

Don't Call it a Comeback: Revisions to Evidentiary Rules for Expert Testimony

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The Michigan Supreme Court recently adopted a revision to the state's Rules of Evidence related to expert testimony (MRE 702) to bring it in line with the 2023 revision to the Rule 702 of the Federal Rules of Evidence.

The revised Michigan rule establishes the framework to evaluate experts and permits an expert qualified by those criteria to testify in trial, now subject to the addition of a single clause, which requires "the proponent demonstrates to the court that it is more likely than not that . . ."

That clause changes neither the criteria to evaluate experts, the underlying substance of the law, or the procedure by which the process is employed. The staff comment notes that the rule change "requires the proponent of an expert witness's testimony to demonstrate that it is more likely than not that the factors for admission are satisfied and clarifies that it is the expert's opinion that must reflect a reliable application of the principles and methods to the fact of the case."

The rule tracks the same change that was made to the Federal Rule in 2023, however, and the Federal Rules Committee made a slightly different point. The Advisory Committee Comment on the 2023 Federal Rule change offers a slightly different explanation for the change. The Committee explains 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)."

What does this mean for litigants?

The rule change is helpful to litigants challenging the reliability of an expert's opinions in at least a couple ways. First, by affirmatively requiring the proponent to demonstrate the testimony will meet the criteria "to the court," the rule reinforces the role of the trial court in this process. This clarifies that the trial courts may not ignore this responsibility or defer it to the jury.

Second, by articulating the preponderance of the evidence standard, the rule change reinforces that the role of the trial court is not simply to be a gatekeeper on guard for junk science or wanton speculation. Instead, proponents of expert testimony must establish reliability under the rule on a more likely than not basis.

Finally, if the Federal Advisory Committee Comments are to be given weight, the rule change also clarifies that while some challenges to expert testimony do go to weight, challenges to “the sufficiency of an expert’s basis, and the application of the expert’s methodology,” do not. This will help to eliminate a common basis for the denial motions challenging expert opinions and lead to more scrutiny on the expert’s foundation and methodology.

When does the new rule go into effect?

The Michigan Supreme Court made the rule change effective on May 1, 2024. Changes to the Michigan Court Rules typically apply to all proceedings brought after the effective date and those that are already pending, except where application of the new court rule would cause an injustice to the parties.