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# Florida Supreme Court Tosses Frye Out – Daubert is Now the Rule in Qualifying Expert Testimony

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Recently, the Florida Supreme Court adopted the *Daubert* standard in the procedural evidence rules to qualify expert witness testimony at trial. See *In re Amendments to the Fla. Evidence Code*, No. SC19-107 (Fla. May 23, 2019). Before this decision, the Florida procedural evidence rules followed the *Frye* standard for admissibility of expert witness testimony at trial. The Court's recent decision is a reversal of its longstanding support for *Frye*, and it heightens the evidentiary standard by which expert testimony may be admitted in Florida.

The *Frye* standard originates from *Frye v. United States*, a nearly 100-year-old federal case that created a lenient test for determining the admissibility of expert testimony at trial. See 293 F. 1013 (D.C. Cir. 1923). To be admissible under *Frye*, the techniques the expert used to develop his or her opinion need only be "generally accepted" as reliable in the relevant scientific community.

In 1993, the United States Supreme Court rejected *Frye* and created a new standard for the admissibility of expert testimony. In *Daubert v. Merrell Dow Pharm., Inc.*, the Court found that *Frye* did not comply with the Federal Rules of Evidence, and that a stricter test must be used. See 509 U.S. 579 (1993). The *Daubert* standard is comprised of the following five-factor test to determine the admissibility of expert testimony:

1. Whether the theory or technique in question can be and has been tested;
2. Whether it has been subjected to peer review and publication;
3. Its known or potential error rate
4. The existence and maintenance of standards controlling its operation; and
5. Whether it has attracted widespread acceptance within a relevant scientific community (i.e., the *Frye* standard).

The *Daubert* standard was intended to be more flexible and focused on scientific principles and methodology rather than solely relying on whether it is "generally accepted" in the scientific community.

Since 1993, all federal courts and the majority of state courts adopted the *Daubert* standard. Florida did not, which created confusion as to whether the *Frye* or *Daubert* standard should control. The Florida Legislature attempted to remedy this problem in 2013, when it passed a law making *Daubert* part of the Florida Evidence Code. See § 90.702, Fla. Stat. However, the Florida Supreme Court in both 2017 and 2018 declined to procedurally adopt *Daubert* and reaffirmed its acceptance of *Frye*. See *In re Amendments To Fla. Evid. Code*, 210 So. 3d 1231 (Fla. 2017); *DeLisle v. Crane Co.*, 258 So. 3d 1221 (Fla. 2018).

This all changed with the Florida Supreme Court's recent decision, and *Daubert* is now the rule for Florida courts. Going forward, all Florida courts must utilize the *Daubert* five-factor test above when determining the admissibility of expert witness testimony.