



LCJ Applauds Unanimous Approval of Amendment to Rule 702 by the Committee on Rules of Practice and Procedure

Amendment will help ensure that Rule 702, not outdated case law, is the standard for courts when considering the admissibility of expert evidence

Arlington, VA – June 7, 2022 – Lawyers for Civil Justice (LCJ) – Today, the Committee on Rules of Practice and Procedure voted unanimously to approve an amendment to Rule 702 of the Federal Rules of Evidence. Lawyers for Civil Justice (LCJ) applauds the approval of the amendment, which clarifies that: (1) the proponent of expert testimony must establish its admissibility to the court by a preponderance of the evidence before it can be presented to a jury, and (2) an expert shall not assert a degree of confidence in an opinion that is not derived from sufficient facts and reliable methods.

“Too often, Rule 702 is misapplied to allow opinion testimony that does not meet admissibility standards, which is a failure of courts’ responsibility as ‘gatekeepers’ of expert evidence in the courtroom,” said **LCJ’s General Counsel Alex Dahl**. “These misapplications can have huge consequences because they unfairly influence trial verdicts, especially in high-stakes multi-district litigation which can have thousands of cases and billions of dollars at risk. The amendment approved by the Committee today will go a long way toward ensuring that Rule 702, not outdated ‘Daubert’ case law, is applied when courts consider the admissibility of expert evidence.”

LCJ’s analysis of over 1,000 recent opinions shows a widespread pattern of incorrect application of the expert admissibility standards set forth in Rule 702, highlighting the dire need for this amendment. 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)

Additionally, LCJ’s analysis demonstrates a widespread discrepancy about citing or failing to cite the preponderance standard in 57 judicial districts--more than half of all federal court districts.

“LCJ strongly supports the amendment to Rule 702 that was approved today, which will make clear that courts, not juries, are the gatekeepers for the admissibility of expert opinion into the courtroom,” said **Daniel Steen, LCJ’s Executive Director**. “We look forward to this amendment taking effect in December 2023.”

The approved amendment will now be sent to the Judicial Conference for consideration this fall. Then the amendment will be subject to review by the U.S. Supreme Court, which in turn sends the final version to Congress. Barring action by Congress to disapprove the amendment, it will take effect on December 1, 2023.

To learn more about why it's Rule 702 -- and not *Daubert* -- visit www.dontsaydaubert.com

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