January 25, 2026

Dear Judge Furman and the Distinguished Members of the Advisory Committee on the Federal Rules of Evidence:

We write to offer our comments regarding proposed new Federal Rule of Evidence 707. We have not previously written to the Committee expressing our views, nor did we seek to testify at the recent hearing on the proposed new rule. However, in light of the many negative comments that were provided by those who did make submissions or offer testimony, we wanted to provide our perspective on the proposed new rule and why we believe it would be helpful in addressing some of the concerns about the ability of the current rules of evidence to address the panoply of problems that are presented by evidence generated by artificial intelligence (AI) applications, especially those concerning authenticating such evidence and dealing with fabricated AI-generated evidence from generative AI (GenAI) programs (commonly referred to as "deepfakes").

In our view, there are three distinct evidentiary issues related to AI evidence that would benefit from revisions to the evidence rules: (1) proper authentication of evidence that the litigants acknowledge was created by AI ("acknowledged AI-generated evidence"), (2) admissibility of evidence that one party contends is not the product of an AI application, but which the opposing party contends is AI-generated ("unacknowledged AI-generated evidence," also referred to as "deepfakes"), and (3) what standards should govern the admissibility of acknowledged AI-generated evidence, which inherently involves scientific, technical, or specialized information, and what kind of witness is properly qualified to provide such evidence.

We have previously proposed rules that would address the first two issues—proposed amended Federal Rule of Evidence 901(b)(9)(b) (authentication of acknowledged AI-generated evidence) and proposed new Federal Rule of Evidence 901(c) (dealing with unacknowledged AI-generated evidence/Deepfakes, which was considered by the Committee when it drafted its own version of Rule 901(c), which has not yet been approved for release for public comment). In our publications regarding these topics,[1] we have written extensively about the importance of demonstrating the validity and reliability of AI-generated evidence before it is admitted, and explained why this unavoidably involves scientific, technical, and specialized evidence, which is best addressed under Federal Rule of Evidence 702, which—especially with its recent

[1] *See*, *e.g.*, Maura R. Grossman & Paul W. Grimm, *Judicial Approaches to Acknowledged and Unacknowledged AI-Generated Evidence*, 26;2 Columb, Sci. & Tech. L. Rev. 110 (2025); Abhishek Dalal et al., *Deepfakes in Court: How Judges Can Proactively Manage Alleged AI-Generated Material in National Security Cases*, The Univ. of Chi. Legal Forum 200 (2024); Maura R. Grossman, Paul W. Grimm, Daniel G. Brown & Molly (Yiming) Xu, *The GPT Judge: Justice in a Generative AI World*, 23:1 Duke L. & Tech. Rev. 1 (2023); Paul W. Grimm, Maura R. Grossman & Gordon V. Cormack, *Artificial Intelligence as Evidence*, 19:1 Nw. J. Tech. & Intell. Prop. 9 (2021).

amendment—is purpose-made to address the reliability issues essential to admitting such evidence.

While we continue to hope that the Committee will consider a draft rule regarding the authentication of acknowledged AI-generated evidence, and that it will release proposed Rule Federal Rule of Evidence 901(c) concerning unacknowledged AI-generated evidence for public comment, our purpose in writing this letter is to point out the features of proposed new Federal Rule 707 that we feel are quite helpful in addressing the inherent reliability issues (which, in our view, encompass assessing both *validity* and *reliability*), and which underlie admissibility of evidence that is the product of an AI application.

We begin with some general comments. First, we recognize that the rules of evidence, in the main, are technology neutral, and in most instances, that makes sense because technology—especially AI technology—is changing at lightning speed, while amending the rules of evidence involves a much more deliberative and lengthy process. It is for that reason that Federal Rule of Evidence 102 wisely encourages the flexible application of the existing rules to "promote the development of evidence law, to the end of ascertaining the truth and securing a just determination" of cases. As we see it, the existing rules of evidence provide a tested and familiar method of assessing the validity and reliability of scientific, technical, or specialized evidence, and the factors identified in Federal Rule of Evidence 702(a)-(d), as amplified by the *Daubert, Kumho Tire*, and *Joiner* decisions, give us the tools needed to decide when AI-generated evidence should be admissible. For that reason, we respectfully disagree with the critics of proposed Rule 707 to the extent that they believe that its reliance on Rule 702 is misplaced. We believe that it is important for the bench and bar to receive guidance on how to admit AI-generated evidence quickly, and rather than try to craft a stand-alone rule addressing it, borrowing from the existing Federal Rule of Evidence 702 makes sense because it has been strengthened by its recent amendment and its factors are well known to both judges and lawyers.

Further, we are confident that with proper case management by judges, looking to Federal Rule 702 when addressing the admissibility of AI-generated evidence, as proposed new Rule 707 does, will not inevitably lead to the need for a "*Daubert* hearing" in every case. To the contrary, we believe that judges will instead build into their preliminary case management orders procedures calling for the early disclosure of AI-generated evidence that the parties intend to use, allowance for appropriate discovery for adverse parties to determine whether to challenge the AI-generated evidence, and a pretrial opportunity for motions practice when the proposed AI-generated evidence is challenged as invalid or unreliable. In articles that we have written,[2] we have extensively discussed what these procedures might look like, and we are confident that judges will develop effective protocols to facilitate this process. The bottom line is that AI-generated evidence inherently involves scientific and technical subjects that are beyond the knowledge of lay juries and most judges. Federal Rule 702, as embodied in proposed new Rule

[2] *See, e.g., supra* n.1.

707, puts the inquiry in the correct place—the underlying validity and reliability of the AI-generated evidence.

While the text of proposed new Rule 707 introduces a novel way to evaluate AI-generated evidence (*i.e.*, focusing on its introduction *without* an expert witness, while mandating the same showing that would be required by Federal Rule 702 *if* an expert were to provide the foundation for its admission), it addresses an important point. As some of the critics of the proposed new rule noted, it is not at all unusual for parties offering scientific and technical evidence to attempt to lay a foundation by calling the wrong person to lay that foundation. The experience of one of the signatories to this letter, as a federal judge, was that frequently the proponent of highly technical and specialized evidence called someone who was qualified by training and experience to *use it* in a particular application, but was entirely lacking in the knowledge of how it was developed, tested, its potential error rate, and whether it was accepted as reliable by peers in the scientific community. Federal Rule 702 requires a witness qualified by knowledge, training, and experience to provide the foundation for its reliability and appropriate application to the facts of a particular case. Proposed new Rule 707 makes it clear that when introducing AI-generated evidence, the proponent cannot avoid the requirements of Federal Rule 702 by attempting to lay the foundation for admissibility by an unqualified witness. In that manner, proposed new Rule 707 reinforces Federal Rule 701, which limits lay witnesses to evidence that does not fall within the scope of Federal Rule 702.

There is another advantage to proposed new Rule 707. As the Committee well knows, in 2017, the Federal Rules of Evidence rules were amended to adopt Rules 902(13) and 902(14) to permit the authentication of evidence that is the product of an electronic system/process that produces accurate results, as well as data copied from an electronic device, storage medium, or file through a certificate instead of a "live" witness. While these rules are not specifically focused on AI, the kinds of evidence they do focus on will likely include AI-generated evidence. Proposed new Rule 707 would require that the certification contemplated by Rules 902(13) and (14) also would have to meet the foundational requirements of Rule 702 when used to authenticate AI-generated evidence.

We would like to address another matter raised by those who expressed concerns about proposed new Rule 707. That is, the use of the phrase "machine-generated" instead of "computer-generated" or "AI" to define its scope. Their concern is that this phrase—not defined in the rule itself—but addressed in the proposed Advisory Committee Note—will create confusion and result in application of Rule 707 to well accepted technical evidence other than AI-generated evidence, notwithstanding the provision in the proposed rule that it is not intended to apply to "the output of simple scientific instruments"—which also are not defined by the rule.

We agree that these concerns may have some merit, but we suggest that the proposed rule could be easily amended to assuage them. We offer for consideration of the Committee a rule adopted by the Supreme Court of Maryland in 1998 that provides an example of how the

Committee might address what the rule covers, and what it does not. The rule is Maryland Rule 2-504.3 and it addresses computer-generated evidence (which AI-generated evidence most assuredly is). It defines this evidence as:

> Computer-generated evidence means (1) a computer-generated aural, visual, or other sensory depiction of an event or thing and (2) a conclusion in aural, visual, or other sensory form formulated by a computer program or model. The term does not encompass photographs merely because they were taken by a camera that contains a computer, documents merely because they were generated on a word or text processor, business, personal, or other records or documents admissible under . . . [rule 803(6)]; or summary evidence admissible under . . . [rule 1006], spread sheets, or other documents merely presenting or graphically depicting data taken directly from business, public, or other records admissible under . . . [rules 803-804].

While we do not advocate wholesale adoption of this definition in proposed new Federal Rule 707, it is a helpful example of how the scope of the rule could be focused more directly on what its true concern is—AI-generated evidence—but defined in a way that will not overwhelm courts with its application to other technological evidence that should not have to meet the requirements of Federal Rule 702. We also agree that using the term "artificial intelligence" instead of "machine-generated" would most effectively avoid any confusion as to the proposed rule's intended scope. There is no need to agonize over the definition of "AI" as there are ample existing definitions of that term that could be referenced in the Advisory Committee Note.

In short, we believe that proposed new Rule 707 offers promising assistance with respect to one important aspect of AI-generated evidence: acknowledged AI-generated evidence. We remain convinced that there is more work to be done with respect to unacknowledged AI-generated evidence (a/k/a deepfakes).

We thank you for the opportunity to submit these comments and for your thoughtful consideration of them.

Respectfully submitted,

/s/ Paul W. Grimm
Hon. Paul W. Grimm
U.S. District Judge (retired)
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