



NATIONAL COMMISSION ON FORENSIC SCIENCE



Use of the Term “Reasonable Scientific Certainty”

Subcommittee

Reporting and Testimony

Type of Work Product

Adjudication of Public Comments on Final Draft Recommendations Document on the Use of the Term “Reasonable Scientific Certainty”

Public Comment Summary:

The document was posted as proscribed by Commission by-laws. Eighteen individuals or groups submitted comments.

Adjudication Process Used by Subcommittee:

All comments, responses and proposed changes to the views document were adjudicated by the task lead.

Itemized Issues and Adjudication Summary:

CATEGORY OF COMMENT	SPECIFIC CONCERN(S)	NUMBER TAKING THIS POSITION	ADJUDICATION
COMPLETE SUPPORT		Jennifer Friedman; Anonymous, Anonymous; Tiffany Roy; William Shields; Libby Pace; Office of Ohio Public Defender; J.D. Schmid; Andrea Roth and Erin Murphy; N.A.M.E.; NACDL; Colin Aitken, section of Royal Statistical Society; 11	NO ADJUDICATION NEEDED

CATEGORY OF COMMENT	SPECIFIC CONCERN(S)	NUMBER TAKING THIS POSITION	ADJUDICATION
SUPPORT ONLY IF REPLACEMENT LANGUAGE IS AVAILABLE/ADOPTED		Fingerprint examiner; anonymous, anonymous 2	<p>ADJUDICATED AND POSITION REJECTED: there is no need for an alternative to a statement that has no defined meaning in science or the law or even within specific disciplines and that, by its very terms, may tend to mislead the fact finder as to the scientific reliability, validity or interrater reliability of a specific test or examination. Neither does this recommendation preclude the questioner and the witness from discussing aspects of the testing that relate to the reliability, validity or accuracy of a particular exam or the competency of the examiner.</p> <p>Beyond that, the Recommendation is for better terminology to be developed.</p>
SUPPORT ONLY IN PART	WORDING; AUTHORITY OF ATTORNEY GENERAL TO MANDATE ACTION BY OSAC; CONCERN OVER LEGAL PRECEDENT; INAPPROPRIATE FOR ATTORNEY GENERAL TO DIRECT LAWYERS TO ARGUE THAT THIS TERM IS "MISLEADING"	Ted Hunt 1	ADJUDICATED. caselaw analysis rejects suggestion by commentator; language reviewed and deemed satisfactory; recommendation 3 modified to change term to be that attorney general "urge" OSACs to undertake this work.

CATEGORY OF COMMENT	SPECIFIC CONCERN(S)	NUMBER TAKING THIS POSITION	ADJUDICATION
DISFAVOR	RETAIN THE TERM, BUT FIND A UNIFORM DEFINITION FOR JURORS	Forensic Practitioner 1	ADJUDICATION: Rejected due to conclusion that term is misleading and devoid of scientific content.
UNCLEAR	“The rendering of scientific conclusions and wording of conclusions should be made within the scientific community, without undo pressure from legal bodies.”	Garth Glassburg 1	ADJUDICATION: Cannot adjudicate, as no clear position
SUPPORT BUT WITH SUGGESTED WORDING CHANGE	Kaye: Change Recommendation 3 to “urge”; Cole – “I respectfully suggest replacing "an individualized conclusion " with "a conclusion."	Simon Cole; David Kaye 2	ADJUDICATION: Agree to Kaye modification to recommendation 3. Agree to Cole modification.