in at least 11 other states.¹⁰

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For these reasons, I encourage the Court to adopt the proposed amendment to New Jersey Rule of Evidence 702. This amendment clarifies existing rules in ways that reinforce their fundamental purpose. Thank you for the opportunity to submit this comment.

Respectfully submitted,



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⁸ See [Order](#), In the Matter of Rule 702, Rules of Evidence, No. R-23-0004 (Ariz. Aug. 24, 2023) (effective Jan. 1, 2024); [Kan. S.B. 398](#) (2026) (amending Kan. Stat. Ann. § 60-456); [Order](#), In Re: Amendment of Rule 506 and Rule 702 of the Kentucky Rules of Evidence (Ky. June 24, 2024); [La. S.B. 16](#), Act. No. 88 (2024) (amending La. Code of Evid. art. 702); [Order](#), Amendments of Rules 702 and 804 of the Michigan Rules of Evidence, ADM File No. 2022-30 (Mich. Mar. 27, 2024); [Amendments to Ohio Rules of Practice and Procedure](#) (Ohio July 1, 2024); [Okla. S.B. 453](#) (2025) (amending Okla. Stat. tit. 12, § 2702); [Order](#), In the Matter of the Amendment to SDLC 19-19-702 (N.D. Feb. 25, 2026) (effective Mar. 31, 2026); Wis. S.B. 459, [2025 WI Act 92](#) (2026).

⁹ *In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1134-35 (Del. 2025).

¹⁰ See [State Evidentiary Rule Reform](#), Don't Say Daubert, (identifying rule reform initiatives in Alabama, Florida, Georgia, Illinois, Indiana, Mississippi, Missouri, North Carolina, Pennsylvania, Tennessee, and Wyoming).