

REPORT CARD

Research Shows Rule 702's Standards for Admissibility of Experts Are Confusing Courts

More Evidence That Amendments Pending to Rule 702 Must Be Adopted

LCJ conducted a survey by searching Westlaw for mentions of Rule 702 or Daubert, and excluding references that were procedural or not substantive rulings.

Federal Courts Applied the Incorrect Standard 882 Times in 1,059 Rule 702 Decisions

Issue	Number Wrong	Percentage Wrong
*Fail to cite preponderance of evidence standard	686	65%
Mistakenly state Rule 702 has a "liberal thrust favoring admission"	135	13%
Inconsistently cite both preponderance and liberal thrust standard	61	6%
Totals	882	NA

*Preponderance/no preponderance splits occur in 57 judicial districts (more than half of all districts) and encompass every appellate circuit.