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THE "PURE OPINION" EXCEPTION TO THE FLORIDA *Frye* STANDARD

This summary evaluates the "pure opinion" exception to the Florida *Frye* standard regarding admissibility of expert testimony. The pure opinion exception provides that if the expert's opinion relies solely on the expert's personal experience and training, the testimony is admissible without being subject to Florida's *Frye* analysis. This allows expert testimony to be admitted into evidence without any indicia of reliability as required by its federal counterpart, the *Daubert* standard.

Because the pure opinion exception to the Florida *Frye* standard provides a "let it all in" standard for expert testimony, the result is a very costly battle-of-the-experts approach to expert testimony. Additionally, it forces juries to sort out matters of science that science itself has been unable to decide. Further, litigants are rewarded for forum shopping and moving litigation to Florida that is based on unreliable expert testimony from a jurisdiction that does not have such a lax admissibility criteria and would not admit similar expert testimony.

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Contrary to comments made by the Florida Supreme Court, *Frye* is not a strict standard. Because of the pure opinion exception to the *Frye* standard, the "vast majority" of expert testimony in Florida is not even subject to *Frye* and therefore does not undergo any type of analysis, much less the rigorous reliability standards detailed in *Daubert*. Essentially, if an expert's "pure opinion" eschews scientific method and relies only on the expert's personal experience and training, the testimony is admissible without being subject to any analysis, *Frye* or otherwise.

In the federal system, there must be something supporting an expert's opinion other than the opinion itself. Testimony unsupported by independent analysis is routinely excluded in *Daubert* jurisdictions but automatically admitted in Florida. The end result is that experts are permitted to offer opinions on specific causation when they have not even established general causation.

Florida's *Frye* standard is outdated and allows admission of inherently unreliable expert testimony into evidence.

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