



Judicial committee adopts controversial change to expert witness rule

Reuters

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- Proponents say amendment needed because current rule allows for too much "junk" science
- Plaintiffs' bar contends change opens door to misguided evaluations

(Reuters) - A federal judicial committee on rules of court practice voted Tuesday to advance an amendment to the federal rule on expert witnesses that has drawn strong opposition from the plaintiffs' bar.

The Committee on Rules of Practice and Procedure passed the amendment unanimously, clearing the way for it to go to the Judicial Conference of the United States and then to the U.S. Supreme Court. If it garners those approvals and Congress does not intervene, it will take effect in December 2023.

The proposed amendment to Rule 702 of the Federal Rules of Evidence states that expert witness testimony can only be admitted if a judge determines that the testimony is "more likely than not" based on sufficient facts and reliable methods.

"This does not change the law at all," said U.S. District Judge Patrick Schiltz of Minnesota, who chairs an advisory committee on rules of evidence and supported the amendment, before the vote. "It simply makes it clearer."

Schiltz said that many federal judges had wrongly interpreted the existing rule to mean evidence could be admitted if a jury could find it reliable, rather than determining whether it was reliable themselves as the rule requires.

"There are people who are benefiting from the misapplication of the law and they are fighting to maintain the misapplication," professor Daniel Capra of the Fordham University School of Law, who is also part of the advisory committee on evidence, said at Tuesday's meeting.

The comments echoed those of defense lawyers and business-oriented groups like Lawyers for Civil Justice, who have long argued that the existing rule led to judges admitting unreliable "junk" scientific testimony.

Members of the plaintiffs' bar and its main lobbying group, the American Association for Justice, have said the change would cause some judges to wrongly evaluate pre-trial which side's expert witnesses were correct, not just the admissibility of their testimony.