



July 1, 2013

The Honorable Stuart Rabner
Chief Justice
Supreme Court of New Jersey
Hughes Justice Complex, P.O. Box 023
Trenton, New Jersey 08625-0023

Dear Chief Justice Rabner:

On behalf of the New Jersey Lawsuit Reform Alliance, the Commerce and Industry Association of NJ, the HealthCare Institute of New Jersey, the Medical Society of New Jersey, the New Jersey Business and Industry Association, the New Jersey Hospital Association and the New Jersey State Chamber of Commerce, I respectfully ask that the Court exercise its original jurisdiction to adopt the attached amendments to the New Jersey Rules of Evidence ("N.J.R.E.") 104 and 702, as submitted in our letter to the Committee on the Rules of Evidence of October 16, 2012.

However, if the Court is inclined to remand the question to the Evidence Committee, then we would respectfully urge the Court to remand the question off-cycle for expedited consideration.

As you know, this Court's Evidence Committee first considered this issue in 2002. At that point, the Committee concluded that New Jersey should not move toward the federal standard before that standard was "well-defined." Seven years later, the Committee again considered the question, again recommending against joining what was at that point still a minority of states that had adopted some version of the federal rule. Hence, this issue has been before the Court and the Court's Evidence Committee for over 10 years without a decision on the merits.

Today, eleven years since the Committee first took up the issue, the national trend is clear. New Jersey now finds itself in the small minority of states that have yet to update our rules of evidence to adopt a more structured reliability test for expert testimony. With some 35 states now having amended their rules to embrace some form of *Daubert* standard, we now find ourselves in a small and shrinking minority of outlier states.

Our concern is that if the question is merely remanded to the Committee for reconsideration on the next cycle in 2015, New Jersey will find itself increasingly isolated from the growing national

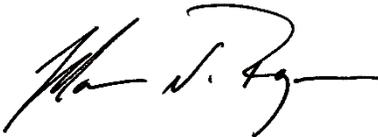
consensus. And the perception of lower evidentiary standards on expert testimony will continue to attract a growing share of litigation to our state courts.

Moreover, the failure to update our Rules of Evidence to guide and reflect existing case law is itself a significant concern. We see it as inconsistent that the current rules do not embody this Court's substantial case law at all. As case law continues to diverge from the text of the Rules, varying standards of admissibility in civil cases have developed, depending on the type of case: net opinion for some cases; *Frye* for others. We believe that simply as a matter of jurisprudence, the standard for admissibility of expert testimony should be reflected in the Rules themselves, and should be the same in all civil cases.

The proposed amendments would provide the necessary guidance for trial courts to evaluate expert testimony in a predictable and consistent manner, ensuring that the testimony presented is based on sound scientific principles and reliable methodology. We appreciate the lengthy and careful consideration that the Committee and this Court have brought to this issue. But we would suggest that now having observed the *Daubert* experience of federal and other state courts for over a decade, the time has come to move toward that standard and update our own Rules of Evidence.

Accordingly, we request that at this time the Court exercise its original jurisdiction and adopt the attached amendments to the New Jersey Rules of Evidence. Alternatively, if the Court is inclined to remand the question to the Evidence Committee then we request that the Court in its remand instruct the Evidence Committee to consider this issue now off cycle rather than waiting until the next cycle in 2015.

Respectfully Submitted,



Marcus Rayner
Executive Director
New Jersey Lawsuit Reform Alliance

cc: Justice Jaynee LaVecchia
Justice Barry T. Albin
Justice Helen E. Hoens
Justice Anne M. Patterson
Judge Glenn A. Grant, J.A.D.
Thomas Bracken, NJ State Chamber
Larry Downes, Medical Society of NJ
John Galandak, CIANJ
Phil Kirschner, NJBIA
Dean Paranicas, HINJ
Betsy Ryan, NJHA