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Rule 702 has been amended to clarify the burden of proof and the trial court's gatekeeping role

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Effective December 1, 2023, Federal Rule of Evidence 702 has been amended to address the standard for admission of expert opinion testimony. The amendments confirm that the trial judge, in its gatekeeping role, must determine whether to admit expert opinion testimony and that the movant has the burden of meeting the standard for admission by a preponderance of the evidence.

The amended version of Rule 702 now reads (additions bolded, deletions struck through):

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if **the proponent demonstrates to the court that it is more likely than not that**:
>
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
> (b) the testimony is based on sufficient facts or data;
> (c) the testimony is the product of reliable principles and methods; and
> (d) the ~~expert has reliably applied~~ **expert's opinion reflects a reliable application of** the principles and methods to the facts of the case.

The first addition confirms that the proponent of the expert evidence has the burden to show that the requirements of Rule 702 have been met but confirms that the mere preponderance standard applies. Thus, where experts plausibly and reliably reach different conclusions based on the same facts, the trial court should admit the opinions of both experts and allow the jury or factfinder to determine the weight to give those opinions.

The change to subparagraph (d) requires the opinion to reflect a "reliable application" of the principles and methods to the facts. The Comments to the Rule state that this rule change addresses forensic analyses. The Committee stated: "[f]orensic experts 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." Committee Notes on Rules 2023 Amendment. As a result of this change, the expert should disclose the error rate to its methodology.

Key Takeaways: The amendment makes clear to that the proponent of the expert opinion must demonstrate to the court that the opinions satisfy the Rule and that the trial judge remains the gatekeeper. While the standard for admission is a preponderance of the evidence ("more likely than not"), the expert opinion must reflect a reliable application of principles and methods to the facts of the case. For forensic analyses, the expert should avoid overstating the results and should disclose the reasonable error rates in the methodology.