



AI In the Courtroom

RULES OF EVIDENCE GOVERNING EXPERT TESTIMONY AND AI-ASSISTED METHODOLOGY

For forensic practitioners who use AI tools in their work, the relevant legal framework is not primarily about artificial intelligence—it is about expert testimony. The Federal Rules of Evidence (FRE) that govern how forensic experts do their work have not been rewritten in response to AI. Instead, the challenge lies in understanding how existing rules apply to AI-assisted methodologies and being prepared to explain that application to courts, retaining counsel, and opposing parties.

This document provides a plain-language overview of the four federal rules most directly relevant to forensic practitioners who use Argent Forensics or any AI-assisted record review tool: **FRE 702, FRE 703, FRE 705, and Proposed FRE 707**. Each section explains what the rule requires, how it has been interpreted by courts, and what it means for forensic practice.

Note: A broader legal analysis—including the full five-factor Daubert analysis applied to Argent Forensics specifically—is available in our companion document: Sample Admissibility Brief, at argentforensics.com/resources.

PREPARED BY: ARGENT FORENSICS
WWW.ARGENTFORENSICS.COM
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FRE 702

Testimony by expert witnesses

Federal Rule of Evidence 702 is the foundational rule governing the admissibility of expert testimony in federal court and in the majority of state courts that have adopted it. Under FRE 702, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion if all of the following conditions are met:

1. The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
2. The testimony is based on sufficient facts or data;
3. The testimony is the product of reliable principles and methods; and
4. The expert has reliably applied the principles and methods to the facts of the case.

FRE 702 was amended effective December 1, 2023, to clarify two points that trial courts had inconsistently applied. First, the amendment confirmed that the proponent of expert testimony must demonstrate admissibility to the court by a *preponderance of the evidence*—that is, demonstrating it is more likely than not that the admissibility requirements are satisfied. Second, the amendment clarified that the expert's opinion must reflect a *reliable application* of the methodology to the facts of the case—not merely that the methodology is reliable in the abstract. See Fed. R. Evid. 702 advisory committee's note to 2023 amendment.

For forensic practitioners using AI-assisted record review, the 2023 amendment is significant: it places an explicit burden on the party offering the expert to affirmatively demonstrate that the AI-assisted methodology was reliably applied to the specific case at hand.

Furthermore, under FRE 702(b), the testimony must be based on "sufficient facts or data." Opposing counsel may try to exploit this by arguing that an AI search represents an "incomplete" dataset if an OCR glitch or processing error skipped crucial pages. Practitioners must prevent this "omission risk" by executing a standardized validation step: verifying the ingestion index completeness (cross-checking the platform's uploaded document list against the official collateral record index provided by retaining counsel) before running any AI analyses.

Therefore, practitioners must be prepared to explain not just that Argent is a reliable tool generally, but how they applied it in this specific instance—what records were uploaded, how the ingestion index was verified for completeness, what queries were run, and how they manually verified the outputs.

What This Means for Practice:

Under FRE 702 as amended, you must be able to demonstrate that you reliably applied your AI-assisted methodology to the facts of your specific case. Retain your complete case file export from Argent—including original documents, AI-generated summaries, chronologies, query logs, and metadata trails—as documentation of your application of the methodology. The Argent metadata trail answers the FRE 702 reliability question directly: it shows exactly what the AI did, when, from what source material, and how you verified its outputs.

FRE 702 as amended requires proof that the AI-assisted review was reliably applied in your specific case, verified by an active audit trail of what records were processed and how they were checked.

FRE 703

Bases of an Expert's Opinion Testimony

Federal Rule of Evidence 703 addresses what facts or data an expert may rely on in forming their opinion. Under FRE 703, an expert may base an opinion on facts or data that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

FRE 703 is central to the question of whether AI-generated outputs—summaries, chronology entries, or AI Assistant responses—can appropriately serve as part of the factual basis for an expert opinion. One part of this answer depends on the distinction between generalize open domain chatbots, versus specialized closed-domain systems.

Courts have demonstrated early sensitivity to the dangers of ungrounded generative AI. In *Mata v. Avianca*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023), attorneys were heavily sanctioned for submitting legal briefs containing non-existent case citations fabricated by an AI chatbot. Open-domain consumer AI tools operate "closed-book"—drawing probabilistically on massive, public datasets, which makes them highly prone to factual fabrications or "hallucinations." Additionally, they operate under algorithms or architectures that are often proprietary to the developer, further obscuring scrutiny. Depending on the application relying on unverified open-domain AI outputs may fail the "reasonable reliance" standard of FRE 703, at least for output that cannot be verified in other ways or where conclusions rely on these "black box" computations that cannot be further examined.

In contrast, Argent operates primarily as a closed-domain **Retrieval-Augmented Generation (RAG)** system. It is restricted to the specific, verified collateral records uploaded by the practitioner for that individual case. The

Large Language Model (LLM) within Argent does not act as an independent source of information other than for provision of peripheral context, acting as a linguistic formatting engine and translating verified vector-retrieved text segments back into clear prose.

Because Argent's citation architecture hardcodes page-level citations to every output, the expert is never blindly relying on the AI. They are relying on verified extractions from the original source documents. The AI organized and surfaced those sources; the expert verified and relied on them.

What This Means for Practice:

AI-assisted outputs should not be cited as independent clinical authorities in your report. Characterize them correctly: the AI organized, indexed, and surfaced the records; you manually verified the relevant extractions against the original source documents; and your opinion is based on those verified primary records. This framing is accurate, maintains your sole intellectual agency, and satisfies the reasonable reliance standard of FRE 703.

Under FRE 703, reasonable reliance is established because the expert relies on verified primary source records organized by a closed-domain retrieval system, rather than an ungrounded generative chatbot.

FRE 705

Disclosing the Facts or Data Underlying an Expert's Opinion

Federal Rule of Evidence 705 provides that an expert may state their opinion—and give the reasons for it—without first testifying to the underlying facts or data, unless the court orders otherwise. However, the expert may be required to disclose those facts or data on cross-examination.

First, proactive disclosure of AI tool use in the forensic report is typically professionally appropriate and strategically preferable regardless of what FRE 705 technically requires. A practitioner who is prepared to explain their methodology under cross-examination is in a substantially stronger position than one who attempts to hide the tool and is forced to explain it under hostile questioning. Courts have also generally favored transparency in expert methodology.

Therefore, the importance of FRE 705 lies in the professional burden of proving your factual foundation when AI tools were used. While the rule allows you to state opinions on direct examination without listing every supporting document first, it grants opposing counsel an absolute right to demand the exact underlying facts and data on cross-examination. If your report discloses that you used an AI-assisted tool like Argent to review thousands of pages of records, opposing counsel may place the underlying foundation of your opinion under different scrutiny. They may seek to establish that you did not actually read the records, that you relied on a "black-box" machine, or that your opinions are built on unverified AI hallucinations.

Under this level of pressure, a vague recollection of the records can damage your credibility. If you cannot articulate how the system identifies the precise location, page number, and clinical context of a challenged fact, your foundation may be compromised.

This is where Argent serves as a protective instrument. By enforcing a strict page-level citation for every extracted fact, chronology entry, and summary line, Argent ensures that this information is available to you. During your case preparation, the click-to-source architecture allows you to rapidly audit, verify, and locate every critical piece of evidence. On the stand, you do not have to defend AI math; you can produce the exact page and sentence in the primary medical or legal records at issue, proving that your independent professional judgment is grounded in factual reality.

What This Means for Practice:

Expect opposing counsel to use FRE 705 to demand the precise source and location of your any underlying facts that may have involved AI. Do not rely on memory or unverified AI summaries. Throughout the workflow, use Argent's page-level links to audit the final formulation. When asked where a specific fact came from on cross-examination, you can confidently cite the document and page number.

Proactive disclosure of AI tool use in your forensic report preempts opposing counsel's cross-examination and positions your methodology as a model of professional transparency. Under FRE 705, the expert must be prepared to produce the exact source of any underlying fact on cross-examination; Argent's page-level audit trail ensures you can instantly locate and defend every foundational fact in the record.

[proposed] FRE 707

Proposed Rule Related to AI-Generated Evidence

Proposed FRE 707 is a drafted rule working through the federal rulemaking process. It has not yet been enacted. Its final form may differ materially from current drafts. This section describes the proposed rule as currently drafted and its likely implications as of this writing.

Proposed FRE 707 specifically addresses the admissibility of machine-generated, AI-driven evidence in federal court. If adopted in its current form, FRE 707 would require AI-generated evidence to meet reliability standards similar to those governing expert testimony under FRE 702.

Proposed FRE 707 focuses on complex, non-technical AI-generated outputs that are offered directly as substantive evidence or exhibits (such as computer-generated accident reconstructions or synthetic digital media). Under FRE 707, when evidence is generated by a machine or AI system, and no human expert testifies to its substance, the court may only admit it if the offering party proves that the output satisfies the reliability requirements of Rule 702 (that it is based on sufficient facts or data, that it is the product of reliable principles and methods, and that those principles and methods were reliably applied to the facts of the case). If a human expert is involved, then the testimony is governed by Rule 702. FRE 707 is specifically oriented for situations where an algorithm is acting without human expert involvement.

Because Argent is utilized strictly as a clinical-legal workbench to organize records, and because Argent-produced summaries, chronologies, or chat outputs are never offered as standalone evidence or exhibits, Proposed FRE 707 does not apply. The evidence offered in court is not the AI's output but your expert clinical opinion that is only in small part informed by it, which remains under the governance of FRE 702. Because you independently review, cross-check, and verify every page of the primary records before

incorporating them into your analysis, the expert remains the sole intellectual author of the testimony.

Even though the rule is inapplicable, opposing counsel may attempt to invoke the spirit of Proposed FRE 707 to argue that by utilizing AI-generated text to aid your review, you are acting as a "conduit" to smuggle inadmissible, unverified AI evidence into the record. To preempt this objection, you can demonstrate that even if analyzed under the rigorous system integrity standards contemplated by Proposed FRE 707, Argent's architecture exceeds them:

- **System Integrity:** Argent's database storage, secure AWS KMS cryptographic keys, and closed-loop data processing prevent any form of data tampering or external leakage.
- **No Out-of-Court Assertions:** The software does not operate as an autonomous decision maker. It functions solely as a clinical document indexer, and every finding is instantly traceable to an authentic, page-level primary record.

What This Means for Practice:

Proposed FRE 707 signals that the legal system is actively developing an explicit reliability framework for AI-generated evidence—and the standards it is moving toward are highly substantive. Forensic practitioners who use Argent Forensics are uniquely positioned for this future because the platform is designed specifically around the principles of system integrity, even as this Rule will not apply to this software due to the foundational role of expert involvement throughout the workflow.

Proposed FRE 707 signals a legal future demanding verified system integrity, a standard Argent anticipates through its closed-loop, page-cited, and cryptographically secure architecture.

Summary of Practical Implications

Putting It All Together

The federal rules of evidence governing expert testimony have not changed in response to AI—they were designed to evaluate the reliability of methodologies more generally, and they apply to AI-assisted methodologies through that general framework. What has changed is the need to think explicitly about how those rules apply to the specific AI tools you use and how you use them.

For forensic practitioners using Argent Forensics, four practical obligations flow from this evidentiary framework:

- **DISCLOSE:** AI tool use should be disclosed in the forensic report —and you must be prepared to discuss it under cross-examination. Argent provides sample report disclosure language and cross-examination preparation resources at argentforensics.com/resources to support both. Disclose accurately and proportionately—neither minimizing nor overstating the AI's role in your methodology.
- **VERIFY:** AI-generated output must be verified against the cited source before it informs your analysis or enters your report. Argent's citation architecture makes verification fast—every output is linked to a specific document and page number. Verification is the practitioner's responsibility, not the platform's.
- **DOCUMENT:** Retain the complete case file, either within the Argent platform or through Argent's export process. This will capture the original documents, AI-generated artifacts with metadata, and query history, as part of the methodological documentation.

- **STAY CURRENT:** The legal and professional landscape around AI in forensic practice is developing rapidly. Consult primary sources and jurisdiction-specific factors for guidance on any specific case.

Argent is a modern, highly secure instrument for performing an accepted methodology, not a new scientific theory or diagnostic method in itself.

AUTHORITIES REFERENCED

Federal Rules of Evidence

- Fed. R. Evid. 702 (as amended December 1, 2023)
- Fed. R. Evid. 702 advisory committee's note to 2023 amendment
- Fed. R. Evid. 703
- Fed. R. Evid. 705
- Proposed Fed. R. Evid. 707 (pending rulemaking)

Cases

- *Da Silva Moore v. Publicis Groupe*, 287 F.R.D. 182 (S.D.N.Y. 2012)
- *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
- *Equity Analytics, LLC v. Lundy*, 248 F.R.D. 54 (D.D.C. 2008)
- *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)
- *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999)
- *Mata v. Avianca*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023)
- *United States v. O'Keefe*, 537 F. Supp. 2d 14 (D.D.C. 2008)

Professional Standards

- American Psychological Association, *APA Ethics Code* (2017)
 - American Psychological Association Office of Health Care Innovation, *Companion Checklist: Evaluation of an AI-Enabled Clinical or Administrative Tool* (October 2024)
 - American Psychological Association, *Specialty Guidelines for Forensic Psychology* (2013, revised)
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CONTACT AND FURTHER INFORMATION

Argent Forensics LLC

www.argentforensics.com/resources

support@argentforensics.com

Additional professional resources, including Sample Informed Consent and Report Disclaimer, APA AI Tool Evaluation Checklist, and Admissibility Analysis, are available for free download at argentforensics.com/resources.

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