

**KENTUCKY BAR ASSOCIATION
KENTUCKY RULES OF EVIDENCE**

**ARTICLE VII
OPINIONS AND EXPERT TESTIMONY**

KRE 701 Opinion testimony by lay witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

- (a) Rationally based on the perception of the witness,
- (b) Helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and
- (c) Not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Evidence Rules Review Commission Notes (2007)

With the adoption by the Kentucky Supreme Court of the analysis required by the decision in Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993), there was a risk that courts could be asked to avoid the reliability standards set out in that case by the simple process of offering “scientific, technical, or other specialized knowledge” evidence through a witness that an attorney sought to identify as a “lay witness.” The Federal Rules of Evidence, Rule 701, avoided this error, by specifically adding language that excludes such evidence from the operation of Rule 701. The addition of subsection © to Kentucky Rule of Evidence, Rule 702, follows the exact language of the Federal Rule amendment. This subsection requires that an attempt to introduce testimony that is a part of “scientific, technical, or other specialized knowledge,” must be tested for reliability under Rule 702.

The amendments to Rules 701 and 702 must be read together. The introduction and reliability of the evidence is determined not by asking whether the *witness* is lay or expert, but, instead, by asking whether the *testimony* to be offered is lay or “scientific, technical, or other specialized knowledge.” If it is of the former, then Rule 701 is applicable. If it is of the latter, then Rule 702 must be used.

HISTORY: Amended by Supreme court Order 2007-02, eff. 5-1-07; 1992 c 324, § 34, eff. 7-1-92; 1990 c 88, § 49