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Attacks Haven't Killed Judiciary's AI Rule, May Strengthen It

By **Jeff Overley**

Law360 (January 29, 2026, 11:52 PM EST) -- Federal judiciary advisers Thursday confronted the most extensive opposition yet in their campaign to ensure the reliability of evidence utilizing artificial intelligence, but the criticism appeared constructive, possibly upping the odds of a digital age addition to U.S. court rules.

Members of the judiciary's Advisory Committee on Evidence Rules heard the elaborate opposition during a virtual hearing regarding **proposed Federal Rule of Evidence 707**, which would apply the so-called Daubert standards of reliability in Rule 702 to "machine-generated evidence" presented without a human expert.

At Thursday's hearing, a baker's dozen witnesses from academia, BigLaw and boutique firms shared their perspectives, and while their views varied greatly, they almost uniformly used impassioned words when describing the stakes.

"At the heart of litigation in this country is fairness," DiCello Levitt LLP partner Mark M. Abramowitz, Thursday's first witness, said mere minutes into the two-and-a-half-hour hearing. "It is understandable and, frankly, crucial that the rules of evidence be updated to keep up with how generative AI has become a mainstay within our jobs and daily life."

"But," Abramowitz added, "the proposed rule as written does not accomplish the goals of justice, fairness or efficiency."

Strong feelings abound because Rule 702 is a powerful gatekeeper for expert testimony that can make or break civil and criminal cases. If Rule 707 is codified, it could cover a nearly limitless realm that encompasses breathalyzers, electronic medical records, facial recognition technology, geolocation data, license plate readers and pressure gauges, to name a few of the examples cited worryingly Thursday.

"Who's to say that an MRI is not machine-generated evidence? Or an EKG?" Cambo Ferry PLLC partner Cristina P. Cambo told the committee, one of several panels of judges and lawyers that advise the Judicial Conference of the United States.

Neither the draft rule nor its accompanying note explicitly mentions artificial intelligence. The draft rule's terminology is intentionally broad, designed for flexibility in the fluid field of AI as well as durability in the slow field of judiciary policymaking. At Thursday's hearing — and at **another public hearing** two weeks ago, as well as in **written comments** regarding Rule 707 — many observers have sought more precision.

"I think the universal comments are it's vague and overbroad," Shook Hardy & Bacon LLP partner

John J. Rosenthal said during his testimony Thursday.

Those sorts of comments, while critical, appeared to help steer the committee toward refinements on Thursday. In particular, committee leaders sounded receptive to a proposal from Andrea Roth — a professor at the University of California, Berkeley School of Law — to replace "machine-generated evidence" with "computer-generated conclusions."

"The elegance of the rule, if you will, is that it only applies to conclusions of machines that would be subject to [Rule] 702 if uttered by a human," Roth said Thursday. "And so the whole point is that it's only dealing with those analytical conclusions that are of the type that an expert would make."

The committee's chair, U.S. District Judge Jesse M. Furman, also voiced interest Thursday in Roth's response to criticism that Rule 702's regulation of human experts is an awkward fit for Rule 707's regulation of computers. Currently, Rule 707 simply cites Rule 702. Roth has proposed Rule 707 language that would borrow text from Rule 702 but also omit certain words, such as "knowledge" and "testimony."

"While I'm not aligned with professor Roth and a lot of her opinions … I think the committee should seriously consider her proposal to import certain components of 702 into this rule," Rosenthal said.

King & Spalding LLP partner Robert B. Friedman, another witness at Thursday's hearing, echoed that statement, saying that "expressly putting Rule 707 evidence under the same disclosure framework as Rule 702 … will go a long way to solving this."

Judge Furman also seemingly made progress Thursday when asking witnesses if concerns would be alleviated by revising Rule 707 to require that litigants promptly disclose use of AI evidence.

"Do you think a notice provision in our rule would be at least a step in the right direction?" the judge asked Cambo, who replied, "I think that would be a very helpful thing."

Another point of contention has surrounded Rule 707's caveat that it "does not apply to the output of simple scientific instruments," with many experts calling the language murky and an invitation to drawn-out disputes in litigation. But Thursday's hearing produced a refinement on that issue as well, with attendees widely saying that the sentence should be scrapped.

"We also agree with the other commentators that the 'simple scientific instruments' language is unnecessary and creates more room for confusion," Lauren Yu of the American Civil Liberties Union said during her testimony.

Some witnesses on Thursday also reprised assertions that Rule 707 is premature — "a solution in search of a problem," as some put it — because few litigants are seeking to admit AI evidence without an expert. But several attorneys on both sides of the aisle said it's a real issue affecting both civil and criminal practice areas.

"We're already seeing this type of evidence come [into] the trial court," witness Nicole Owens, executive director of the Federal Defender Services of Idaho, said Thursday. Facial recognition technology, video enhancements and AI-generated transcripts "are increasingly utilized by law enforcement and other witnesses, often without triggering Rule 702," Owens said.

Jonathan Redgrave of Redgrave LLP, who specializes in electronic discovery for defendants, offered a similar attestation during his testimony, saying, "I do disagree with some of the folks

who are saying we don't have enough anecdotal evidence on the civil side. I think this issue is in front of us right now."

Redgrave did advise against moving forward with Rule 707 in the near future, while adding that the work thus far was commendable.

"I don't want you to take from this any lack of respect for the work you've done," he told Judge Furman.

"No disrespect taken. Indeed, when we put this rule out for comment, we expressed that there was no assumption that it would be adopted," the judge responded. "We were very eager for the input, and this input has been very helpful."

The public comment period concludes Feb. 16. Any revisions to Rule 707's text are expected to be released in connection with the semiannual meeting of the evidence rules committee on May 7 in Washington, D.C.

--Editing by Michael Watanabe.
