

Push it to the Limit: How Far Can Your Expert Ethically Go with AI?

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This paper addresses the ethical and evidentiary landscape governing expert witnesses' use of generative artificial intelligence (GenAI) in litigation, with analysis organized into six parts: (1) ethical rules for lawyers assisting expert preparation; (2) Federal Rules of Evidence developments, including the 2023 amendments to Rule 702, proposed Rule 707, and potential amendment to Rule 901; (3) case law and commentary on expert use of GenAI in report preparation; (4) practical impacts on admissibility of AI-assisted expert testimony; (5) emerging litigation themes regarding AI methodologies, data provenance, and error rates; and (6) strategic guidance for offering and challenging AI-related expert evidence.

Part 1: Ethical Rules for Lawyers Assisting with the Preparation of Expert Witnesses and Expert Witness Reports

Attorneys are both permitted and expected to assist their expert witnesses in preparing for testimony and drafting reports, but that assistance must remain within firm ethical and procedural boundaries. The core governing framework draws from the ABA Model Rules of Professional Conduct (particularly Rules 3.3 and 3.4), Federal Rule of Civil Procedure 26, and a substantial body of case law. The overarching principle is that all attorney assistance must be directed toward helping the expert effectively communicate truthful, independently-held opinions — not toward manufacturing, shaping, or distorting those opinions. An attorney who crosses the line by ghostwriting reports that the expert did not substantively prepare, coaching experts to testify in ways different from their actual views, or improperly contacting the opposing party's expert witness may face sanctions ranging from exclusion of the expert's testimony to professional discipline, including suspension or disbarment.

Lawyer involvement in expert preparation engages multiple duties under the ABA Model Rules of Professional Conduct:

- Rule 1.1 (Competence). Lawyers must possess the legal knowledge, skill, thoroughness, and preparation reasonably necessary to represent the client. Competent handling of experts includes selecting qualified experts, defining the

scope of the engagement, ensuring familiarity with governing procedural and evidentiary rules on expert disclosures, and supervising work product to avoid misstatements or omissions.

- Rule 1.3 (Diligence). Counsel must act with diligence and promptness. This includes timely retention, ensuring the expert has necessary materials, monitoring deadlines for disclosures, and addressing errors or supplementation needs.
- Rule 1.4 (Communication). Lawyers must keep clients reasonably informed and explain matters to permit informed decisions. Material choices about expert selection, scope, budgets, and risk tradeoffs in methodology or disclosure must be discussed with the client.
- Rule 3.3 (Candor Towards the Tribunal). A lawyer shall not offer evidence the lawyer knows to be false and must take remedial measures if false evidence has been offered. Counsel must not permit an expert to present opinions known to be unsupported, fabricated, or misleading by omission, and must correct material inaccuracies.
- Rule 3.4 (Fairness to Opposing Party and Counsel). A lawyer shall not unlawfully obstruct access to evidence, falsify evidence, assist a witness to testify falsely, or fail to make reasonably diligent efforts to comply with proper discovery. Assisting experts to withhold considered materials or ghostwriting opinions that mask true authorship can violate this rule.
- Rule 4.1 (Truthfulness in Statements to Others). In negotiations and discovery communications, lawyers must not knowingly make false statements of material fact or law or fail to disclose material facts when disclosure is necessary to avoid assisting a criminal or fraudulent act. Statements regarding expert independence, methodology, compensation, and the existence of drafts or considered materials must be truthful.
- Rule 4.2 (Communications with Persons Represented by Counsel). Prohibits communications with represented persons about the subject of the representation without consent. If an expert is a represented corporate or retained expert for an adversary, counsel must honor Rule 4.2 boundaries.
- Rule 4.3 (Dealing with Unrepresented Person). Requires clarity about the lawyer's role and avoidance of giving legal advice if the person's interests may conflict with the client's. When interacting with nonparty unrepresented experts (e.g. court-appointed neutrals), counsel must avoid confusion about representation.
- Rule 4.4 (Respect for Rights of Third Persons). Forbids using methods that have no substantial purpose other than to embarrass, delay, or burden a third person and addresses inadvertent receipt of privileged materials. Counsel should avoid

discovery tactics that improperly burden experts and appropriately handle inadvertently produced consulting-expert materials.

- Rule 8.4 (Misconduct). Prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation and conduct prejudicial to the administration of justice. Ghostwriting that conceals lawyer authorship of purported expert opinions or fabrication of data implicates Rule 8.4

The most directly applicable rule to expert witness preparation is ABA Model Rule 3.4, which has been adopted in substantially similar form by every U.S. state (with California having its own parallel framework). The rule provides that a lawyer shall not: (a) unlawfully obstruct another party's access to evidence; (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law; or (c) knowingly disobey an obligation under the rules of a tribunal. The rule expressly permits paying a reasonable fee for the professional services of an expert witness, but prohibits contingent fee arrangements whose payment is conditioned on the content of the expert's testimony or outcome of the case.

These prohibitions bear directly on expert witness work at multiple levels. Rule 3.4(a) prevents attorneys from taking actions — such as contacting an opposing expert's employer — that have the effect of obstructing the opposing party's ability to use their expert, even if obstruction was not the attorney's intent. Rule 3.4(b) is the central prohibition: it bars attorneys from counseling or assisting any witness, including an expert, to testify falsely, and from falsifying evidence, which courts have construed to encompass the submission of a fabricated expert report purportedly authored by the expert. Rule 3.4(c), as interpreted by the ABA and courts, prohibits ex parte contact with the opposing party's retained expert witness in jurisdictions that have adopted discovery rules patterned on FRCP 26(b)(4), because such contact circumvents the formal discovery procedures that constitute obligations of the tribunal.

Model Rule 3.3 obligates lawyers to be candid with courts and other tribunals. It prohibits knowingly offering evidence that the lawyer knows to be false, requires attorneys to take remedial measures — including disclosure to the tribunal — if they later discover that evidence they offered is false, and permits an attorney to refuse to offer evidence the lawyer reasonably believes is false. Applied to expert witnesses, Rule 3.3 requires that the testimony presented actually reflects the expert's opinions and beliefs. If an attorney knows that an expert's testimony is false or misleading, presenting it violates Rule 3.3. Courts and disciplinary bodies have applied this rule broadly: an attorney who knowingly allows false deposition testimony to stand without correction and without disclosure to the court commits a violation, regardless of whether the attorney actively instigated the false testimony.

Rule 8.4(c) prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation. Rule 8.4(d) prohibits conduct that is prejudicial to the administration of justice. Courts and

ethics authorities have applied both provisions in the expert witness context. In *People v. Layton*, 494 P.3d 693 (Colo. O.P.D.J. 2021), a Colorado disciplinary court found that an attorney who submitted a falsified expert rebuttal report under the expert's name — without the expert's knowledge or authorization — violated both Rule 3.4(b) and Rule 8.4(c). In *BAR COUNSEL, PETITIONER JEFFREY M. ROSIN, ESQ., RESPONDENT*, 2023 WL 7499920 (Ma.St.Bar.Disp.Bd., 2023), the Massachusetts Board of Bar Overseers concluded that an attorney who surreptitiously coached a witness during a deposition by whispering answers engaged in conduct violating Rule 8.4(d), as confirmed by reference to ABA Formal Opinion 508 (2023), which provides that "'Overtly attempting to manipulate' testimony-in-progress would likely violate Rule 8.4(d) as conduct prejudicial to the administration of justice."

With respect to witness preparation, it's permissible if not necessary for counsel to discuss with the expert: case strategy, how the expert's testimony and opinions fit into the overall case; possible lines of questioning; and even suggesting word choices that might help the expert make his or her meaning clear. But lawyers can cross an ethical line, as noted above, if they coach the expert as in the following ways: supplying the expert with testimony to give or providing scripted answers; telling the expert to give opinions the expert does not hold or testify falsely; or giving the expert facts that are false in order to influence the opinion the expert will give. See, e.g., *In re Halsey*, Case No. 02-O-10195 PEM.

In federal court, the foundational procedural requirement governing expert witness reports is Federal Rule of Civil Procedure 26(a)(2)(B), which mandates that a retained expert's written report be "prepared and signed" by the witness. Courts have uniformly interpreted this language to mean that the expert must be the true author of the report — the requirement is not satisfied by an expert who merely reviews and signs a report that was substantively drafted by counsel. As the court in *Government Employees Insurance Co. v. Right Spinal Clinic, Inc.*, 608 F.Supp.3d 1184 (M.D. Fla. 2022) explained, attorneys may help an expert draft a report in a way that satisfies Rule 26 requirements or rephrase the expert's writing to reflect the appropriate legal terminology, but an attorney "cannot be a ghostwriter of the expert's written report, preparing the expert's opinion from whole cloth and then asking the expert to sign it if he or she wishes to adopt it." 608 F. Supp.3d at 1188. That level of attorney involvement conflicts directly with Rule 26(a)(2)(B)'s requirement that the expert prepare the report. *Id.*

The operative legal standard courts apply is whether the expert "substantially participated" in the creation of the report. This standard permits considerable attorney assistance while preserving the core requirement that the expert's knowledge, methodology, and independent analysis drive the substance of the opinions disclosed. As the court in *Albritton v. Acclarent, Inc.*, 2020 WL 11627275 (N.D. Tex. 2020) explained: a ghost-written report "fails to comply with the disclosure requirements of Rule 26 and calls into question the reliability of the proposed testimony," and while an expert "may receive some assistance in preparing his or her report," the expert must "substantially participate[] in the

preparation." *Albritton* 2020 WL 11627275 at *7, citing *Batiste v. Lewis*, 2019 WL 1552843 (E.D. La. 2019). The Sixth Circuit articulated the permissible end of the spectrum in *U.S. v. Kalymon*, 541 F.3d 624, 638 (6th Cir. 2008), noting that "[A] party's attorney can reduce an expert's oral opinion to writing so long as the report reflects the actual views of the expert." *Zoch v. Daimler, A.G.*, 2018 WL 4610569 at *8 (E.D. Tex. 2018) confirmed that "as long as the substance of the opinions is from the expert, the attorney's involvement in the written expression of those opinions does not make them inadmissible" — specifically where the expert generates the underlying concepts, discusses them with the drafting attorney, and testifies that the finished product accurately reflects his or her opinions.

Courts that find true ghost-writing typically exclude the expert under Fed. R. Civ. P. 37(c)(1), impose adverse inferences, order supplemental discovery, or — in the most egregious cases — sanction counsel. In *Numatics, Inc. v. Balluff, Inc.*, 66 F.Supp.3d 934 (E.D. Mich. 2014), the court fully excluded the defense expert who conceded at deposition that the retaining attorney wrote his 64-page report, which he then reviewed and adopted with only "fairly minor" changes. A comparison of the report with the defendant's invalidity contentions showed the text was "indistinguishable down to the punctuation" — meaning the report was "a legal brief disguised (thinly) as an expert disclosure." Exclusion was mandatory under Rule 37(c)(1) because the violation was neither substantially justified nor harmless.

Attorneys should document their expert preparation process to demonstrate that the expert's independent judgment and expertise drove the substance of any report. Best practices include holding substantive meetings or calls with the expert before any draft is prepared, keeping records of those consultations, ensuring the expert reviews multiple drafts and provides meaningful revisions, and avoiding the use of reports or templates from prior cases as a foundation for a new expert's report in a different matter. When assisting with report preparation, attorneys should confine their role to organizational, editorial, and formatting assistance, ensuring that the expert's own stated opinions are the source of all substantive conclusions. Where an attorney reduces the expert's oral opinions to writing, the attorney must ensure the final product reflects the expert's actual views.

Part 2: The 2023 Amendments to Federal Rule of Evidence 702, Proposed Federal Rule of Evidence 707, and the Potential Amendment to Federal Rule of Evidence 901 Regarding the Use of Generative AI by Expert Witnesses

Federal Rule of Evidence 702 was most recently amended effective December 1, 2023, making two significant but clarifying changes: (1) explicitly imposing a preponderance of the evidence standard on all admissibility determinations—including the three reliability-based requirements that many courts had incorrectly been treating as questions of weight for the jury—and (2) strengthening the requirement in Rule 702(d) that an expert opinion must reflect a reliable application of the expert's principles and methods to the facts of the case, ensuring expert conclusions stay within the bounds of what the methodology

actually supports. These amendments did not create new substantive rules; rather, they corrected widespread judicial misapplication of the existing gatekeeping framework established in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). As for GenAI, FRE 702 as currently written contains no express provisions addressing it. However, courts have already applied the amended rule's reliability requirements to exclude AI-generated expert reports that lacked sufficient human oversight and verification, and a proposed new rule—FRE 707—would expressly extend the FRE 702 reliability framework to AI-generated and AI-enhanced evidence.

The current text of FRE 702, as amended effective December 1, 2023, provides that a qualified expert may testify if "the proponent demonstrates to the court that it is more likely than not" that: (a) the expert's specialized knowledge will help the trier of fact; (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's opinion reflects a reliable application of the principles and methods to the facts of the case. The phrase "demonstrates to the court that it is more likely than not"—new to the rule text—and the revised language of subsection (d) represent the two operative changes from the 2011 version of the rule.

The Advisory Committee on Evidence Rules explained that the 2023 amendments were necessitated by a persistent and widespread pattern of judicial error. In its May 2022 report leading up to the amendment, the Committee concluded 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," describing such holdings as an incorrect application of Rules 702 and 104(a). Courts had effectively been treating expert testimony as presumptively admissible and delegating reliability determinations to jurors, who often lack the specialized knowledge to evaluate whether an expert's conclusions exceed what the methodology actually supports.

The 2023 amendment responded directly to this problem. First, by weaving the Rule 104(a) preponderance standard into the text of Rule 702 itself, the amendment clarifies that the proponent of expert testimony must affirmatively demonstrate—by a preponderance of the evidence—that all four requirements are satisfied before the testimony may be admitted. Second, the revised Rule 702(d) "emphasize[s] that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology." The Advisory Committee notes that "judicial gatekeeping is essential because just as jurors may be unable, due to lack of specialized knowledge, to evaluate meaningfully the reliability of scientific and other methods underlying expert opinion, jurors may also lack the specialized knowledge to determine whether the conclusions of an expert go beyond what the expert's basis and methodology may reliably support."

Federal courts have been applying the amended rule with increasing rigor. The Sixth Circuit confirmed the dual nature of the amendment in *Davis v. Sig Sauer, Inc.*, 126 F.4th 1213 (6th Cir. 2025), explaining that the December 1, 2023 changes "enacted two principal changes": clarifying the preponderance standard and emphasizing that expert opinions must stay

within the bounds of reliable application of the expert's methodology. The District of New Jersey in *In re Valsartan, Losartan, and Irbesartan Products Liability Litigation*, 2025 WL 1024048 at *14 (D.N.J. 2025) applied Third Circuit precedent, reemphasizing the "rigorous gatekeeping function" required of district courts, while noting the amendment does not substantively alter Rule 702, but rather clarifies that the preponderance standard applies to the three reliability-based requirements added in 2000."

A proposed rule, FRE 707, would go further than the current framework by explicitly requiring courts to apply FRE 702's reliability standards to AI-generated and AI-enhanced evidence even when no expert witness accompanies that evidence. Under proposed FRE 707, a court could admit such evidence only if the proponent demonstrates that: the AI evidence will help the trier of fact; the AI tool relied on sufficient facts or data and used reliable principles and methods; and the AI evidence reflects a reliable application of principles and methods to the case's facts. Proposed FRE 707 would cover both AI-generated evidence (content created entirely by GenAI) and AI-enhanced evidence (human-generated content modified or improved using AI software). In evaluating these showings, courts would look at the intended purpose of the AI tool, how the tool is trained and tested, and whether its output is valid and reliable for its intended purpose.

The potential amendment to FRE 901 would specifically address the authentication of AI-generated content, including so-called "deepfakes." The amendment would clarify how to challenge AI-generated or altered evidence – especially synthetic audio or video – by requiring the proponent to affirmatively demonstrate authenticity when manipulation is credibly alleged. See, 7 Bus. & Com. Litig. Fed. Cts. §80.14 (AI and the Courtroom – Expert Evidence) (5th ed.) Although the Advisory Committee ultimately tabled the proposed amendment, it acknowledged the growing risk posed by "deepfakes" and left open the possibility of revisiting the issue if courts encounter persistent authentication problems. *Id.* Litigants can still invoke FRE 901(a) and seek metadata, expert review, or other indicators of reliability when questioning the origin or integrity of AI-generated media. *Id.*

These developments collectively heighten the proponent's burden to demonstrate reliability and proper application, and they foreshadow a framework – via proposed Rule 707 and potential Rule 901 changes – explicitly channeling AI-generated or AI-enhanced outputs through Rule 702's reliability gatekeeping and Rule 901's authentication principles. judges to assess the reliability of the theory or technique in question.

Part 3: The Use of Generative AI by Expert Witnesses to Prepare Expert Reports, Including Relevant Case Law and Commentary

Courts have consistently held that an expert witness's use of GenAI in preparing an expert report or declaration — without independent verification of the AI's output — renders the resulting work product unreliable and inadmissible. The two leading cases, *In re Celsius Network LLC*, 655 B.R. 301 (Bkrtcy. S.D.N.Y. 2023) and *Matter of Weber as Trustee of Michael S. Weber Trust*, 85 Misc.3d 727 (Surrogate's Ct. N.Y. 2024), establish that AI-

generated expert reports must satisfy the same reliability standards as any other expert testimony: they must be based on sufficient facts and data, produced through reliable and peer-reviewed methodologies, and independently reviewed by the signing expert. When experts abdicate their professional judgment to AI systems without verifying sources, calculations, or citations, courts have excluded the resulting reports under Federal Rule of Evidence 702 and its state-law equivalents. Courts have also signaled that counsel bear an affirmative duty to inquire whether their expert witnesses used AI and to ensure that any AI-generated content has been independently verified.

The leading federal decision is *In re Celsius Network LLC*. The case arose during Chapter 11 bankruptcy confirmation proceedings for a cryptocurrency lending platform. An expert witness, Mr. Faraj, submitted a 172-page valuation report regarding the value of a digital token called CEL. The report was not written by Mr. Faraj himself; rather, while he "directed and guided its creation," the report "was written by artificial intelligence at the instruction of Mr. Faraj." 655 B.R. at 308 "By his own testimony, a comprehensive human-authored report of that scope would have taken over 1,000 hours to complete." *Id.* Mr. Faraj generated the 172 pages in 72 hours, acknowledging it took him longer to read the report than to generate it. *Id.*

The court excluded the report in its entirety under FRE 702, finding that it failed all of that rule's requirements. First, the report was not based on sufficient facts or data. It "contain[ed] almost no citations to facts or data underlying the majority of the methods, facts, and opinions set forth therein," and "Mr. Faraj did not review the underlying source material for any sources cited, nor does he know what his team did (or did not do) to review and summarize those materials." *Id.* Second, the report was not the product of reliable principles and methods. "There were no standards controlling the operation of the artificial intelligence that generated the Report." *Id.* The Faraj Report was not the product of reliable or peer-reviewed principles and methods." *Id.* The expert's chosen valuation methodology was not widely accepted in the field, had not been peer tested, and was not supported by any academic citations. Third, the report contained numerous errors throughout, from duplicated paragraphs to mistakes in its description of trading windows — errors the expert acknowledged were inevitable given the 72-hour timeline. While the court excluded the written report, it separately allowed Mr. Faraj to testify orally as an expert in cryptocurrency, giving that testimony such weight as the court deemed appropriate. 655 B.R. at 309. The court reasoned that excluding oral testimony in a bench trial would not risk confusing a jury, and that Mr. Faraj possessed sufficient practical experience in cryptocurrency research to speak knowledgeably on those topics. *Id.*

Matter of Weber as Trustee of Michael S. Weber Trust, 85 Misc.3d 727 (2024), decided by the New York Surrogate's Court in October 2024, is a first-impression decision in New York Surrogate's Court practice addressing expert use of GenAI in report preparation. The case involved a fiduciary accounting dispute in which expert witness Charles Ranson relied on Microsoft Copilot — a large language model GenAI chatbot — to cross-check his damages calculations in a supplemental damages report. Critically, Ranson "could not recall what

input or prompt he used to assist him," "could not state what sources Copilot relied upon," and "could not explain any details about how Copilot works or how it arrives at a given output." 85 Misc. 3d at 741.

To demonstrate the reliability concerns, the court conducted its own experiment: it entered the same calculation prompt into Microsoft Copilot on three separate court computers, and received three different numerical results. The court also asked Copilot directly whether its calculations were "reliable enough for use in court," and Copilot responded that "any calculations or data need to meet strict standards, [and] should always be verified by experts and accompanied by professional evaluations before being used in court." 85 Misc. 3d at 741-42. The court noted wryly that "even Copilot itself self-checks and relies on human oversight and analysis." *Id.*

The court characterized the issue as one of first impression in Surrogate's Court practice and issued its ruling. "[D]ue to the nature of the rapid evolution of artificial intelligence and its inherent reliability issues that prior to evidence being introduced which has been generated by an artificial intelligence product or system, counsel has an affirmative duty to disclose the use of artificial intelligence and the evidence sought to be admitted should properly be subject to a *Frye* hearing prior to its admission." 85 Misc. 3d at 743. Because Ranson could not identify any publications confirming that GenAI use is generally accepted in fiduciary analysis — despite testifying that it "represents the future of analysis of fiduciary decisions" — the court declined to credit his damages calculations. 85 Misc. 3d at 742. The court found the expert's testimony "inherently unreliable" based on multiple deficiencies including use of outdated law, failure to consider obvious elements such as real estate taxes and the COVID-19 pandemic, utilization of incorrect time periods for damages, and speculative assumptions, in addition to the expert's inability to explain Copilot's methodology. 85 Misc. 3d at 737-38.

The court further defined "Generative Artificial Intelligence" as "artificial intelligence that is capable of generating new content (such as images or text) in response to a submitted prompt (such as a query) by learning from a large reference database of examples," and distinguished it from "A.I. assistive materials" — documents prepared with AI assistance but not solely generated by AI. 85 Misc. 3d at 742. This definitional framework is significant. It signals that courts may treat wholly AI-generated expert work differently from expert work where AI served merely as a drafting tool with robust human oversight.

Kohls v. Ellison, 2025 WL 66514 (D. Minn. 2025), illustrates a second, distinct harm from unverified GenAI use in expert declarations: AI-hallucinated citations to non-existent academic articles. *Kohls* involved a First Amendment challenge to Minnesota's deepfake statute, and the Attorney General submitted expert declarations including one from Professor Hancock. After plaintiffs moved to exclude the declarations, the Attorney General's office contacted Professor Hancock, who admitted that his declaration "inadvertently included citations to two non-existent academic articles, and incorrectly cited the authors of a third article." 2025 WL 66514 at *1. These errors originated from

Professor Hancock's use of GPT-4o, which provided him with fake citations that he failed to verify before including them in his declaration. The court noted that Professor Hancock "typically validates citations with a reference software when he writes academic articles but did not do so when submitting the Hancock Declaration as part of Minnesota's legal filing." *Id.* at *3.

The court was direct in its consequences: "Professor Hancock's citation to fake, AI-generated sources in his declaration — even with his helpful, thorough, and plausible explanation — shatters his credibility with this Court." 2025 WL 66514 at *4. The entire declaration was excluded. The court did not fault the use of AI for research generally, but noted that "when attorneys and experts abdicate their independent judgment and critical thinking skills in favor of ready-made, AI-generated answers, the quality of our legal profession and the Court's decisional process suffer." *Id.*

Kohls is also notable for the guidance it offered to retaining counsel. The court suggested that a "reasonable inquiry" under Federal Rule of Civil Procedure 11 "may now require attorneys to ask their witnesses whether they have used AI in drafting their declarations and what they have done to verify any AI-generated content." 2025 WL 66514 at *4. This signals an affirmative obligation for retaining attorneys — not just experts — to supervise the use of GenAI in expert work product.

Another case addressing the intersection of GenAI and expert testimony is *Ferlito v. Harbor Freight Tools USA, Inc.*, 2025 WL 1181699 (E.D. N.Y. 2025). The plaintiff's expert testified that a splitting maul was defectively designed, and after completing his report, used ChatGPT to confirm his conclusions. The defendant moved to exclude the expert's opinion under Rule 702, arguing that the expert's reliance on GenAI rendered the testimony unreliable. The court rejected that argument, finding "little risk" that the AI use impaired the expert's methodology because the expert's conclusions were rooted in his decades of engineering experience and independent analysis. 2025 WL 1181699 at *4. ChatGPT was used only as a corroborative check – not as a primary source.

A growing number of federal courts have issued standing orders or local rules requiring disclosure when GenAI is used in court filings. Northern District of Texas Local Civil Rule 7.2(f) requires briefs prepared using GenAI to disclose that fact on the first page of the filing under the heading "Use of Generative Artificial Intelligence." *Willis v. U.S. Bank, N.A. as Trustee, Igloo Securities Trust*, 783 F. Supp.3d 959 (N.D. Tex. 2025). Similarly, the Southern District of Texas issued General Order 2025-04 warning that "attorneys and self-represented litigants are cautioned against submitting to the Court any pleading, written motion, or other paper drafted using generative artificial intelligence without checking the submission for accuracy." *In re Kheir*, 674 B.R. 631 (Bkrtcy. S.D. Tex. 2025). The federal district court in Arizona has a similar rule. See, *Hunter v. TForce Freight, Inc.*, 2026 WL 673285 (D. Ariz. 2026).

These standing orders, while generally directed at attorneys drafting pleadings and briefs, reflect a broader judicial expectation that all persons submitting work product to courts – including expert witnesses – must independently verify AI-generated content.

Across both the caselaw and legal commentary, a common theme emerges: the critical failure in each case was not the use of AI itself, but the expert's failure to independently verify the AI's output. The Practical Law Expert Q&A on *Articles, Expert Q&A on Opening the Black Box of Generative AI: Explainability in Bankruptcy Cases* identifies "explainability" and "human oversight" as the twin pillars of responsible AI use in expert reports. For GenAI-created content to be admissible, the expert submitting it must be able to explain:

- The system that was used in its creation. How and with what input that system was trained.
- Whether the system is open or closed.
- How the system reached its particular decision, recommendation, or prediction.
- Why the training and system is reliable and trustworthy.

This framework tracks directly with FRE 702's requirements. In *Celsius*, the court found that "[t]here were no standards controlling the operation of the artificial intelligence that generated the Report." 655 B.R. at 308. Nor was the Faraj Report the product of reliable or peer-reviewed principles and methods." *Id.* Courts are increasingly likely to require that AI systems used in expert reports be "explainable" (i.e., closed systems with defined source training materials) rather than inscrutable large language models that generate outputs through opaque processes that neither the expert nor the court can audit.

The anti-ghostwriting principle reinforces that the expert's personal responsibility for the report's content and conclusions is non-delegable — whether to another human or to a machine. When GenAI is the primary author of an expert report and the expert performs no meaningful review of the underlying sources or methodology, the report is not genuinely prepared by the expert witness and may violate the rule's requirement that reports reflect the expert's own opinions.

Part 4: Practical Impact on the Admissibility of Expert Testimony Using Generative AI

The practical impact of the foregoing authorities is that an expert who delegates material portions of their analysis to a GenAI tool without independent review and verification of sources, methodology, and outputs faces a serious risk of exclusion under FRE 702's reliability requirements. The key factors that courts will scrutinize are whether the expert reviewed the underlying sources, whether there were quality controls governing the AI tool's operation, whether the methodology used by the AI has been validated and peer-reviewed, and whether the AI's conclusions were verified and adopted as the expert's own. Expert witnesses who use GenAI responsibly—as a tool for efficiency within a framework of

rigorous independent review—are on far stronger ground than those who allow AI to substitute for genuine expert judgment.

Practitioners must treat expert witness use of GenAI as a potential litigation-ending vulnerability that requires proactive management well before any challenge arises. As a threshold matter, retaining counsel should affirmatively ask each expert witness at the outset of engagement whether the expert intends to use, or has used, any GenAI tools in preparing the report or declaration — a practice explicitly endorsed by the court in *Kohls*. Experts who use GenAI should be instructed to document their prompts, record what sources the AI cited, and independently verify every citation, calculation, or factual assertion that the AI generated. The *Weber* court's demonstration that the same Copilot prompt returned three different numerical values on three different computers is a powerful reminder that AI outputs are not deterministic or auditable in the way traditional expert methodologies are.

For admissibility purposes, experts using GenAI should be prepared to testify in detail about what AI tool was used, what inputs were provided, how the AI's outputs were reviewed and corrected, and why the underlying methodology — which the AI implemented — is reliable and generally accepted in the field. The *In re Celsius* framework makes clear that directing and guiding the AI's creation is insufficient; the expert must be able to independently vouch for the facts, data, and methodology reflected in the report. Experts who cannot answer those questions on cross-examination will face serious credibility challenges and likely exclusion.

As previously noted, multiple federal circuits and many district courts have adopted standing orders or local rules requiring disclosure of GenAI use in court filings. These disclosure requirements, while currently focused primarily on attorneys' pleadings and briefs, are increasingly being interpreted to extend to expert declarations and reports. Experts and the lawyers who retain them should consult the standing orders of the specific court in which any litigation is pending before submitting AI-assisted expert work product.

Part 5: Emerging Litigation Themes Concerning AI-Assisted Methodologies, Data Provenance, and Error Rates

Emerging litigation themes center on three interconnected concerns: (1) the absence of standards controlling AI-assisted methodologies; (2) opaque data provenance; and (3) demonstrable error rates that undermine reliability under FRE 702.

First, courts repeatedly emphasize the lack of standards controlling the operation of the artificial intelligence that generated the report. In *Celsius*, "[T]here were no standards controlling the operation of the artificial intelligence that generated the Report." 655 B.R. at 308. "The Faraj Report was not the product of reliable or peer-reviewed principles and methods." *Id.* Finally, the expert's chosen valuation methodology was not widely accepted

in the field, had not been peer tested, and was not supported by any academic citations. *Id.* at 309.

Second, data provenance is a recurring failure point. Experts routinely admit they did not review the underlying source material for any sources cited by the AI, nor do they know what their team did (or did not do) to review and summarize those materials. In *Kohls*, the expert admitted using GPT-4o without validating citations with reference software, leading to citations to two non-existent academic articles and misidentified authors of a third. The court held that such failures "shatter[] his credibility." 2025 WL 66514 at *4.

Third, error rates are both inevitable and unquantifiable when GenAI is used without verification. In *Celsius*, the report contained duplicated paragraphs and mistakes in its description of trading windows — errors the expert acknowledged were inevitable given the 72-hour timeline. 655 B.R. at 308. In *Weber*, the court's own experiment with the identical Copilot prompt on three separate computers yielded three different numerical results, demonstrating non-deterministic outputs. The court also elicited from Copilot itself the admission that "any calculations or data need to meet strict standards, [and] should always be verified by experts and accompanied by professional evaluations before being used in court." 85 Misc.3d at 742.

These themes map directly onto the 2023 amendments to FRE 702(b)–(d). The preponderance standard now requires the proponent to affirmatively demonstrate sufficient facts or data, reliable principles and methods, and reliable application of those methods to the case facts. When an expert cannot explain the AI's training data, sources, or error rates, the proponent cannot meet that burden.

Part 6: Strategic Guidance for Proffering and Challenging AI-Related Expert Testimony

For parties proffering AI-assisted expert testimony, the strategy must center on preemptive transparency and rigorous human oversight. Retaining counsel should: (1) affirmatively inquire at engagement whether the expert used GenAI and document the response; (2) require the expert to preserve and disclose all prompts, outputs, and verification steps; (3) ensure the expert can testify to the AI tool's training data, error rates, and explainability; and (4) prepare the expert to demonstrate independent verification of every AI-generated citation, calculation, and factual assertion. In jurisdictions with standing orders requiring GenAI disclosure in filings, extend those disclosures to expert reports. When moving for admission, frame the expert's testimony around the amended FRE 702(d) "reliable application" requirement, emphasizing that the expert—not the AI—reached the ultimate conclusions after verification.

For parties challenging AI-related expert testimony, the motion to exclude should be framed as a FRE 702 gatekeeping issue, not merely a credibility attack. Key arguments include: (1) failure of reliability under FRE 702(b)–(d) where the expert cannot identify sources, methodology, or error rates of the AI system; (2) lack of sufficient facts or data

where the expert did not review underlying materials cited by the AI; (3) absence of peer-reviewed principles and methods controlling the AI's operation; and (4) violation of FRCP 26(a)(2)(B) where the report was effectively ghostwritten by AI without substantial expert participation. Cite *Celsius*, *Weber*, and *Kohls* for the proposition that unverified GenAI use renders the report unreliable and inadmissible. Request a *Daubert* hearing and, if appropriate, ask the court to replicate the *Weber* experiment by testing the same prompt on multiple systems to demonstrate non-determinism. If exclusion is denied, seek adverse inferences or limiting instructions on the weight to be given the testimony due to unverifiable provenance and error rates.

In all cases, counsel should consult the specific court's standing orders on GenAI use, as these increasingly extend to expert work product. The combined effect of the 2023 FRE 702 amendments, proposed FRE 707, and the growing body of exclusionary precedent creates a strong presumption against unverified AI-generated expert reports. Proactive verification and disclosure remain the safest path to admissibility, while failure to verify presents a powerful basis for exclusion.

Conclusion

The ethical and evidentiary regimes collectively demand that experts – and counsel – maintain ownership, transparency, and verification when GenAI tools are used. Rule 702's 2023 amendments sharpen the preponderance of the evidence standard and the reliable-application requirement, while proposed Rule 707 and potential Rule 901 changes portend more explicit governance of AI-generated and AI-enhanced evidence. Courts have excluded AI-driven submissions where experts abdicate independent judgment or fail to validate AI outputs, yet have tolerated limited AI use as a corroborative check when the expert's methodology and reasoning remain paramount. Effective advocacy in this evolving area requires early disclosure and documentation of AI use, robust verification and provenance practices, careful management of reported authorship and considered materials, and targeted *Daubert* and authentication strategies tailored to the AI tool's purpose, validation, error profile, and explainability.