



## New *Daubert* Standard in Florida Limits Expert Evidence At Trial

*Florida Statutes § 90.702 – Effective July 1, 2013*

The Florida Legislature amended Florida Code of Evidence 90.702 to provide a new standard for determining the admissibility of expert testimony at trial. Florida's new law rejects the *Frye* standard and adopts the *Daubert* standard. The *Frye* standard merely required a showing that an expert's opinion was "generally accepted" by other experts. The more restrictive *Daubert* standard requires the court to determine if: (1) the opinion is based upon sufficient facts or data; (2) the opinion 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. If the party seeking to introduce an expert's opinion cannot establish all three elements, then the expert's testimony will not be presented to the jury.

In theory, the application of *Daubert* is to reduce the occurrence of admitting "junk science" or expert testimony based on novel, unreliable scientific theories. However, the change will likely increase the frequency and length of pre-trial hearings. The *Daubert* standard requires the trial court to independently assess the scientific validity and reliability of the reasoning, methodology and principles underlying proffered evidence. Such a determination may require judges to increase their education of various scientific principles. A *Daubert* hearing itself will require extensive expert testimony and complex evidentiary arguments which, according to The Florida Prosecuting Attorneys Association, will become a "trial within a trial."

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### What This Means For You.

Testifying experts must ensure that their opinions withstand this new standard. Experts should also consider the elements of the new standard when analyzing opposing opinions and preparing rebuttal reports. Because expert opinions will be heavily scrutinized by the Court, litigation costs will likely increase due to the additional time spent on preparing for and attending pre-trial hearings

#### SIDE BAR

*Calvin F. Harding Jr. has joined the firm to head the firm's new Real Estate Practice group. Cal has extensive experience in commercial development and real estate. His practice will focus on commercial and multi-family purchase and sale agreements, leases, closings and title insurance.*

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