

## Tennessee Rules Of Evidence

[*Relevant Extract – Full Rules [here](#)*]

### Article VII. Opinions and Expert Testimony

**Rule 701. Opinion testimony by lay witnesses.** —(a) Generally.—If a witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are

(1) rationally based on the perception of the witness and  
(2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

(b) Value.

A witness may testify to the value of the witness's own property or services.

[*Amended by order effective July 1, 1996.*]

**Advisory Commission Comments [1996].** *This rule was amended because the former rule precluded any lay opinion if the lay witness could substitute facts for opinion.*

**Rule 702. Testimony by experts.** —If scientific, technical, or other specialized knowledge will substantially 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 in the form of an opinion or otherwise.

**Advisory Commission Comments 2001.** *The Frye test no longer exists in Tennessee. In *McDaniel v. CSX Transportation, Inc.*, 955 S.W.2d 257 (1997), the Tennessee Supreme Court listed five nonexclusive factors taken from the federal case of *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993):*

*“(1) whether scientific evidence has been tested and the methodology with which it has been tested;*

*“(2) whether the evidence has been subjected to peer review or publication;*

*“(3) whether a potential rate of error is known;*

*“(4) whether, as formerly required by Frye, the evidence is generally accepted in the scientific community; and*

*“(5) whether the expert's research in the field has been conducted independent of litigation.”*

**Rule 703. Bases of opinion testimony by experts.** —The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The court shall disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness.

**Advisory Commission Comments.** *Experts in the field may base opinions on facts not in evidence under this rule. Requisite foundations are that (1) the facts must be "reasonably relied upon by experts in the particular field" and (2) the facts must be trustworthy. With such foundations, inadmissible hearsay could support an admissible expert opinion.*

*New Jersey Zinc Co. v. Cole*, 532 S.W.2d 246 (Tenn. 1975), allows a treating doctor to base an opinion on reports of other professionals.

*If the bases of expert testimony are not independently admissible, the trial judge should either prohibit the jury from hearing the foundation testimony or should deliver a cautionary instruction. Unfairly prejudicial facts or data should be dealt with under Rule 403. With respect to cross-examination, see Rule 705.*

**Rule 704. Opinion on ultimate issue.** —Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

**Advisory Commission Comments.** *The Supreme Court has already approved this language. City of Columbia v. C.F.W. Construction Co., 557 S.W.2d 734 (Tenn. 1977). But Blackburn v. Murphy, 737 S.W.2d 529 (Tenn. 1987), places limitations on lay witnesses testifying to some ultimate issues, such as whether an accident was unavoidable.*

**Advisory Commission Comments [1996].** *"One ultimate issue is outside the scope of expert testimony. T.C.A. § 39-11-501 provides that "no expert witness may testify as to whether the defendant was or was not insane."*

**Rule 705. Disclosure of facts or data underlying expert opinion.** —The expert may testify in terms of opinion or inference and give reasons without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

**Advisory Commission Comments.** *This rule gives a lawyer the option of not using a hypothetical question in examining an expert; the lawyer can ask the expert simply to state an opinion. Tennessee presently requires the hypothetical unless the expert bases testimony on personal observation. See, e.g., Valentine v. Conchemco, 588 S.W.2d 871 (Tenn. Ct. App. 1979).*

**Rule 706. Court-appointed experts.** —(a) Appointment. —The court may not appoint expert witnesses of its own selection on issues to be tried by a jury except as provided otherwise by law. As to bench-tried issues, the court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed and may request the parties to submit nominations. The court ordinarily should appoint expert witnesses agreed upon by the parties, but in appropriate cases, for reasons stated on the record, the court may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, the witness's deposition may be taken by any party, and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) Compensation. —Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and condemnation proceedings. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs and thereafter charged in like manner as other costs.

(c) Disclosure of Appointment. —Where a court-appointed expert is permitted otherwise by law to testify on an issue to be tried by a jury, no one may disclose to the jury the fact that the court appointed the expert witness.

(d) Parties' Experts of Own Selection. —Nothing in this rule limits the parties in calling expert witnesses of their own selection.

**Advisory Commission Comments.** *The Commission was wary of the undue impact a court-appointed expert might have on a jury, and the rule prohibits such experts in jury trials unless expressly permitted by statute. Even where the trial court wants its own expert in a bench trial, the judge normally should defer to the parties' suggestions. Either party may discover and cross-examine the court's expert.*

## ARTICLE VIII HEARSAY

**Advisory Commission Comments.** *Learned treatises can be used to impeach an expert but are not themselves admissible to prove the truth of their contents. No good reason exists to permit hearsay to be taken as true just because it is written in books. F.R.Evid. 803(18) is contra.*

---