**Comparison of Potential Amendments to Minnesota Rule of Evidence 702**

| **Federal Rule of Evidence 702 / *Daubert*** | **Advisory Committee Proposal** | **Current Minnesota Rule 702** |
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| Rule 702. Testimony by Expert Witnesses  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.  **Excerpts from Advisory Committee Notes:**  *Daubert* set forth a non-exclusive checklist for trial courts to use in assessing the reliability of scientific expert testimony. The specific factors explicated by the *Daubert* Court are  (1) whether the expert’s technique or theory can be or has been tested—that is, whether the expert’s theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability;  (2) whether the technique or theory has been subject to peer review and publication;  (3) the known or potential rate of error of the technique or theory when applied;  (4) the existence and maintenance of standards and controls; and  (5) whether the technique or theory has been generally accepted in the scientific community.”  Courts have also found other factors relevant in determining whether expert testimony is sufficiently reliable to be considered by the trier of fact. These factors include:  (1) Whether experts are ‘proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying’…;  (2) Whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion…;  (3) Whether the expert has adequately accounted for obvious alternative explanations…;  (4) Whether the expert ‘is being as careful as he would be in his regular professional work outside his paid litigation consulting’…;  (5) Whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give….” | Rule 702. Testimony by Experts  (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. The opinion must have foundational reliability, which requires that:  (1) the testimony is based upon a reliable principle, theory, or method;  (2) the testimony is based upon sufficient and reliable facts or data; and  (3) the witness has applied the principle, theory, or method reliably to the facts of the case.  (b) In determining the reliability of a principle, theory, or method, the trial judge shall consider relevant factors, which may include:  (1) the extent to which the principle, theory, or method has been tested;  (2) the adequacy of research methods employed in testing the principle, theory, or method;  (3) the extent to which the principle, theory, or method has been published and subjected to peer review;  (4) the rate of error in the application of the principle, theory, or method;  (5) the experience of the witness in the application of the principle, theory, or method;  (6) the extent to which the principle or method has gained acceptance within the relevant scientific, technical, or specialized community; and  (7) the extent to which the witness’s specialized field of knowledge has gained acceptance within the general scientific, technical, or specialized community. | Minnesota Rule of Evidence 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. 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.  *See also Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164-65 (Minn. 2012):  In [*State v*.] *Obeta,* we stated that expert testimony is only admissible under Minn. R. Evid. 702 if the proponent shows that the testimony passes a four-part test:  (1) the witness must qualify as an expert;  (2) the expert’s opinion must have foundational reliability;  (3) the expert testimony must be helpful to the trier of fact; and  (4) if the testimony involves a novel scientific theory, it must satisfy the [*Frye*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1924122438&originatingDoc=Ic610db50d64011e1b343c837631e1747&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.FindAndPrintPortal))*–*[*Mack*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980314811&originatingDoc=Ic610db50d64011e1b343c837631e1747&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.FindAndPrintPortal)) standard.  All expert testimony must satisfy the first three parts of the Rule 702 test.  It is only when the proponent offers “novel” “scientific” evidence that the fourth part of the test, the [*Frye*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1924122438&originatingDoc=Ic610db50d64011e1b343c837631e1747&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.FindAndPrintPortal))*–Mack* standard, applies.  When the [*Frye*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1924122438&originatingDoc=Ic610db50d64011e1b343c837631e1747&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.FindAndPrintPortal))*–Mack* standard applies, the proponent of novel scientific evidence must show that the evidence meets two additional requirements:  (1) the proponent must prove that the science “is generally accepted in the relevant scientific community”; and  (2) the particular scientific evidence must be shown to have foundational reliability.”  Under the *Frye–*[*Mack*](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980314811&originatingDoc=Ic610db50d64011e1b343c837631e1747&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.FindAndPrintPortal)) standard, foundational reliability requires the proponent of a test to establish that the test itself is reliable and that its administration in the particular instance conformed to the procedure necessary to ensure reliability. |