Rule 702. Testimony by Experts

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.

(Amended effective September 1, 2006.)

Committee Comment - 1977

The admissibility of expert opinion has traditionally rested in the discretion of the trial court. This discretion is primarily exercised in two areas:

1. determining if an opinion can assist the trier of fact in formulating a correct resolution of the questions raised; and

2. deciding if the witness is sufficiently qualified as an expert in a given subject area to justify testimony in the form of an opinion. There will be no change in existing practice in this regard.

The rule is not limited to scientific or technical areas, but is phrased broadly to include all areas of specialized knowledge. If an opinion could assist the trier of fact it should be admitted subject to proper qualification of the witness. The qualifications of the expert need not stem from formal training and may include any knowledge, skill, or experience that would provide the background necessary for a meaningful opinion on the subject. The rule also contemplates expert testimony in the form of lecture or explanation. The expert may educate the jury so the jurors can draw their own inference or conclusion from the evidence presented.

Committee Comment - 2006

The amendment codifies existing Minnesota case law on the admissibility of expert testimony. The trial judge should require that all expert testimony under Rule 702 be based on a reliable foundation. The proposed amendment does not purport to describe what that foundation must look like for all types of expert testimony. The required foundation will vary depending on the context of the opinion, but must lead to an opinion that will assist the trier of fact. If the opinion or evidence involves a scientific test, the case law requires that the judge assure that the proponent establish that "'the test itself is reliable and that its administration in the particular instance conformed to the procedure necessary to ensure reliability.'"Goeb v. Tharaldson, 615 N.W.2d 800, 814 (Minn. 2000) (quoting State v. Moore, 458 N.W.2d 90, 98 (Minn. 1990)).

In addition, if the opinion involves novel scientific theory, the Minnesota Supreme Court requires that the proponent also establish that the evidence is generally accepted in the relevant scientific community. The rule does not define what is novel, leaving this for resolution by the courts. See, e.g., State v. Klawitter, 518 N.W.2d 577, 578-86 (Minn. 1994) (addressing whether 12-step drug recognition protocol involves novel scientific theory); State v. Hodgson, 512 N.W.2d 95, 98 (Minn. 1994) (ruling that bite-mark analysis does not involve novel scientific theory).

The Minnesota Supreme Court provided the standard for admissibility of novel scientific testimony in Goeb. The court stated:

Therefore, when novel scientific evidence is offered, the district court must determine whether it is generally accepted in the relevant scientific community. See Moore, 458 N.W.2d at 97-98; Schwartz, 447 N.W.2d at 424-26. In addition, the particular scientific evidence in each case must

*be shown to have foundational reliability. See Moore, 458 N.W.2d at 98; Schwartz, 447 N.W.2d at 426-28. 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.'" Moore, 458 N.W.2d at 98 (alteration in original) (quoting State v. Dille, 258 N.W.2d 565, 567 (Minn. 1977)). Finally, as with all testimony by experts, the evidence must satisfy the requirements of Minn. R. Evid. 402 and 702 -- be relevant, be given by a witness qualified as an expert, and be helpful to the trier of fact. See State v. Nystrom, 596 N.W.2d 256, 259 (Minn. 1999).*

Goeb, 615 N.W.2d at 814.

In State v. Roman Nose, 649 N.W.2d 815, 819 (Minn. 2002), the court described the standard in a different way:

Put another way, the Frye-Mack standard asks first whether experts in the field widely share the view that the results of scientific testing are scientifically reliable, and second whether the laboratory conducting the tests in the individual case complied with appropriate standards and controls.

Finally, in State v. MacLennan, 702 N.W.2d 219, 230 (Minn. 2005) the court explained the standard:

Under the Frye-Mack standard, a novel scientific theory may be admitted if two requirements are satisfied. The district court must first determine whether the novel scientific evidence offered is generally accepted in the relevant scientific community. Second, the court must determine whether the novel scientific evidence offered is shown to have foundational reliability. As with all expert testimony, the evidence must comply with Minn. R. Evid. 402 and 702; that is, it must be relevant, helpful to the trier of fact, and given by a witness qualified as an expert. The proponent of the novel scientific evidence bears the burden of establishing the proper foundation for the admissibility of the evidence.

(Citations omitted.)