



The second amendment requires the proponent to demonstrate to the court that “the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.”



On December 1, 2023, an amended Federal Rule of Evidence 702 (Testimony by Expert Witnesses) will take effect. There are two amendments to the rule.

The first amendment requires that “*the proponent demonstrates to the court that it is more likely than not that*” the requirements in Rule 702(a) — (d) have been met. The

Committee Note states that “many courts have held that the critical questions of the sufficiency of an expert’s basis, and the application of the expert’s methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702

and 104(a).” The Committee Note explains this amendment “clarifies that the preponderance standard applies to the three reliability-based requirements added in 2000 — requirements that many courts

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have incorrectly determined to be governed by the more permissive Rule 104(b) standard. But it remains the case that other admissibility requirements in the rule (such as that the expert must be qualified and the expert’s testimony must help the trier of fact) are governed by the Rule 104(a) standard as well.”

The second amendment pertains to subsection (d) and requires the proponent to demonstrate to the court that “*the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.*” The Committee Note states that this amendment is “to emphasize that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert’s basis and methodology.” The Committee Note further states the

amendment is especially pertinent to the testimony of forensic experts who “should avoid assertions of absolute or one hundred percent certainty — or to a reasonable degree of scientific certainty — if the methodology is subjective and thus potentially subject to error.” In addition, the Committee Note states that “in deciding whether to admit forensic expert testimony, the judge should (where possible) receive an estimate of the known or potential rate of error of the methodology employed, based (where appropriate) on studies that reflect how often the method produces accurate results. Expert opinion testimony regarding the weight of feature comparison evidence (i.e., evidence that a set of features corresponds between two examined items) must be limited to those inferences that can reasonably be drawn from a reliable application of the principles and

methods.” But it expressly notes that the amendment “does not bar testimony that comports with substantive law requiring opinions to a particular degree of certainty.”

Finally, as the Committee Note states, “Nothing in the amendment imposes any new, specific procedures. Rather, the amendment is simply intended to clarify that Rule 104(a)’s requirement applies to expert opinions under Rule 702.” ■



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