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LCJ Applauds Amendment to FRE 702

Amendment Becomes Effective Today; Will Help Ensure Courts Determine Reliability of Expert Opinions Before Admitting a Witness to Testify

WASHINGTON, D.C. – December 1, 2023 – Lawyers for Civil Justice (LCJ) today applauded the new amendment to Rule 702 of the Federal Rules of Evidence (FRE) intended to address a widespread pattern of incorrect application of the expert admissibility standards in federal courts.

The amended rule makes clear that (1) it is the duty of district courts to determine the admissibility of expert evidence before allowing a jury to hear it; (2) the proponent has the burden of establishing admissibility by a preponderance of the evidence; and (3) the court's gatekeeping responsibility is ongoing throughout the testimony to ensure that the expert's opinions are based on facts and reliable methods.



“The implementation and proper usage of the amended Rule 702 will help ensure that federal courts apply the correct standards for expert testimony consistently, and that only reliable opinions are presented to juries in the future,” said LCJ’s General Counsel, Alex Dahl. “LCJ supports these clarifications to the Rule that will help keep unreliable science out of federal trials and establish that Rule 702 -- not Daubert or any other case law -- is the standard for determining admissibility of expert testimony.”

An [analysis](#) by LCJ shows that more often than not, federal judges fail to refer to the correct standard for admissibility. Out of the 1,059 Rule 702 opinions issued during 2020 in which the trial judge decided to admit, deny, or partially admit expert evidence, LCJ found 882 instances in which the court:

- Failed to cite the preponderance of evidence standard (686)
- Mistakenly stated Rule 702 has a “liberal thrust favoring admissibility” (135)
- Inconsistently cited the preponderance and “liberal thrust” standard (61)

“We look forward to seeing courts properly apply this amendment, which seeks to correct inconsistent and mistaken practices that have had far-reaching consequences in many litigations,” said LCJ Executive Director Dan Steen. “LCJ also urges states to adopt similar reforms to ensure the fair administration of justice in their courts and prevent parties from presenting unreliable expert evidence to juries.”

The adoption of a similar amendment to state rules is a separate process from that of updating the federal rules and is unique to each state. LCJ supports efforts such as those in Arizona, which has adopted a similar amendment to its state rule that will go into effect on January 1, 2024.

LCJ is also announcing an updated website which details efforts to bring clarity to judicial rules governing the admission of expert evidence at DontSayDaubert.com, which includes resources on the federal rule change, state reform updates, and a [new video](#) from LCJ’s Alex Dahl on the importance of the amendment to Rule 702.

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