

Legislature Amends Evidence Code Provisions Governing Admission of Expert Testimony

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The Florida Legislature passed House Bill 7015, which was signed into law by Governor Scott on June 4, 2013. The new law, Chapter 2013-107, Laws of Florida, deals with expert testimony, and amends Florida's evidence code to conform to Rule 702 of the Federal Rules of Evidence and the principles applicable in federal court under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny. The new law takes effect July 1, 2013. Under *Daubert* and Rule 702, the trial court acts as a "gatekeeper" to ensure that *all* expert testimony is only admitted when its proponent demonstrates that it is both relevant and reliable. Rule 702 and the *Daubert* standard have become effective tools for excluding a wide variety of unreliable expert opinions in federal court. The Florida Legislature intended to overrule existing Florida Supreme Court precedent that rejected *Daubert* and retained the so-called *Frye* test. *See, e.g., Marsh v. Valyou*, 977 So. 2d 543, 547 (Fla. 2007); *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). The new law could significantly alter pretrial and trial strategy in cases where expert testimony is important because it could, potentially, make broader challenges to that testimony available. Litigants should carefully consider the law's applicability in current and future cases, weighing its possible impact on expert testimony issues, and taking appropriate steps to preserve challenges to expert testimony. Failure to ask the court to apply the new law would likely result in a waiver of challenges available under it. For example, if depositions of expert witnesses have already been taken under the *Frye* regime, litigants might consider seeking to re-open or supplement the depositions to explore issues raised by the new standard. Similarly, pre-trial motions challenging expert testimony under the new law should be made where appropriate. If motions have already been made, consideration should be given to amending or supplementing them to incorporate the new challenges. A continuance of trial, or extension of pre-trial deadlines may have to be sought to conduct the necessary discovery, present any appropriate motions, and otherwise assess the law's impact on possible motions in limine and trial. If you have any questions, please call [E. Kelly Bittick, Jr.](#)

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