January 15, 2026

Committee on Rules of Practice and Procedure
Thurgood Marshall Building
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544
E-Mail: RulesCommittee_Secretary@ao.uscourts.gov

Re: **Proposed Rule of Evidence 707**

To the Advisory Committee on Evidence Rules:

On behalf of the National Association of Consumer Advocates, I intend to present the following testimony at the January 29, 2026, hearing of the Committee on Rules of Evidence.

My name is David Nagdeman. I am a partner at the law firm Langer, Grogan & Diver P.C. in Philadelphia, Pennsylvania. And I appear before you today in my capacity as a member and representative of the National Association of Consumer Advocates or NACA. NACA, its members, and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means. We appreciate this opportunity to comment on the proposed amendments to the Federal Rules of Evidence and specifically Proposed Rule 707.

We understand, based on the report and comments to the proposed rule, that Proposed Rule 707 permits a party to introduce broadly defined "machine-generated" outputs into the evidentiary record without a subject-matter expert to testify to the material. The proposed rule purports to ensure the reliability of such materials through a technical expert declaration that otherwise meets the criteria set forth in Rule 702. The Committee's notes provide limited guidance about how courts should apply these reliability requirements, absent a testifying subject matter expert as would otherwise be required.

We recognize and support the Committee's desire to address the fast-developing proliferation of machine-generated materials in federal courts and to ensure any such materials in the evidentiary record are subject to rigorous reliability tests. As consumer advocates, we regularly see how consumers are harmed by unreliable machine-generated output. For instance, credit-assessment and loan-underwriting algorithms can exhibit racially discriminatory biases by using data, such as zip code data, that highly correlate with race. Meanwhile, credit-reporting systems often incorporate mistaken identity data or scriveners'

errors that harm consumers and prove difficult to remove because no one wants to take responsibility for the operation of the software systems.

Although we agree that federal courts would benefit from guidance regarding the admissibility of machine-generated materials, we are concerned that Proposed Rule 707 undermines its very purpose to ensure reliability in machine-generated evidence or testimony at trial. In our view, Rule 702 sufficiently addresses the concerns outlined by the Committee at the present time.

Our principal objections are threefold. First, Proposed Rule 707 and the accompanying Comment introduce undeveloped terms and concepts that warrant elaboration, especially the core term of "machine-generated" itself. Second, we fear that by removing the requirement of a testifying expert, the proposed rule will undermine a jury's ability to weigh the veracity of machine-generated analysis. Third, we are concerned that the reliability standards set forth in Rule 702 cannot practically be assessed as to "machine-generated" materials as envisaged by the Committee's notes.

On the first point, the Proposed Rule's use of vague, overinclusive terms is bound to engender confusion and costly litigation. This is especially apparent to the Proposed Rule's core term: "machine-generated." On the one hand, the Proposed Rule appears to be motivated to deal with recent advances in Large Language Model (LLM) technologies, often referred to as "AI," and their potential use in litigation. But the notes and comments assume that "machine-generated" materials include any evidence extracted through an automated process. In the context of consumer litigation, this might include vehicle reports, consumer credit reports, and all manner of routine business records stored in an electronic format. While LLM technologies may be relatively novel, courts have been managing the admission of other "machine-generated" evidence for decades. If the Committee believes that additional rules are necessary to manage the reliability of LLM generated materials, the rules should be narrowly tailored to those materials in order to address the specific reliability concerns they raise.

On the second point, for evidence subject to Rule 702, the reliability requirements are only a preliminary step before a jury weighs the veracity of the models and analyses through the process of adversarial testimony. Rule 702 assumes the presence of an expert capable of defending such models and analyses on the stand and subject to rigorous cross-examination. We fear that removing the testifying expert deprives the jury of a critical opportunity to weigh the veracity of expert-like analyses. This deprivation undermines the purpose of both Rule 702 and Proposed Rule 707, to the extent that such materials are solely admissible to "help the trier of fact to understand the evidence or to determine a fact in issue." Indeed, in the use examples identified in the Committee Report—stock trading causation analysis and copyright analysis for works of art or software—an expert's testimony
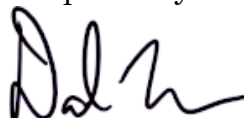
is crucial to understanding the assumptions that went into the models and how the models produced the results.

Third, we are concerned with the practicality and precision of Proposed Rule 707. The Committee suggests that courts may take judicial notice that machine output is reliable, but it provides no context or examples when it would be appropriate to do so, leaving the scope of this exception up for debate. In situations where the judicial notice exception does not apply, the Committee recommends a process for analyzing reliability that involves assessment of the output's training data and system. This recommendation presents several core impracticalities. Most notably, the underlying mechanics of Large Language Model systems, including both their programming and their training data, are closely guarded intellectual property in a highly competitive industry. If the systems' owners believe the inner working of their machines are trade secrets, they likely will refuse to disclose sufficient information about their operation to permit the reliability inquiry suggested by the Comment. It is also understood that the nature of these systems' operations, after training on the data, is largely a "black box," meaning, even the programmers don't know exactly how or why the software is producing certain output. This lack of transparency not only heightens the concern for latent biases and unintended errors, which we continue to see in existing machine-generated output, but also undermines the possibility of a meaningful reliability inquiry as set forth in the Comment.

Again, while we appreciate the Committee's efforts to address the widely touted use of Large Language Models in contemporary legal practice, NACA believes that Rule 702 adequately permits the use of machine-generated materials at trial while protecting the jury's critical and constitutional role as the finder of facts in our legal system. Alternatively, the Committee may find it appropriate to revisit and clarify Proposed Rule 707 by, for example, defining "machine-generated" to apply solely to outputs generated by machine-learning software. The Committee could also elaborate further on the scope of the exceptions for "simple scientific instruments" and "judicial notice." Given the ever-evolving state of technology, the prudent approach would be to draft a narrow rule limited in scope to address the evidentiary concerns specific to "machine-learning" and Large Language Models that prompted the Committee to propose the rule in the first place.

Thank you for your time and consideration.

Respectfully submitted,

David A. Nagdeman, Esq.