

2026 MID-CYCLE REPORT
OF THE SUPREME COURT COMMITTEE
ON THE RULES OF EVIDENCE



March 2026

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I. RULE AMENDMENTS CONSIDERED AND REJECTED

A. New Jersey Rules of Evidence 702, Testimony by Experts – Amending Rule to Model Federal Rules of Evidence 702

1. Referral Overview

The Supreme Court Committee on the Rules of Evidence (Committee) received a referral from the New Jersey Defense Association (NJDA), dated October 21, 2024, requesting that the New Jersey Rules of Evidence, Rule 702 (N.J.R.E. 702), be amended to mirror the current Federal Rules of Evidence, Rule 702 (F.R.E. 702). In its referral, the NJDA sought an "unambiguous rule" to "clarify existing law regarding the admissibility of expert testimony and the gatekeeping role of trial judges to prevent unreliable expert testimony from reaching juries." It accordingly urged the Committee to consider modeling N.J.R.E. 702 after the 2023 amendment to F.R.E. 702. It noted F.R.E. 702 was amended "to fix widespread misapplication of the Rule by courts," and contended that a similar amendment was needed in New Jersey.

Although the NJDA credited the Supreme Court's decision in In re Accutane Litigation, 234 N.J. 340 (2018), as improving the quality and admissibility of expert testimony in New Jersey, it cited two unpublished Appellate Division cases (Barden v. Brenntag North America, Inc., No. A-47-20 (App. Div. Oct. 3, 2023); Fredella v. Township of Toms River, No. A-3196-21 (App. Div. Feb. 22, 2024)), for the proposition that New Jersey trial courts continue to struggle with applying correctly

the applicable evidentiary principles resulting in the admission of unreliable expert testimony.

2. Prior Review by the Committee

The Committee's consideration of the NJDA's request was informed, in part, by its prior research and reports, which we address for purpose of background and context. In 2000, the Committee discussed whether New Jersey should adopt the federal Daubert standard for the admission of expert testimony. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, (1993). The Committee determined it would take no action on the issue, based on the belief that federal case law interpreting Daubert was then still unsettled, whereas N.J.R.E. 702's jurisprudence remained sound law. The Committee's 2000-2002 report stressed that "it would be a mistake to change our rule to conform with the federal standard before the standard is well-defined." See Appendix A, 2013 Rule 702 Subcommittee Report, p. 2 (quoting 2000-2002 Report of the Supreme Court Committee on the Rules of Evidence (Feb. 8, 2002)).

In 2008, on its own initiative, the Committee recommended an amendment to N.J.R.E. 702. Without specifically endorsing and adopting the federal Daubert standard, the Committee proposed expressly adopting the reliability standard that had developed from our caselaw into our evidence rules. The Committee proposed the following amendments to the N.J.R.E. 702 (with alterations underlined):

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, provided that the basis for the testimony is generally accepted or otherwise shown to be reliable.

Pursuant to the Committee's then proposal, New Jersey courts would retain more flexibility in clarifying and refining its own reliability test, rather than adopting the Daubert body of caselaw. Ultimately, the New Jersey Supreme Court did not accept this proposal.

In 2013, the Committee received a directive from the Supreme Court to consider: (1) whether "N.J.R.E. 702 and related case law are so unclear that New Jersey's trial courts are applying inconsistent standards in admitting expert testimony" and, (2) "whether current law is creating other problems, such as attracting a disproportionate number of negligence cases to the State, especially mass tort cases, that might otherwise be filed in other jurisdictions." Following a comprehensive report from a subcommittee, the Committee concluded that neither N.J.R.E. 702, nor our New Jersey caselaw interpreting the Rule, was "unclear." To the extent trial courts were applying inconsistent standards in admitting expert testimony—a premise that the Committee did not necessarily adopt—the Committee concluded it was not due to any lack of clarity from the Court regarding the

requirements for expert testimony admissibility. See Appendix A, 2013 Rule 702 Subcommittee Report.

3. Current Subcommittee Review

In response to the NJDA's referral, the Committee formed a subcommittee, chaired by Judge James R. Paganelli to consider the referral and whether an amendment to N.J.R.E. 702 was warranted. After a detailed and thorough examination of the issue, the subcommittee recommended against amending N.J.R.E. 702.

While the subcommittee did not prepare a formal report, its meeting minutes detailed its deliberative process. The subcommittee's approach was to determine whether there was any "trend" in how the Court addressed N.J.R.E. 702, and whether caselaw indicated any need for the amendment. To address this question, the subcommittee planned to review Appellate Division and trial court opinions (published and unpublished), and any law review or scholarly articles, to determine if clarity and reaffirmation of the gatekeeping role was necessary.

The subcommittee reconvened on September 29, 2025. Its review included a legal memorandum addressing the history of N.J.R.E. 702 and relevant caselaw, published and unpublished Appellate Division cases applying N.J.R.E. 702, and a letter from the Office of the Public Defender articulating its concerns about the current state of N.J.R.E. 702. We address these materials in the next section.

After detailed review and discussion, the subcommittee voted unanimously, with one abstention, to recommend maintaining the current language of N.J.R.E. 702. The subcommittee recommended that amending N.J.R.E. 702 would not further the goals of "clarity" and "reaffirmation of the gatekeeping role" of the courts and concluded the language of the Rule and New Jersey's interpreting case law was sufficiently clear. It determined that the appropriate redress, if any, related to better training and education for trial court judges on how to enforce and otherwise implement the N.J.R.E. 702 and applicable case law.

4. Review of the Rules and Current Caselaw

New Jersey's Rule 702 states that, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise." This language mirrors the original F.R.E. 702 language from its adoption in 1975. F.R.E. 702 has since been amended three times. The most recent amendment, from 2023, provides (with alterations underlined):

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

[F.R.E. 702 (emphasis added).]

As explained in the "Advisory Committee Notes" to the 2023 Amendments, F.R.E. 702 was amended in two respects. First, the amendment addressed the concern that many courts improperly framed "the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology," as "questions of weight and not admissibility." Thus, the Advisory Committee stated the rule was "amended to clarify and emphasize that expert testimony may not be admitted unless the proponent demonstrates to the court that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule," citing F.R.E. 104(a).

Second, the Advisory Committee commented the rule was "amended to emphasize 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." It noted that just as juries may lack the specialized knowledge to meaningfully evaluate the reliability of scientific and other methods underlying the expert testimony, they

"may also lack the specialized knowledge to determine whether the conclusions of an expert go beyond what the expert's methodology may reliably support."

In considering the NJDA's request, the subcommittee reviewed recent and relevant New Jersey caselaw addressing the appropriate standard to evaluate the admissibility of expert evidence under N.J.R.E. 702, specifically, State v. Olenowski, 253 N.J. 133 (2023) (Olenowski I); State v. Olenowski, 255 N.J. 529 (2023) (Olenowski II); In re Accutane Litigation, 234 N.J. 340 (2018); Lanzo v. Cyprus Amax Minerals Co., 467 N.J. Super. 476 (App. Div. 2021); Matter of Civil Commitment of A.Y., 458 N.J. Super. 147 (App. Div. 2019); Benjamin-Carter v. Fontanetta, No. A-2154-23 (App. Div. Feb. 4, 2025), certif. denied, 262 N.J. 366 (2025); and State v. Lee, No. A-3125-22 (App. Div. Apr. 4, 2025).

In Accutane, 234 N.J. at 398, New Jersey formally adopted the Daubert factors to determine the admissibility of expert opinion in our civil litigation, albeit with qualifications. The Court framed the Daubert factors as "provid[ing] a helpful—but not necessary or definitive—guide for our courts to consider when performing their gatekeeper role concerning the admission of expert testimony." Id. at 398-99. Moreover, the Court clarified that "[i]n adopting use of the Daubert factors, we stop short of declaring ourselves a 'Daubert jurisdiction.'" Id. at 399.

Next, in Olenowski I, 253 N.J. at 151-52, the Court adopted the "Daubert-type standard" articulated in Accutane for criminal and quasi-criminal proceedings. The Court noted, however, that in Accutane, it "declined to declare New Jersey 'a

Daubert jurisdiction' and did not 'embrace the full body of Daubert case law' from other 'state and federal courts.'" Id. at 149 (quoting Accutane, 234 N.J. at 399). The Court continued this commentary in Olenowski II, 255 N.J. at 584, stating its prior rulings "cautioned that the Daubert factors should not be applied rigidly, and that New Jersey evidence principles ultimately govern admissibility in our state courts." (citing In re Accutane, 234 N.J. at 398-99; Olenowski I, 253 N.J. at 147-49, 154).

The NJDA contends that notwithstanding these decisions, New Jersey lacks clarity regarding the standard for admissibility of expert testimony and the role of trial judges as gatekeepers. As noted, it cited two unpublished cases in support. First, in Fredella, slip op. at 19-20, the Appellate Division remanded the matter for the trial court to more fully consider the admissibility of the expert's opinion consistent with the factors set forth in Accutane. In that case, the doctor was an expert in toxicology and offered opinions on how the plaintiff's heroin use may have contributed to his car accident. Id. at 20. The Appellate Division concluded that the trial court failed to properly assess whether he was qualified to offer an opinion about how heroin impacted the plaintiff's vision, as he was not an expert in ophthalmology. Id. at 21.

The NJDA also cited Barden, slip op. at 8, where the Appellate Division held "the trial court misapplied the well-established judicial gatekeeping procedures," and accordingly reversed and remanded the matter for a new trial. In Barden, the trial court failed to hold a Rule 104 hearing and made no legal determinations about the

reliability of the expert's methodology, which the Appellate Division criticized because the expert failed to identify the data he used to form his opinion, and did not specify how the authorities he relied upon provided comparable data from other experts in the same field. Id. at 21.

In addition, the subcommittee reviewed Lanzo, 467 N.J. Super. at 476. In that case, the Appellate Division held the trial court failed to perform its gatekeeping function in admitting the testimony of two expert witnesses in an asbestos action. Id. at 511-13. The court did not conduct a Rule 104 hearing to perform the analysis required by Accutane, and failed to "assess the methodology, or the underlying data used by the two experts to form their opinion." Id. at 507.

In another case reviewed by the subcommittee, A.Y., 458 N.J. Super. at 168, the Appellate Division determined the trial court did not err in admitting certain expert opinions. The Appellate Division concluded the experts did not proffer an inadmissible net opinion because their testimony was based "on a comprehensive review of data and information of the type relied upon by others in their scientific community," including their own evaluation of the subject and their review of prior evaluations, treatment records, and actuarial documents, all of which supported their conclusions. Id. at 170-71.

Next, in unpublished case, Lee, slip op. at 2-3, the Appellate Division held the trial court erred in failing to conduct a Rule 104 hearing to review the reliability of the fingerprint analysis evidence under the Daubert standard. As the Lee court

explained, the trial court erroneously "focused on the historical acceptance of fingerprint evidence" without ever considering defendant's supported challenge to the underlying methodology. Id. at 23-24.

The subcommittee also considered Benjamin-Carter, slip op. at 12-18. In Benjamin-Carter, id. at 17, the Appellate Division reversed the trial court's finding that the proffered expert was unqualified and that his opinion on causation was an inadmissible net opinion. The Appellate Division concluded that while the doctor was not qualified to opine on the standard of care for pathologists, he was qualified to opine "on the diagnostic failures of emergency room personnel, and the consequences which flowed from them." Id. at 14-15. Moreover, it concluded that his opinion was "sufficiently grounded in facts and clearly articulated methodology" as to be admissible. Id. at 18.

5. The Committee's Deliberations

The Committee considered NJDA's referral in light of this caselaw and disagreed on two broad fronts. First, there was an initial dispute as to whether our trial courts misunderstood or struggled to exercise their gatekeeping authority to determine the admissibility of expert evidence under N.J.R.E. 702. Second, to the extent there was such an ongoing issue, members disagreed on whether a rule amendment was necessary to address this point.

As to the first issue, several members disagreed with the premise that our trial courts struggled in exercising their gatekeeping authority, viewing the cases cited

above as outliers that were corrected through appellate review. A member of the judiciary commented that this discussion may be premature, as New Jersey's Daubert-like standard is fairly new, and there have been limited cases applying Olenowski II. Thus, the judge reasoned, it may take some time to see how our courts apply and interpret these decisions, which may render amendment of N.J.R.E. 702 unnecessary. Another member of the judiciary disagreed that any problem lay solely in the trial court's "gatekeeping." For example, the judge noted that issues relating to expert evidence may not be fully raised or disputed before the trial court, but then are argued robustly on appeal, giving the impression that the trial judge was derelict in his or her responsibilities, when really the issue was not fully presented below.

However, at least one member—including a representative from the Office of the Public Defender—cautioned that we may not know the full extent of any gatekeeping issues, as not all cases with expert evidence result in trial and/or appeal. This was particularly true in criminal proceedings, where there may be rulings regarding expert testimony that are never appealed, as the defendant enters into a plea. Other members accepted the premise that our trial courts struggled with how to interpret N.J.R.E. 702, and/or that there was a lack of clarity in the Rule's language, which justified amending the Rule.

Next, the Committee considered whether it should amend N.J.R.E. 702 to model F.R.E. 702. Many members opposed this proposal, opining that adopting F.R.E. 702's language inevitably would result in New Jersey's adopting federal

caselaw interpreting the Daubert factors. This, in turn, would run contrary to the Supreme Court's caution that although it was adopting a Daubert-like standard, it was not adopting the full body of caselaw from Daubert jurisdictions. Accutane, 239 N.J. at 399; Olenowski I, 253 N.J. at 419; Olenowski II, 255 N.J. at 584. Relatedly, a law professor from Seton Hall Law School expressed concern that amending N.J.R.E. 702 would give the impression that our prior caselaw interpreting the "old" N.J.R.E. 702 was no longer valid, and our courts and practitioners would instead turn to caselaw interpreting F.R.E. 702 instead. More generally, some members contended that if the Supreme Court wished for New Jersey to adopt F.R.E. 702, it would have so directed in its recent decisions interpreting N.J.R.E. 702.

Proponents of the rule change disagreed that adopting F.R.E. 702's language meant adopting federal caselaw, given our Supreme Court's strong language to the contrary. Members of the judiciary and a member from the Office of the Public Defender reasoned that adopting F.R.E. 702's language does not require our courts to apply federal case law any more than moving towards the Daubert standard requires such a move. Moreover, they reasoned this could easily be prevented by addressing in the comments to the Rule that in adopting F.R.E. 702's language, New Jersey was not adopting federal caselaw. A law professor from Rutgers Law School acknowledged that while our courts and practitioners may look to federal caselaw for issues that New Jersey caselaw has yet to address, this could be a benefit, particularly given the rapidly changing landscape of scientific testimony.

Further, an associate dean of Rutgers Law School viewed amending N.J.R.E. 702 as entirely consistent with, if not supported by, our Supreme Court's decisions. First, he noted, in Accutane, 234 N.J. at 388, the Court had commented on this Committee's decision not to revise N.J.R.E. 702, even as our caselaw moved away from the Frye¹ test and towards a Daubert-like test. In adopting the Daubert factors, the Court said, "we can and should have more clear direction to courts on how the gatekeeping function is properly performed." Id. at 390. The member reasoned that in adopting the Daubert factors, the Court essentially was supporting adoption of F.R.E. 702, and its main caveat against transforming New Jersey into a Daubert jurisdiction was to avoid adopting federal caselaw interpreting this standard. Id. at 399; Olenowski I, 253 N.J. at 154. Moreover, he cited to a footnote in Olenowski II, 255 N.J. at 583, n.26, that N.J.R.E. 702 was modeled after F.R.E. 702 before it was amended. Now that F.R.E. 702 has been amended to better reflect the Daubert factors, and the Supreme Court has also embraced the Daubert standard, the member reasoned that a similar revision to our rules would be warranted (assuming it was not warranted earlier, following our Supreme Court's decisions in Accutane and Olenowski I).

Proponents to the proposed amendment viewed F.R.E. 702's language as providing more simplicity and clarity to judges and practitioners, who could then

¹ Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

rely primarily on the Rule's language when raising/addressing issues of expert admissibility, rather than also scouring through caselaw to ascertain what factors one must review. To that end, a member from the judiciary noted that while an evidentiary rule could not mirror all the language contained in our caselaw, F.R.E. 702's language better reflected our caselaw. In particular, the judge emphasized that F.R.E. 702(b) included language relating to the net opinion rule, which is not reflected in N.J.R.E. 702. Including this language in our Rule was important, the judge argued, because it related not to just the admissibility of the underlying methodology, but whether the expert has reliably applied the methodology. In support, the judge cited two unpublished decisions, State v. Jacobs, No. A-122-33 (App. Div. Dec. 23, 2024) and State v. Venable, No. A-3391-21 (App. Div. March 13, 2025), both of which were tried pre-Olenowski and which involved a net opinion analysis.

A member from the Office of the Public Defender concurred on this point, but asked for more pointed language to address this, beyond what is contained in F.R.E. 702. Such language would highlight the court's role as gatekeeper to determine not only whether a field is foundationally reliable, but whether the expert's application of the field is reliable, rather than concluding that this goes to "weight not admissibility." The member emphasized the need for judicial gatekeeping because jurors are unable "to evaluate meaningfully the reliability of scientific and other methods underlying expert opinion," and thus "may also lack the specialized

knowledge to determine whether the conclusions of an expert go beyond what the expert's basis and methodology may reliably support." (citing Daniel Capra, The 2023 Amendment to Federal Rule of Evidence 702: The Inside Story, 108 *Judicature* 27, 31 (2025)).

A law professor from Seton Hall Law School disagreed with the view that one needed to amend the Rule to reflect our caselaw. He said New Jersey was not an outlier in declining to adopt the amended versions of F.R.E. 702. Other jurisdictions declined to follow F.R.E. 702 altogether, and others, like New Jersey, still utilized the original F.R.E. 702 language, adopting a Daubert-like standard without amending their Rule 702, instead relying on their caselaw to define the process and standards for the admissibility of expert testimony.

A member from the Office of the Public Defender viewed N.J.R.E. 702 as suffering from a lack of clarity on additional grounds, including a lack of guidance on the form and scope of a N.J.R.E. 702 hearing, and the type of analysis expected from the court in its decision following such a hearing. That member, and another member from the Bar, contemplated other amendments to the Rule, beyond mirroring F.R.E. 702's language. For instance, the member took issue with F.R.E. 702, to the extent it placed the burden on the proponent to demonstrate the reliability of proposed expert testimony to a "more likely than not" standard, as New Jersey imposes a higher standard of evidence, requiring the proponent to "clearly establish" the reliability of proposed expert testimony. State v. Nieves, 262 N.J. 161, 220

(2025). Thus, while the member did not support adopting F.R.E. 702's language in full, her office otherwise supported amendment to N.J.R.E. 702, as articulated above.

Finally, the Committee considered whether the issues discussed herein could be addressed by means other than amending the language of N.J.R.E. 702. Specifically, while the subcommittee concluded no amendment to our Rule was necessary, to the extent there was an issue in interpreting or applying the Rule, it recommended that this would be best addressed through continued education of our trial judges on their gatekeeping responsibilities under N.J.R.E. 702. Such an approach was supported by many members, including those who believed there were no gatekeeping issues, those who believed we should adopt F.R.E. 702's language, and those who fell in between—finding that our courts could benefit from some guidance, but that an amendment to our Rules was not necessary.

As noted, some members disagreed with the framing that this was a judicial education issue. Thus, they argued, it was too simplistic to frame it as a trial court issue—that trial judges did not understand N.J.R.E. 702 or our interpreting caselaw—as the issue oftentimes was not properly presented to the trial court to adjudicate in the first instance. Others concurred, insofar as they believed better training overall, for both judges and practitioners, would assist in how to present, challenge, and admit expert testimony in accordance with N.J.R.E. 702 and interpreting caselaw.

Following this robust discussion, the Committee voted with a clear majority (sixteen versus five) against amending N.J.R.E. 702 to model F.R.E. 702. This tally does not include "yes" votes from two members, who did not support adoption of F.R.E. 702, but otherwise supported amendment of the Rule if additional language was adopted.² Ultimately, while our caselaw has changed since 2013, our opinion remains the same—that the language of the current N.J.R.E. 702 and our caselaw interpreting the same is sufficiently clear to direct the trial court on its gatekeeping responsibilities. This vote appears consistent with the approach of other jurisdictions. While some states have adopted the more recent (2023 and 2011) versions of F.R.E. 702, many—including New Jersey—follow the original version of the statute, while others follow their own approaches altogether. See Appendix B, 50 State Survey Reviewing Adoption of F.R.E. 702.

That said, given the extent of the internal discussions engaged in by the Committee, and because this is a relatively new and/or evolving area of the law, the Committee believes all members of the bar, including trial and appellate judges and practitioners, would benefit from additional training on how to interpret and apply N.J.R.E. 702.

² As noted, the member from OPD commented that New Jersey imposes a higher burden on the proponent to demonstrate the reliability of the proposed expert testimony, with New Jersey requiring that the proponent "clearly establish" the reliability, versus F.R.E. 702's "more likely than not" standard.

II. CONCLUSION

The members of the Supreme Court Committee on the Rules of Evidence appreciate the opportunity to serve the Supreme Court.

Respectfully submitted,

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Dated: March 2026

III. APPENDICES

- A. 2013 Rule 702 Subcommittee Report (without attachments)**
- B. 50 State Survey Reviewing Adoption of F.R.E. 702**

APPENDIX A:

2013 RULE 702 SUBCOMMITTEE REPORT
(WITHOUT ATTACHMENTS)

**2013 - 2015 REPORT OF THE
SUPREME COURT COMMITTEE ON
THE RULES OF EVIDENCE
Part II**



January 15, 2015

N.J.R.E. 702 SUBCOMMITTEE REPORT

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The N.J.R.E. 702 subcommittee was formed to address the Supreme Court's directive to provide the Court with a report to determine if (1) "N.J.R.E. 702 and related case law are so unclear that New Jersey's trial courts are applying inconsistent standards in admitting expert testimony" and, (2) "whether current law is creating other problems, such as attracting a disproportionate number of negligence cases to the State, especially mass tort cases, that might otherwise be filed in other jurisdictions."

In furtherance of the subcommittee's charge, we gathered an abundance of information including (1) court statistics depicting the number of filings for the past ten years in case types most likely to necessitate expert testimony, (2) analyses of reported and unreported cases involving N.J.R.E. 702, (3) a comparison of how other states determine admissibility of expert testimony, (4) research analyzing the history and application of the three-part test for admissibility set forth in State v. Kelly, 97 N.J. 178 (1984) and repeatedly applied by the Supreme Court and in other published cases, (5) memos and e-mails from various groups setting forth their arguments as to why we should/should not amend N.J.R.E. 702 and (6) journal and research articles focusing on the present criteria of Fed. R. Evid. 702, as amended in 2000, and the adoption of same or similar standards by state courts.

This is not the first time the Supreme Court Committee on the Rules of Evidence ("Committee") has been directed to study N.J.R.E. 702. On November 16, 2000, the Committee discussed whether New Jersey should adopt the federal Daubert standard for the admission of expert testimony. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). The Committee reached a consensus that it should take no action on the issue based on the belief that federal case law interpreting Daubert was then still unsettled and New Jersey's jurisprudence regarding the admission of expert testimony remained sound law. The Committee's 2000-2002

report stressed that "it would be a mistake to change our rule to conform with the federal standard before the standard is well-defined." 2000-2002 Report of the Supreme Court Committee on the Rules of Evidence (Feb. 8, 2002).

The Committee addressed the issue again in 2008. It recommended in the 2007-2009 report to the Supreme Court that, without specifically endorsing and adopting the federal Daubert standard, the reliability aspect of the standard evolving from our State's case law should be expressly incorporated into the Rules of Evidence. The Committee noted that the New Jersey courts would retain more flexibility in clarifying and refining its own reliability test under state law, rather than importing wholesale the federal criteria and federal case law under Daubert. Specifically, the Committee recommended N.J.R.E. 702 should be amended to provide (additions underlined):

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, provided that the basis for the testimony is generally accepted or otherwise shown to be reliable.

The New Jersey Supreme Court did not accept this recommendation, although the Court's substantive objections to that particular proposal are not known.

Since some of our current members were not on the Committee when we last considered N.J.R.E. 702, this report will briefly set forth the standards in the federal courts and New Jersey for determining the admissibility of expert testimony.

BACKGROUND OF FEDERAL LAW

The federal standard for determining the admissibility of expert testimony is guided by Fed. R. Evid. 702, as well as case interpretations of the rule. Prior to the 1975 enactment of the Federal Rules of Evidence, Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923), established

that the admissibility of expert testimony was held to the "general acceptance" test. The District of Columbia Appellate Court famously stated, "[w]hile courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs." Ibid.

Frye remained the dominant standard even after the initial adoption of the Federal Rules of Evidence in 1973. Twenty years later, the United States Supreme Court held that Fed. R. Evid. 702 superseded Frye. Daubert, 509 U.S. 579, 580. The Court noted that the drafting history did not mention Frye, and that a strict interpretation of the "'general acceptance' requirement would be at odds with the 'liberal thrust' of the Federal Rules." Id. at 588. In sum, Daubert confirmed the trial court's role in screening expert testimony at a preliminary hearing and recognized that it would be unreasonable to know the subject matter of testimony to an absolute degree of certainty. Id. at 590.

The Daubert test provides non-exclusive guidelines for a trial court to assess, including (1) whether the scientific knowledge can be or has been tested, (2) whether the methodology relied on has been subject to peer review or publication, (3) whether there is a known or potential rate of error, and (4) whether the theory or technique enjoys general acceptance in the scientific community. Id. at 593-94. Though "general acceptance" was maintained as a consideration, it is no longer "a necessary precondition to the admissibility of scientific evidence." Id. at 597. In sum, the Court declared that "the Rules of Evidence – especially Rule 702 – do assign to the trial judge the task of ensuring that an expert's testimony both rests on a *reliable* foundation and is *relevant* to the task at hand." Ibid. (emphasis added).

After Daubert, the United States Supreme Court elaborated on the new standard in General Electric Co. v. Joiner, 522 U.S. 136 (1997). Joiner held that abuse of discretion was the proper standard of review for determinations as to admissibility, but that a trial court could nevertheless exclude testimony that used reliable methodology. Id. at 146. ("A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered."). In the third decision of what has been referred to as "the Daubert trilogy," the Supreme Court held that Daubert applies to all experts and not just scientific experts. See Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137 (1999) (holding that the federal standard for expert testimony applies to engineers and other experts who are not scientists).

Fed. R. Evid. 702 was amended in 2000 to encompass the aforementioned developments.

Prior to the 2000 amendment, Fed. R. Evid. 702 stated:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

After the 2000 amendment Fed. R. Evid. 702 stated:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods;
- and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

In the advisory committee notes, an explanation of the Daubert trilogy was provided. Fed. R. Evid. 702 advisory committee's note ("The standards set forth in the amendment are broad enough

to require consideration of any or all of the specific Daubert factors where appropriate."'). However, the notes stated that the amendment was not an attempt to codify specific factors, as Daubert indicated that none of the proffered considerations are dispositive. Ibid.

DEVELOPMENT OF NEW JERSEY LAW

In New Jersey, cases that require courts to determine admissible expert testimony all use the same guidelines that have been established in Kelly, 97 N.J. at 208. These guidelines, which are not explicitly stated in the text of N.J.R.E. 702, are found in the first comment following N.J.R.E. 702. Current N.J. Rules of Evidence, comment on N.J.R.E. 702. This three-part test, that was established through New Jersey case law and is used in all expert testimony cases, reads as follows:

(1) [T]he intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the art such that an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony.

Id. at 208. The history of the Kelly test can be found in Document 3.

Since the Kelly test was developed it has been cited in practically all New Jersey cases that involve the admission of expert testimony. The case itself is cited directly by over 430 cases and many other cases cite to the three-part test without mention of Kelly. The most notable cases that cite to the three-part Kelly test are Rubanick, Landrigan, and Kemp. Rubanick v. Witco Chemical Corp., 125 N.J. 421, 431-432 (1991); Landrigan v. Celotex Corp., 127 N.J. 404, 414-15 (1992); and Kemp v. State, 174 N.J. 412, 424 (2002).

Two years before the Daubert opinion, the New Jersey Supreme Court in Rubanick, 125 N.J. 421, relaxed the "general acceptance" standard for the admissibility of expert testimony in toxic-tort litigation. Noting that the Third Circuit was more flexible with the reliability of

emerging scientific theories in toxic-tort litigation, the Court held that a new scientific theory in that particular subject matter can be reliable "if it is based on sound methodology that draws on scientific studies reasonably relied on in the scientific community, and has actually been used and applied by responsible experts or practitioners in the particular field." Id. at 447. Notably, the Court in Rubanick also quoted from and applied features of the general admissibility test it had previously announced in Kelly, including whether the field of science involved "must be at a state of the art such that an expert's testimony could be sufficiently reliable." Id. at 431-32 (quoting Kelly, 97 N.J. at 210).

Unlike the federal approach, which required a separate determination for the reliability of the data used *and* the methodology used to interpret the data, Rubanick distinguished the corresponding State rule as employing a single determination of reliability. Id. at 228. Rubanick also provided a distinct explanation of qualifications for the proffered expert, such as sufficient education in their field, an ability to assess data and apply scientific methodology, and an explanation of the conclusion reached. Id. at 449. Moreover, future trial courts were directed to consider whether "comparable experts accept the soundness of the methodology" and actually rely on that information. Id. at 451-52.

One year later, the Court in Landrigan, 127 N.J. 404, provided additional substance to the new toxic-tort law requirements for the admission of expert testimony. The Court reaffirmed the Kelly test, quoting all three Kelly factors and identifying them as "basic requirements" of the evidence rule. Id. at 413. In addition, the opinion announced that the proffered expert should be able to "identify the factual bases for their conclusions, explain their methodology, and demonstrate that both . . . are scientifically reliable." Id. at 417. For guidance, an expert may draw support from professional journals, texts, conferences, symposia, or judicial opinions accepting the

methodology. Id. at 417. In other words, the court should examine each step in the witness' reasoning. Id. at 421. Significantly, the Court reaffirmed in Landrigan the Kelly test, this time quoting all three Kelly factors and identifying them as "basic requirements" of the evidence rule. Id. at 413.

In 1992, the Court adopted N.J.R.E. 702 to replace Evid. R. 56(2) and tracked the language of the then-existing version of Fed. R. Evid. 702. The current rule reads as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

N.J.R.E. 702 official comment states that:

Rule 702 follows Fed. R. Evid. 702 verbatim and makes only minor language changes in the first sentence of Evid. R. 56(2). The foundation requirement set forth in Evid. R. 19 has been omitted as necessarily implied by the use in this rule of the generic word "witness" rather than the more limited word "expert" used in the 1967 New Jersey analogue. Note further for that reason, the applicability of the general conditional acceptance provision of Rule 104(b) to the proffered testimony of an expert witness. Consequently the similar provision of N.J.R.E. 19 is redundant.

This rule intends to incorporate New Jersey case law establishing the general criteria for admissibility of expert testimony articulated by State v. Kelly, 97 N.J. 178, 208 (1984). As restated by Landrigan v. The Celotex Corporation, 127 N.J. 404, 413 (1992), these criteria include the requirements that "(1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the act such that an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony."

Current N.J. Rules of Evidence, comment on N.J.R.E. 702 (2014) (alteration to original).

These narrow developments relating to toxic-tort cases were expanded in Kemp, 174 N.J. 412, where New Jersey further clarified the standard for the admission of expert testimony under

the language of N.J.R.E. 702, which has displaced former Evid. R. 56(2). In explaining the rule, Kemp first confirmed that N.J.R.E. 702 tracks the 1973 version of the federal rule despite ensuing developments in the federal case law. Id. at 423-24. Specifically the court stated that "[w]e do not intend by this opinion to incorporate the Daubert factors into N.J.R.E. 702." Kemp, 174 N.J. at 424 n.3.

Next, Kemp stated that the Kelly criteria requires "(1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the art such that an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony." Id. at 424 (citing Landrigan, 127 N.J. at 413 (quoting Kelly, 97 N.J. at 208)). After evaluating the many burdens of the "general acceptance" test on other tort claims, the Court held that the exception carved out in Rubanick should be extended beyond toxic-tort litigation. Id. at 430.

In reaching this decision, the Court in Kemp explained how "[s]everal other varieties of tort litigation exist in which a medical cause-effect relationship has not been confirmed . . . but compelling evidence nevertheless suggests that such a relationship exists." Ibid. The proffered witness was a professor at a medical school and published writer, who had relied on the plaintiff's medical reports which were written by different doctors and specialists at different time periods. Id. at 418. The witness drew conclusions from the reports, explained his process of reasoning, and argued for and against competing medical studies. Id. at 431. The only problem with the proffered testimony was the witness' failure to demonstrate that his methodology was consistent with other qualified experts in the field. Id. at 431-32. However, the trial court merely evaluated a deposition, allowing the defense to more easily attack the reliability of the opinion. Id. at 432.

Kemp analyzed then existing federal precedent for determining reliability of expert testimony at an in limine hearing. Id. at 428 (citing Padillas v. Stork-Gamco, Inc., 186 F.3d 412, 417 (1999)). At the federal level, the Third Circuit emphasized how the party seeking to admit evidence should have a fair opportunity to justify their submissions. Ibid. (citing Padillas, 186 F.3d at 417). Even where a party did not request an in limine hearing, federal case law had indicated that the trial court “has an independent responsibility for the proper management of complex litigation.” Id. at 429 (citing Padillas, 186 F.3d at 417). Kemp agreed with this approach, holding that “in cases in which the scientific reliability of an expert’s opinion is challenged and the court’s ruling on admissibility may be dispositive of the merits, the sounder practice is to afford the proponent of the expert’s opinion an opportunity to prove its admissibility at a Rule 104 hearing.” Id. at 432-33.

Subsequently, in Hisenaj v. Kuehner, 194 N.J. 6, 17-18 (2008), the Court considered the reliability of the expert testimony of a biomechanical engineer offered by the defendant in a personal injury automobile accident case. The Court succinctly set forth the standard for determining reliability:

Scientific reliability of an area of research or expertise may be established in one of three ways. When an expert in a particular field testifies that the scientific community in that field accepts as reliable the foundational bases of the expert's opinion, reliability may be demonstrated. Scientific literature also can evidence reliability where that "literature reveals a consensus of acceptance regarding a technology." So long as "comparable experts [in the field] accept the soundness of the methodology, including the reasonableness of relying on [the] underlying data and information," reliability may be established. Rubanick, 125 N.J. at 451. Finally, a party proffering expert testimony may demonstrate reliability by pointing to existing judicial decisions that announce that particular evidence or testimony is generally accepted in the scientific community.

[Hisenaj, 194 N.J. at 17 (citations omitted, except Rubanick).]

The three ways of establishing reliability discussed by the Court are largely drawn from cases discussing the Frye general acceptance standard. However, the quotation from Rubanick makes clear that a multi-faceted reliability standard has been added as an alternative to the Frye general acceptance standard. See also State v. Jenewicz, 193 N.J. 440, 454 (2008) (applying reliability standards to the admissibility of an expert in a criminal case).

Notably, the Court's opinions in Hisenaj, 194 N.J. at 15-16 (describing N.J.R.E. 702 as having "three well-known prerequisites," citing the factors derived from Kelly) and Jenewicz, , 193 N.J. at 454 (repeating the three requirements of Kelly and noting that they are "construed liberally in light of Rule 702's tilt in favor of the admissibility of expert testimony") continued to endorse and apply the three-part criteria for admissibility first expressed in Kelly. These standards continue to be applied by the Court in ensuing civil and criminal opinions. See State v. Rosales, 202 N.J. 549, 563 (2010); Agha v. Feiner, 198 N.J. 50, 62 (2009); State v. Reeds, 197 N.J. 280, 290 (2009); Polzo v. County of Essex, 196 N.J. 569, 582 (2008); State v. Joseph, 426 N.J. Super. 204, 219 (App. Div. 2012); State v. Locascio, 425 N.J. Super. 474, 489 (App. Div. 2012). So, the holdings in Kelly, Rubanick, and Kemp would appear to apply not only to determining causation in toxic tort and medical malpractice cases, but also every civil and criminal case in which expert testimony is offered.

ANALYSIS

The impetus for the Court's directive appears to be the renewed requests from various civil litigation defense and business groups who urge an amendment of N.J.R.E. 702 to incorporate a three-factor reliability standard similar to the 2000 version of Fed. R. Evid. 702. However, the Court did not phrase its inquiry to the Committee this way. The Committee is not being asked whether the 2000 version of Fed. R. Evid. 702 should be adopted, either verbatim or in some

variation. Nor is the Committee being asked, as it had been in prior rules cycles, to consider generally whether the federal Daubert standard should be adopted as part of our expert witness admissibility jurisprudence. As we understand the Court's present charge, the Committee is only being asked whether current N.J.R.E. 702 and related case law are “so unclear” that “inconsistent standards” are being applied by trial judges and whether our current law is creating other problems, such as being so lax as to render New Jersey a magnet for foreign-based tort litigation.

In order to answer the questions posed to us, we had four interns conduct research on various topics. Our recommendation is based in part on the five documents attached to this report. The first document addresses the current admission of expert testimony approaches of each state to admission of expert testimony. The second document analyzes all reported and unreported cases dealing with N.J.R.E. 702. The third document sets forth the history of the Kelly three-part test. The fourth document is a chart of civil filings for the past ten years in the areas of law most effected by expert testimony and the fifth document is a 2008 study of the mass tort cases filed by non-New Jersey residents.

Based on the data the Committee has collected to date, it cannot be said that either the current version of N.J.R.E. 702 or the Court's development of the jurisprudence on the issue is unclear. Quite the contrary, the Court has been very clear in its cases, particularly Kelly, Rubanick, Landrigan, Kemp, and Hisenaj, in defining the standards for determining the admissibility of expert testimony. See Hisenaj, 194 N.J. at 17; Kelly, 97 N.J. at 197; Kemp, 174 N.J. at 424; Landrigan, 127 N.J. at 413; Rubanick, 125 N.J. at 431.

Although the Court's jurisprudence to date has not expressly adopted the Daubert standard, as some states have done, the Court's current case-law standards as pronounced in Rubanick, Landrigan, Kemp, and Hisenaj are clear. In fact, the Court in Hisenaj clearly defined and

summarized the three accepted methods for establishing scientific reliability under New Jersey law. Hisenaj, 194 N.J. at 17. If, as posited by the groups advocating a rule change, trial courts were applying inconsistent standards in admitting expert testimony, then this is not because the Court has been unclear in its case law articulating the requirements for expert testimony admissibility.

The general consensus of the subcommittee is that the language of the current N.J.R.E. 702 is not unclear or otherwise preventing the development of the law in this area. It is important to emphasize that the 2000 amendment of Fed. R. Evid. 702 did not establish the federal standard for expert witness admissibility. The 2000 amendment was essentially a housekeeping measure to more closely conform the language of Fed. R. Evid. 702 to the United States Supreme Court's already issued decisions in Daubert, Joiner and Kumho Tire. See Daubert, 509 U.S. at 580; Joiner, 522 U.S. at 141; Kumho Tire, 526 U.S. at 142. As the Fed. R. Evid. 702 advisory committee's note states: "Rule 702 has been amended in response to Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and to the many cases applying Daubert, including Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137 (1999)."

Significantly, the so-called Daubert trilogy (Daubert, 509 U.S. at 580; Joiner, 522 U.S. at 141; Kumho Tire, 526 U.S. at 142) were all decided under the original version of Fed. R. Evid. 702, which is identical to the language of N.J.R.E. 702. Thus, nothing in the language of current N.J.R.E. 702 prevents the New Jersey Supreme Court from adopting a reliability standard identical to or similar to Daubert. In fact, a number of state courts, as reflected in Document 1, have adopted the Daubert standard while still maintaining the original version of Fed. R. Evid. 702 and without adopting the 2000 version of Fed. R. Evid. 702. See, e.g., Document 1 14, 19, 25, 26, 29, 32, 33. Importantly, this is a step that the New Jersey Supreme Court to date has declined to take. In fact,

the Supreme Court in Kemp was careful to point out that "[w]e do not intend by this opinion to incorporate the Daubert factors into N.J.R.E. 702." Kemp, 174 N.J. at 424 n.3.

New Jersey falls into a specific group of states when looking at the impact that the Daubert decision has had on the admissibility of expert testimony. New Jersey is one of eight states that had its own test established prior to the Daubert decision and the subsequent change to Fed. R. Evid. 702. The states that did not have their own test previously followed the guidelines of the Federal Rule, and most amended their test to parallel the Daubert standard. Only two of the eight states that already had their own test for handling admissible expert testimony chose to adopt the Daubert standard (Oregon and Louisiana). Both of these states adopted the test because they felt as though their current guidelines were virtually the same as those set out in Daubert. The other states have expressed that because their rule is effective and well established through case law there is no reason to transition to the federal guidelines. A few of these states have mentioned why they have chosen not to follow Daubert. North Carolina contends that the Daubert test is too stringent, while Minnesota states that the test takes the authority to determine what is scientific away from scientists and gives the power to judges. Document 1 17, 23.

As noted above, the 2000 amendment of Fed. R. Evid. 702 merely conformed to the already existing case law established by the United States Supreme Court. In contrast, an amendment of N.J.R.E. 702 to track, either in verbatim or similar form, the language of Fed. R. Evid. 702 would work the opposite result. It would impose the broader federal standard by rule amendment when the New Jersey Supreme Court in its opinions has declined to do so.

The tradition in New Jersey has been for the law in this area to develop through case law, as reflected in the Court's decisions in, among others, Rubanick, Landrigan, Kemp, and Hesinaj. Nothing in the current language of N.J.R.E. 702 prevents the New Jersey Supreme Court from

adopting the Daubert standard in full or in modified form. More importantly, however, there is nothing unclear about the current pronouncement of the law as defined by the New Jersey Supreme Court or as expressed in the language of N.J.R.E. 702.

We also considered several studies on the impact of Daubert and the various approaches to its adoption or modification in the state courts. These studies suggest that the differences in the standards may not be as significant as thought. As one 2012 article published in the Supreme Court Economic Review concluded:

Daubert and its progeny, Joiner and Kumho Tire, appear to have drastically changed the way federal courts deal with scientific and, ultimately, all expert witness evidence. Moving away from the traditional Frye test, which looks at whether the expert's testimony is generally accepted in the relevant scientific community, Daubert interprets Federal Rule of Evidence 702's reliability standard as requiring methodological soundness or rigor rather than scientific consensus. By charging federal judges with this inquiry into the methods underlying the expert's claims, Daubert places those judges as gatekeepers with wide discretion in determining the admissibility of expert testimony.

Although the Court itself implied that the Daubert standard was more liberal than Frye's general acceptance test, noting that the Frye test was "rigid" and runs against the general thrust of the Federal Rules of Evidence toward reducing barriers to opinion testimony, most commentators now believe that Daubert is a more demanding standard. Given the central role of expert evidence in modern civil litigation, it is not surprising that supporters of the tort reform movement began to push for the adoption of Daubert at the state court level, while pro-plaintiff advocacy groups argued against state adoption.

Despite conventional legal wisdom and the efforts of advocacy groups, however, there is very little evidence regarding the causal effects of state adoption of the Daubert trilogy. Even at the federal level, it is not generally possible to draw causal inferences regarding Daubert as distinct from a general trend toward skepticism of expert evidence.

[Eric Helland and Jonathan Klick, Does Anyone Get Stopped at the Gate? An Empirical Assessment of the Daubert Trilogy in the

States, 20 S. Ct. Econ. Rev 1, 2-3 (2012) (internal citations omitted)].

Lastly, the statistics we received from the AOC reveal that there is a statewide decrease in new filings, but it does not indicate the filing of mass tort cases by non-New Jersey residents. Document 4. During our consideration of the issues, the New Jersey Civil Justice Institute submitted a 2008 study prepared by the law firm of McCarter & English listing the number of certain mass tort cases filed by non-New Jersey residents. According to the McCarter & English study 27,718 (or 93%) of the 29,703 mass tort cases involving ten specific products were filed by non-New Jersey residents in our state courts. Document 5. However, we have no data, for comparative purposes, of the percentages of out-of-state plaintiffs who file mass tort cases in other states, particularly in instances where those states are the home states of defendant manufacturers or companies. Even if, for the sake of discussion, New Jersey courts happen to draw a comparatively higher percentage of foreign plaintiffs than other states, the Committee has no empirical basis to ascertain whether our standards of expert opinion admissibility under N.J.R.E. 702 are responsible for that phenomenon, or whether other factors (such as substantive New Jersey products liability law, summary judgment standards, or juror demographics) play a more significant role in venue selection by potential plaintiffs.

CONCLUSION

The Supreme Court gave us a very pointed fact-finding task rather than a directive to propose a rule change. Historically, when the Supreme Court wanted us to consider a new rule, they expressly said so (prior 702 directives, forfeiture by wrongdoing hearsay exception, and 609 impeachment changes).

We have concluded that the trial courts are not applying inconsistent standards in admitting expert testimony, and there is no definite or conclusive evidence that the current law is creating

other problems, such as attracting a disproportionate number of negligence cases or other civil litigation matters to be venued in this state. Nevertheless, some members of the subcommittee perceive 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 case-law criteria more explicit within the text of the rule itself.

If in the future the Court were to request for the Committee to consider the possibility of a rule change, then the three-part Kelly test would be the best candidate for rule codification given its frequent reference in almost all New Jersey cases that involve the admissibility of expert testimony.

On the other hand, the Subcommittee is mindful of the Court's institutional interests in maintaining flexibility in the ability of future case law to refine and modify the admissibility standards without "locking in" a more detailed codified test in the text of the rule.

APPENDIX B:

50 STATE SURVEY REVIEWING ADOPTION OF
F.R.E. 702

APPENDIX B

The following is a summary review of other states' versions of Evidence Rule 702, comparing their language to the language of F.R.E. 702, to assess whether there is a general consensus across the country on the adoption of F.R.E. 702. As a caveat, this review focuses on the language of any applicable evidence rule, code, or statute, without considering any additional requirements imposed by caselaw. Per this review, eighteen states follow the more recent amendments to F.R.E. 702, from 2023 and 2011; three have adopted the language from the 2000 amendment; and eighteen states (including New Jersey) have language akin to the original F.R.E. 702, as adopted in 1975. The other eleven states have adopted their own standard, which sometimes is similar to the various versions of F.R.E. 702. For ease of review, following this table is an addendum reciting the different versions of F.R.E. 702, and the current version of N.J.R.E. 702.

50 State Survey Reviewing Adoption of F.R.E. 702

State	Adopted F.R.E. 702?	Relevant Language	Official Comment
Alabama	Yes, F.R.E. 702 (2011).	<p>Ala. R. Evid. Rule 702 (2012)</p> <p><i>(a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.</i></p> <p><i>(b) In addition to the requirements in section (a), expert testimony based on a scientific theory, principle, methodology, or procedure is admissible only if:</i></p> <p><i>(1) The testimony is based on sufficient facts or data;</i></p> <p><i>(2) The testimony is the product of reliable principles and methods; and</i></p>	<p>"The language in [Rule 702] subsections (b)(1), (b)(2), and (b)(3) is identical to language added to Rule 702 of the Federal Rules of Evidence in response to the United States Supreme Court's decision in <u>Daubert v. Merrell Dow Pharmaceuticals, Inc.</u>, 509 U.S. 579 (1993)." Advisory Committee Notes to the 2012 Amendments to Ala. R. Evidence Rule 702.</p>

		<p><i>(3) The witness has applied the principles and methods reliably to the facts of the case. . . .</i></p> <p>Ala. Code § 12-21-160 (1975)</p> <p><i>(a) Generally. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.</i></p> <p><i>(b) Scientific evidence. In addition to requirements set forth in subsection (a), expert testimony based on a scientific theory, principle, methodology, or procedure is only admissible if:</i></p> <p><i>(1) The testimony is based on sufficient facts or data,</i></p> <p><i>(2) The testimony is the product of reliable principles and methods, and</i></p> <p><i>(3) The witness has applied the principles and methods reliably to the facts of the case.</i></p>	
Alaska	Yes, F.R.E. 702 (1975).	<p>Alask. R. of Evid. 702 (1997)</p> <p><i>(a) If scientific, technical, or other specialized knowledge will assist the trier of fact to</i></p>	

		<p><i>understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.</i></p> <p>...</p>	
Arizona	Yes, F.R.E. 702 (2023).	<p>Az. R. of Evid. 702 (2024)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:</i></p> <p><i>(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i></p> <p><i>(b) the testimony is based on sufficient facts or data;</i></p> <p><i>(c) the testimony is the product of reliable principles and methods; and</i></p> <p><i>(d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.</i></p>	"Rule 702 was amended effective January 1, 2024, to conform to the changes made to Federal Rule of Evidence 702 that took effect on December 1, 2023." Comment to 2024 Amendment to Az. R. of Evid. 702.
Arkansas	Yes, F.R.E. 702 (1975).	Ar. R. of Evid. 702	

		<i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.</i>	
California	No (<u>Frye</u> jurisdiction).	<p>Cal. Evidence Code 801</p> <p><i>If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:</i></p> <p><i>(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and</i></p> <p><i>(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.</i></p>	
Colorado	Yes, F.R.E. 702 (1975).	<i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or</i>	

		<i>education, may testify thereto in the form of an opinion or otherwise.</i>	
Connecticut	Language similar to F.R.E. 702 (1975).	<p>Ct. Code of Evid. Sec. 7-2 (2018)</p> <p><i>A witness qualified as an expert by knowledge, skill, experience, training, education or otherwise may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue.</i></p>	The comments note that Connecticut "adopted an approach similar" to the <u>Daubert</u> standard in <u>State v. Porter</u> , 698 A.2d 739, 746, 754 (Conn. 1997), but that his analysis "applies only to certain types of scientific expert testimony." Commentary to Ct. Code of Evid. Sec. 7-2.
Delaware	Yes, F.R.E. 702 (2011)	<p>Del. R. Evid. 702 (2018)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:</i></p> <p><i>(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i></p> <p><i>(b) the testimony is based on sufficient facts or data;</i></p> <p><i>(c) the testimony is the product of reliable principles and methods; and</i></p> <p><i>(d) the expert has reliably applied the principles and methods to the facts of the case.</i></p>	Per the comments, Delaware amended its Rule 702 in 2001 to model F.R.E. 702 (2000), and again "in 2017 in response to the 2011 restyling of the Federal Rules of Evidence." Comment to Del R. Evid. 702. This amendment was "intended to be stylistic only," with "no intent to change any result in ruling on admissibility." <u>Ibid.</u>

Florida	Yes, F.R.E. 702 (2011)	<p>Fl. Stat. Ann. § 90.702 (2013)</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:</i></p> <p><i>(1) The testimony is based upon sufficient facts or data;</i></p> <p><i>(2) The testimony is the product of reliable principles and methods; and</i></p> <p><i>(3) The witness has applied the principles and methods reliably to the facts of the case.</i></p>	<p>Per the Editor's Note to Fl. Stat. Ann. § 90.702, the Florida Supreme Court amended the rule in 2019 in <u>In re Amendments to the Florida Evidence Code</u>, 278 So.3d 551 (2019).</p>
Georgia	Yes, F.R.E. 702 (2011).	<p>Ga. Code Ann. § 24-7-702 (2022)</p> <p>...</p> <p><i>(b) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise, if:</i></p> <p><i>(1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i></p>	

		<p><i>(2) The testimony is based upon sufficient facts or data;</i></p> <p><i>(3) The testimony is the product of reliable principles and methods; and</i></p> <p><i>(4) The expert has reliably applied the principles and methods to the facts of the case.</i></p> <p style="text-align: center;">. . .</p> <p><i>(f) It is the intent of the legislature that, in all proceedings, the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible in other states. Therefore, in interpreting and applying this Code section, the courts of this state may draw from the opinions of the <u>United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc.</u>, 509 U.S. 579 (1993); <u>General Electric Co. v. Joiner</u>, 522 U.S. 136 (1997); <u>Kumho Tire Co. Ltd. v. Carmichael</u>, 526 U.S. 137 (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases.</i></p> <p style="text-align: center;">. . .</p>	
Hawaii	Yes, F.R.E. 702 (1975).	<p>Haw. Rev. Stat. § 626-1, R. 702 (1992)</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to</i></p>	"This rule is identical with Fed. R. Evid. 702 except for the deletion of a comma after the word 'education.'"

		<i>understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. In determining the issue of assistance to the trier of fact, the court may consider the trustworthiness and validity of the scientific technique or mode of analysis employed by the proffered expert.</i>	Editor's Note to Haw. Rev. Stat. § 626-1, R. 702.
Idaho	Yes, F.R.E. 702 (1975).	Idaho R. of Evid.702 (2018) <i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.</i>	
Illinois	No (<u>Frye</u> jurisdiction).	Ill. Evid. R. 702 (2011) <i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle</i>	"Rule 702 confirms that Illinois is a <u>Frye</u> state." Comment to Ill. Evid. R. 702.

		<i>on which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs.</i>	
Indiana	Language similar to F.R.E. 702 (1975).	In. R. of Evid. 702 (2014) <i>(a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.</i> <i>(b) Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles.</i>	
Iowa	Language similar to F.R.E. 702 (1975).	Iowa Code § 5.702 (2017) <i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.</i>	

<p>Kansas</p>	<p>Yes, F.R.E. 702 (2011).</p>	<p>Kan. Stat. Ann. § 60-456 (2014)</p> <p>...</p> <p><i>(b) If scientific, technical or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue, a witness who is qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise if: (1) The testimony is based on sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has reliably applied the principles and methods to the facts of the case.</i></p> <p>...</p>	
<p>Kentucky</p>	<p>Yes, F.R.E. 702 (2000).</p>	<p>Ky. R. of Evid. 702 (2024)</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if the proponent demonstrates to the court that it is more likely than not that:</i></p> <p><i>(1) The testimony is based upon sufficient facts or data;</i></p>	<p>Per the Evidence Rules Review Commission Notes, Kentucky modeled its <u>Rule</u> 702 after F.R.E. 702, and amended it in 2007 "to follow the development and . . . exact language set by the Federal rules." Editor's Note to 2007 Amendment to Ky. R. of Evid. 702.</p>

		<p><i>(2) The testimony is the product of reliable principles and methods; and</i></p> <p><i>(3) The witness' opinion reflects a reliable application of the principles and methods to the facts of the case.</i></p>	
Louisiana	Yes, F.R.E. 702 (2023)	<p>La. Code Evid. Ann. art. 702 (2024)</p> <p><i>A. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:</i></p> <p><i>(1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i></p> <p><i>(2) The testimony is based on sufficient facts or data;</i></p> <p><i>(3) The testimony is the product of reliable principles and methods; and</i></p> <p><i>(4) The expert's opinion reflects a reliable application of the principles and methods to the facts of the case.</i></p> <p style="text-align: center;">. . .</p>	Louisiana's Article 702 expressly follows F.R.E. 702, and was amended in 2024 to model F.R.E. 702's amended language. <u>See</u> Comments to the 2024 Amendment to La. Code Evid. Ann. art. 702.

Maine	Yes, F.R.E. 702 (1975)	<p>Me. R. of Evid. 702 (2015)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if such testimony will help the trier of fact to understand the evidence or to determine a fact in issue.</i></p>	<p>Maine's Rule 702 "is similar to its counterpart" but does not include F.R.E. 702's "final subparagraphs." See Ed.'s Note to 2014 Amendment to Me. R. of Evid. 702.</p>
Maryland	No	<p>Md. R. 5-702 (2021)</p> <p><i>Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine</i></p> <p><i>(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,</i></p> <p><i>(2) the appropriateness of the expert testimony on the particular subject, and</i></p> <p><i>(3) whether a sufficient factual basis exists to support the expert testimony.</i></p>	

Massachusetts	Yes, akin to F.R.E. 702 (2011)	<p>Ma. R. Evid. § 702</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if</i></p> <p><i>(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i></p> <p><i>(b) the testimony is based on sufficient facts or data;</i></p> <p><i>(c) the testimony is the product of reliable principles and methods; and</i></p> <p><i>(d) the expert has reliably applied the principles and methods to the facts of the case.</i></p>	Massachusetts's Rule 702 "is based upon Fed. R. Evid. 702" and "reflects Massachusetts common law." Editor's Note to Ma. R. Evid. § 702.
Michigan	Yes, F.R.E. 702 (2023)	<p>Mi. R. of Evid. 702 (2024)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:</i></p> <p><i>(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i></p>	Michigan's Rule 702 was modeled after F.R.E. 702, and was most recently amended to reflect the amendments to the federal rule. <u>See</u> Staff Comments to Amendment of Mi. R. of Evid. 702.

		<p><i>(b) the testimony is based on sufficient facts or data;</i></p> <p><i>(c) the testimony is the product of reliable principles and methods; and</i></p> <p><i>(d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.</i></p>	
Minnesota	No (<u>Frye</u> jurisdiction)	<p>Minn. Stat. R. 702 (2006)</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The opinion must have foundational reliability. In addition, if the opinion or evidence involves novel scientific theory, the proponent must establish that the underlying scientific evidence is generally accepted in the relevant scientific community.</i></p>	
Mississippi	Yes, F.R.E. 702 (2011)	<p>Miss. R. of Evid. 702 (2016)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:</i></p> <p><i>(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact</i></p>	

		<p><i>to understand the evidence or to determine a fact in issue;</i></p> <p><i>(b) the testimony is based on sufficient facts or data;</i></p> <p><i>(c) the testimony is the product of reliable principles and methods; and</i></p> <p><i>(d) the expert has reliably applied the principles and methods to the facts of the case.</i></p>	
Missouri	Language similar to F.R.E. 702 (2011)	<p>Mo. Ann. Stat. § 490.065 (2017)</p> <p>...</p> <p><i>(1) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise;</i></p> <p><i>(2) Testimony by such an expert witness in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact;</i></p> <p><i>(3) The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to</i></p>	

him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable;

(4) If a reasonable foundation is laid, an expert may testify in terms of opinion or inference and give the reasons therefor without the use of hypothetical questions, unless the court believes the use of a hypothetical question will make the expert's opinion more understandable or of greater assistance to the jury due to the particular facts of the case.

2. In all actions except those to which subsection 1 of this section applies:

(1) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data;

(c) The testimony is the product of reliable principles and methods; and

		<p><i>(d) The expert has reliably applied the principles and methods to the facts of the case;</i></p> <p>...</p>	
Montana	Yes, F.R.E. 702 (1975)	<p>Mt. R. of Evid. 702 (1977)</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.</i></p>	Montana's Rule 702 is modeled after F.R.E. 702. Comm. Notes to Mt. R. of Evid. 702.
Nebraska	Yes, F.R.E. 702 (1975)	<p>Neb. Rev. St. § 27-702 (1975).</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.</i></p>	

Nevada	Yes, F.R.E. 702 (1975)	<p>Nev. Rev. Stat. Ann. § 50.725 (1971)</p> <p><i>If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.</i></p>	
New Hampshire	Yes, F.R.E. 702 (2011).	<p>N.H. R. of Evid. 702 (2017)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise if:</i></p> <p><i>(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i></p> <p><i>(b) the testimony is based on sufficient facts or data;</i></p> <p><i>(c) the testimony is the product of reliable principles and methods; and</i></p> <p><i>(d) the expert has reliably applied the principles and methods to the facts of the case.</i></p>	<p>The comments expressly refer to the Federal Advisory Committee's comments for additional guidance. Committee Note to 2016 Update to N.H. R. of Evid. 702.</p>

New Jersey	Yes, F.R.E. 702 (1975)	<p>N.J.R.E. 702 (1993)</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.</i></p>	<p>"Rule 702 follows Fed.R.Evid. 702 verbatim," with only minor changes. Comment to N.J.R.E. 702.</p>
New Mexico	<p>Language similar to F.R.E. 702 (1975) and F.R.E. 702 (2011).</p>	<p>N.M. R. 11-702 (2012)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.</i></p>	<p>New Mexico amended its Rule 702 in 2011 to follow F.R.E. 702's language. Comment to 2011 Amendment to N.M. R. 11-702.</p>
New York	<p>No (<u>Frye</u> jurisdiction)</p>		

<p>North Carolina</p>	<p>Yes, F.R.E. 702 (2000)</p>	<p>N.C. Gen. Stat. § 8C-1, Rule 702 (2017)</p> <p><i>(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply:</i></p> <p><i>(1) The testimony is based upon sufficient facts or data.</i></p> <p><i>(2) The testimony is the product of reliable principles and methods.</i></p> <p><i>(3) The witness has applied the principles and methods reliably to the facts of the case.</i></p> <p>...</p>	<p>North Carolina's Rule 702 is modeled after F.R.E. 702. Commentary to N.C. Gen. Stat. § 8C-1, Rule 702.</p>
<p>North Dakota</p>	<p>Yes, F.R.E. 702 (1975)</p>	<p>N.D. R. of Evid.702 (2014)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.</i></p>	<p>North Dakota amended its Rule 702 in 2014, "in response" to the 2011 amendment to the federal rule. Editor's Notes to N.D. R. of Evid.702. The changes related to "language and organization . . . to make the rule more easily understood and to make style and terminology consistent throughout the rules." <u>Ibid.</u></p>

Ohio	Yes, F.R.E. 702 (2023)	<p>Oh. Evid. R. 702 (2024)</p> <p><i>A witness may testify as an expert if the proponent demonstrates to the court that it is more likely than not that all of the following apply:</i></p> <p><i>(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;</i></p> <p><i>(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;</i></p> <p><i>(C) The witness' testimony is based on reliable scientific, technical, or other specialized information and the expert's opinion reflects a reliable application of the principles and methods to the facts of the case. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:</i></p> <p><i>(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;</i></p> <p><i>(2) The design of the procedure, test, or experiment reliably implements the theory;</i></p>	Ohio's initial Rule 702 was modeled after F.R.E. 702. Staff Notes to the 1994 Amendment to Oh. Evid. R. 702. It was amended again in 2024 to reflect the 2023 amendment to the federal rule. Staff Notes to the 2024 Amendment to Oh. Evid. R. 702.
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		<p><i>(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.</i></p>	
Oklahoma	Yes, F.R.E. 702 (2023)	<p>12 Ok. St. Ann. § 2702 (2025)</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise, if the proponent demonstrates to the court that it is more likely than not that:</i></p> <ol style="list-style-type: none"> <i>1. The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i> <i>2. The testimony is based upon sufficient facts or data;</i> <i>3. The testimony is the product of reliable principles and methods; and</i> <i>4. The expert's opinion reflects a reliable application of the principles and methods to the facts of the case.</i> 	<p>"Section 702 is the same rule as the rule proposed by the Supreme Court and the Federal rule as an exacted by Congress." Evidence Subcommittee's Note to 12 Ok. St. Ann. § 2702.</p>

Oregon	Yes, F.R.E. 702 (1975)	<p>Or. Rev. Stat. § 40.410 (1981)</p> <p><i>If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.</i></p>	<p>Oregon modeled its Rule 702 after F.R.E. 702, and "adopt[ed] the commentary of the federal advisory committee." 1981 Conference Committee Commentary to the Adoption of Or. Rev. Stat. § 40.410 (1981).</p>
Pennsylvania	No (<u>Frye</u> jurisdiction)	<p>Pa. R. of Evid. 702 (2013)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:</i></p> <p><i>(a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;</i></p> <p><i>(b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and</i></p> <p><i>(c) the expert's methodology is generally accepted in the relevant field.</i></p>	<p>The comment states that Pennsylvania's Rule 702 differs from F.R.E. 702 and reflects Pennsylvania's adoption of the <u>Frye</u> standard for admissibility of expert testimony. Cmt. to Pa. R. of Evid.702.</p>

Rhode Island	Yes, F.R.E. 702 (1975)	<p>R.I. R. of Evid. 702</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of fact or opinion.</i></p>	
South Carolina	Yes, F.R.E. 702 (1975)	<p>S.C. R. of Evid.702 (1995)</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.</i></p>	
South Dakota	Yes, F.R.E. 702 (2011)	<p>S.D. Con. Laws § 19-19-702 (2016)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:</i></p> <p><i>(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i></p> <p><i>(b) The testimony is based on sufficient facts or data;</i></p>	

		<p><i>(c) The testimony is the product of reliable principles and methods; and</i></p> <p><i>(d) The expert has reliably applied the principles and methods to the facts of the case.</i></p>	
Tennessee	Yes, F.R.E. 702 (1975)	<p>Tn. R. of Evid. 702 (1990)</p> <p><i>If scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.</i></p>	<p>Per the comments, pursuant to <u>McDaniel v. CSX Transportation, Inc.</u>, 955 S.W.2d 257 (1997), Tennessee abandoned the <u>Frye</u> test and applied the <u>Daubert</u> factors to address admissibility of scientific testimony. 2001 Advisory Committee Comment to Tn. R. of Evid. 702.</p>
Texas	Yes, F.R.E. 702 (1975)	<p>Tx. R. Evid. 702 (2015)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.</i></p>	

Utah	No	<p>Ut. R. of Evid. 702 (2011)</p> <p><i>(a) Subject to the limitations in paragraph (b), a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.</i></p> <p><i>(b) Scientific, technical, or other specialized knowledge may serve as the basis for expert testimony only if there is a threshold showing that the principles or methods that are underlying in the testimony</i></p> <p><i>(1) are reliable,</i></p> <p><i>(2) are based upon sufficient facts or data, and</i></p> <p><i>(3) have been reliably applied to the facts.</i></p> <p><i>(c) The threshold showing required by paragraph (b) is satisfied if the underlying principles or methods, including the sufficiency of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant expert community.</i></p>	<p>While a prior version of Utah's Rule 702 modeled F.R.E. 702, its amendment does not incorporate the federal rule's text and "preserves and clarifies differences between the Utah and federal approaches to expert testimony." Original Advisory Committee Note to Ut. R. of Evid. 702 (2011).</p>
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Vermont	Yes, F.R.E. 702 (2000)	<p>Vt. R. of Evid. 702 (2004)</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.</i></p>	<p>Vermont's original Rule 702 followed the original 702, and then was amended to follow the 2000 amendment. Reporter's Note to 2004 Amendment to Vt. R. of Evid. 702.</p>
Virginia	Yes, F.R.E. 702 (1975)	<p>Va. Sup. Ct. R. 702 (2012)</p> <p><i>(a) Use of Expert Testimony.</i></p> <p><i>(i) In a civil proceeding, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.</i></p> <p><i>(ii) In a criminal proceeding, expert testimony is admissible if the standards set forth in subdivision (a)(i) of this Rule are met and, in addition, the court finds that the subject matter is beyond the knowledge and experience of ordinary persons, such that the jury</i></p>	

		<p><i>needs expert opinion in order to comprehend the subject matter, form an intelligent opinion, and draw its conclusions.</i></p> <p>....</p>	
Washington	Yes, F.R.E. 702 (1975)	<p>Wash. R. of Evid. 702</p> <p><i>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.</i></p>	NOTE: Washington is a <u>Frye</u> jurisdiction. <u>Desranleau v. Hyland's Inc.</u> , 527 P.3d 1160, 1168 (Wash. Ct. App. 2023).
West Virginia	Yes, F.R.E. 702 (2011).	<p>W. Va. R. of Evid. 702 (2014)</p> <p><i>(a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.</i></p> <p><i>(b) In addition to the requirements in subsection (a), expert testimony based on a novel scientific theory, principle, methodology, or procedure is admissible only if:</i></p>	West Virginia's Rule 702 "is a modified version of its federal counterpart." Comment on W. Va. R. of Evid. 702 (2014).

		<p><i>(1) the testimony is based on sufficient facts or data;</i></p> <p><i>(2) the testimony is the product of reliable principles and methods; and</i></p> <p><i>(3) the expert has reliably applied the principles and methods to the facts of the case.</i></p>	
Wisconsin	Yes, F.R.E. 702 (2011)	<p>Wis. Stat. § 907.02 (2011)</p> <p><i>(1) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.</i></p> <p>...</p>	
Wyoming	Yes, F.R.E. 702 (2011).	<p>Wy. R. of Evid.702 (2019)</p> <p><i>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:</i></p>	

		<p><i>(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</i></p> <p><i>(b) the testimony is based on sufficient facts or data;</i></p> <p><i>(c) the testimony is the product of reliable principles and methods; and</i></p> <p><i>(d) the expert has reliably applied the principles and methods to the facts of the case.</i></p>	
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ADDENDUM

For ease of review, here is the current version of N.J.R.E. 702, and past and current versions of F.R.E. 702.

CURRENT N.J.R.E. 702:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

F.R.E. 702 (1975):

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

F.R.E. 702 (2000):

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

F.R.E. 702 (2011):

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

CURRENT F.R.E. 702 (2023):

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.