

Order

Michigan Supreme Court
Lansing, Michigan

October 25, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2022-30

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendments of
Rules 702 and 804 of the
Michigan Rules of Evidence

On order of the Court, this is to advise that the Court is considering amendments of Rules 702 and 804 of the Michigan Rules of Evidence. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

(a)-(c) [Unchanged.]

(d) the expert's opinion reflects a reliable application of~~has reliably~~
~~applied~~ the principles and methods to the facts of the case.

Rule 804. Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a Witness

(a) [Unchanged.]

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1)-(3) [Unchanged.]

(4) Statement Against Interest. A statement that:

(A) [Unchanged.]

(B) if the statement tends to expose the declarant to criminal liability, ~~and is offered to exculpate the accused,~~ it must be supported by corroborating circumstances that clearly indicate its trustworthiness.

(5)-(6) [Unchanged.]

Staff Comment (ADM File No. 2022-30): The proposed amendment of MRE 702 would require the proponent of an expert witness’s testimony to demonstrate that it is more likely than not that the factors for admission are satisfied and would clarify that it is the expert’s opinion that must reflect a reliable application of principles and methods to the facts of the case. The proposed amendment of MRE 804 would require corroborating circumstances of trustworthiness for *any* statement against interest that exposes a declarant to criminal liability. **Please note that the unchanged language in these rules reflects the Court’s non-substantive amendments of the rules that become effective January 1, 2024. See [ADM File No. 2021-10, Order](#).**

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by February 1, 2024 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-30. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 25, 2023

Clerk