



FOR IMMEDIATE RELEASE

May 6, 2020

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF WORKING PAPER Makes Compelling Case for Amendment of Federal Expert-Evidence Rule

“Twenty years of inconsistency have turned Rule 702 into a mosaic of standards in which the same testimony that one court excludes would be admissible in a sister court.”

—Lee Mickus, Evans Fears & Schuttert LLP

WASHINGTON, DC—Washington Legal Foundation (WLF) today released a WORKING PAPER that documents federal courts’ departure from the language and intent of Federal Rule of Evidence 702 and urges the Judicial Conference Advisory Committee on Evidence Rules to commence rulemaking to amend the rule. Lee Mickus, a partner with the Denver law firm Evans Fears & Schuttert LLP, authored *Gatekeeping Reorientation: A Rule 702 Amendment Can Correct Judicial Misunderstandings about Expert Evidence* for WLF on a *pro bono* basis.

Mr. Mickus organized the paper in three sections. The first section discusses the Advisory Committee’s 2000 amendment to Rule 702 that codified the rigorous judicial scrutiny called for in the U.S. Supreme Court’s 1993 *Daubert* ruling and ensure uniform application of such “gatekeeping.” The second section meticulously documents some courts’ misunderstanding of Rule 702 and how those misapplications have effectively re-written the rule. Mr. Mickus focuses on decisions that have eased the proponent’s burden of proving expert evidence is reliable and relevant, as well as rulings that treat an expert’s basis and application as matters for the jury rather than for the judge to decide. Finally, the third section argues that after twenty years of inconsistent application, it is time once again for the Advisory Committee to clarify courts’ gatekeeping duties with an amendment of Rule 702.

This WORKING PAPER is the third publication WLF has released in 2020 meant to inform the debate on Rule 702 and provide direction to litigants and courts on the presentation and review of expert evidence. A January MONOGRAPH, *Admissibility of Expert Testimony: Manageable Guidance for Judicial Gatekeeping*, details the key principles federal and state judges should follow when assessing the admissibility of expert testimony in civil litigation and discuss those principles in the context of four distinct areas of law. A March WORKING PAPER, *Weight of the Evidence: A Lower Expert Evidence Standard Metastasizes in Federal Courts*, argues that the second edition of the Reference Manual on Scientific Evidence accepted and promoted an inherently unreliable evidentiary methodology that undermines judges’ gatekeeping of expert evidence and empowers judges to act as precautionary regulators.

Celebrating its 43rd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

###