

# Proposed AI evidence rule highlights new challenges for federal practitioners

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Artificial intelligence and machine learning are already reshaping litigation in the United States and are poised to play a crucial role in federal court practice. The Judicial Conference Committee on Rules of Practice and Procedure, which drafts and amends the rules governing federal litigation, has recognized the need for additional rules to tame this new frontier.

In June 2025, the committee published a proposed new Federal Rule of Evidence 707, designed to ensure the reliability of “machine-generated” evidence before it is admitted for use at trial.

The proposed Rule regulates this evidence by applying existing principles that govern expert testimony. The proposal reflects the committee’s effort to situate machine-generated evidence within the current evidentiary framework and to provide guidance to courts and practitioners.

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The committee explained that Rule 707 is meant to close a gap in the existing evidentiary framework. In the committee’s view, Rule 702 is “not obviously applicable” when machine-generated evidence is offered directly or through a lay witness, but a party should not be able to evade Rule 702’s reliability requirements simply by substituting a machine for a human expert.

The committee note identifies some foreseeable challenges with machine-generated evidence, including function creep, analytical error or incompleteness, bias or inaccuracy in underlying data or formulas, and lack of interpretability. It also stresses that meeting the reliability standard may be

difficult, and sometimes impossible, without expert testimony, particularly where the proponent could not otherwise show unbiased and sufficient data, an acceptable error rate, and an explainable process

Whatever form the final rule takes, its introduction and the debate around its precise language and scope raise important considerations for attorneys litigating in federal court.

## The proposed Rule 707 applies a familiar framework to AI evidence

The text of the proposed Rule 707 appears simple on its face:

*When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of Rule 702(a)-(d). This rule does not apply to the output of simple scientific instruments.*

Rule 702, in turn, allows an expert witness to offer their opinions if it is more likely than not that (1) the expert’s scientific, technical, or other specialized knowledge will help the court understand evidence or find facts; (2) the testimony is based on sufficient facts or data and is the product of reliable principles and methods; and (3) the opinion reflects a reliable application of these principles and methods to the facts of the case at issue.

As retired U.S. District Judge Paul W. Grimm notes in an article for Thomson Reuters’ Practical Law: The Journal, “Proposed FRE 707 and AI Evidence in Federal Court” (<https://reut.rs/4cYaWKG>), attorneys looking to proffer AI evidence may find guidance in familiar Supreme Court precedents, including *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), which established the so-called *Daubert* factors for evaluating the admissibility of expert evidence.

Judge Grimm appears to be making the point that lawyers should think about machine-generated evidence through the same reliability lens that courts already use for expert testimony under Rule 702 and *Daubert*. Proposed Rule 707 expressly imports Rule 702(a)-(d) when machine-generated

evidence is offered without an expert, so the questions at play are familiar: Are the inputs and training data sufficient and representative? Has the process been validated in circumstances similar to the case? Can the proponent establish a meaningful error rate? And can the system's reasoning be explained well enough for the court to assess reliability?

The committee note says that if the process cannot be explained, courts ordinarily should find that the proponent has not shown the methodology is reliable, absent other proof such as validation studies showing a low error rate.

The committee's report does not explain the interplay between the proposed rule and specific relevant Supreme Court precedents, but it does make clear that Rule 707 is intended to fold machine-generated evidence into the existing Rule 702 reliability framework rather than treat it as a mere authentication issue. It also notes an important practical complication: Much like expert testimony, machine-generated evidence may be regulated pre-trial, but unlike expert testimony, machine-generated evidence cannot be cross-examined the same way a human expert can be. This could implicate, for example, the type of limiting instructions provided to a jury.

Under the proposed structure, when qualifying machine-generated evidence is offered without an expert witness, the proponent must satisfy Rule 702(a)-(d). In practice, courts may consider whether additional testimony is necessary to establish reliability, depending on the nature of the technology and the evidence offered.

In some circumstances, a lay witness may testify regarding the use of a technological tool and the outputs generated. In other cases, courts may determine that expert testimony is needed to establish the reliability of the underlying principles and methods.

In developing the proposed rule, the committee addressed questions concerning how to define the scope of covered evidence and how to distinguish between different types of technological outputs. Drafting a rule in this area presents challenges because technologies described as artificial intelligence or machine learning vary widely in their design and operation. If the new Rule 707 is too similar to existing rules, it may not sufficiently account for AI-specific issues that the courts have not yet confronted.

### Key takeaways for federal practitioners

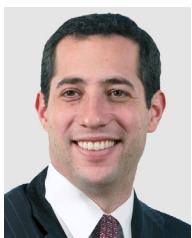
Proposed Rule 707 is proceeding through the Rules Enabling Act process. The committee published the proposal for public comment and scheduled hearings that took place in January 2026, and the public comment window concluded in February 2026.

Now that the comment period is closed, the Evidence Rules Advisory Committee will evaluate comments and testimony before determining whether to transmit the rule for further consideration. Based on testimony and feedback, the Committee may revise the draft before seeking further approvals. If the process stays on track, the Supreme Court will promulgate the final rules by May 1, 2027, and the projected effective date would be December 1, 2027.

While the exact scope and language of the proposed Rule 707 are not yet set, the federal courts will likely soon face a new procedural hurdle governing the admission of important evidence. Any such rule, once promulgated, will be subject to judicial interpretation.

Practitioners should monitor developments in the rulemaking process and judicial decisions addressing machine-generated evidence under existing evidentiary standards. As the proliferation of AI evidence continues, this will enable practitioners to demonstrate good-faith efforts to comply with the new rule.

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