

Will Amendments to Federal Rule of Evidence 702 Change Expert Witness Testimony in the EDVA?

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On April 24, Chief Justice Roberts forwarded to Congress [amendments](#) to Federal Rule of Evidence 702 governing the admission of expert testimony in the federal courts. The amendments will take effect on December 1 unless Congress rejects them.

The changes to the rule are not extensive. The first makes it explicit that the preponderance of the evidence standard applies to admission of expert testimony. The second clarifies that an expert's opinion must reflect a reliable application of the expert's methodology to the facts of the case.

According to the Advisory Committee Note, the amendments are intended to clarify and emphasize that the court must determine the reliability of expert testimony before admitting expert testimony into evidence. While Rule 104(a) already required that a court determine admissibility by a preponderance of the evidence, the Committee felt it necessary to explicitly incorporate the standard into the rule because many courts had incorrectly held that issues of the sufficiency of an expert's basis and the application of the expert's methodology were questions of weight for the jury, and not questions of admissibility for the court.

The amendments also clarify that the court must assess not only the expert's methodology but also the expert's application of the methodology to the facts. Again, as part of its gatekeeping duty, the court must ensure that an expert does not make claims that are unsupported by the expert's basis and methodology, rather than leaving that question to the jury.

The amendments to Rule 702 should not significantly affect admissibility of expert testimony in the EDVA. In an appeal of a case from the EDVA two years ago, the Fourth Circuit relied on the proposed amendments to Rule 702 as support for its decision. *Sardis v. Overhead Door Corp.*, 10 F.4th 268, 283-84 (4th Cir. 2021). In *Sardis*, the Fourth Circuit reversed the district court's ruling that challenges to the reliability and relevancy of expert testimony went only to the weight of the testimony, not its admissibility. Reliability and relevancy, the court held, are preconditions to admissibility, not simply a procedural formality. Judges in the EDVA have frequently cited to *Sardis*, recognizing that "the determination of an expert's reliability is not an issue that can be delegated to a jury." *Boley v. Armor Correctional Health Svcs.*, 2022 U.S. Dist. LEXIS 121031 at *5 (E.D.Va. July 8, 2022). As a result, the final adoption of the amendments to Rule 702 should only reinforce current practice, rather than cause a sea change in how the EDVA assesses the admissibility of expert testimony.

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