

Recommendations of the Legal Systems Committee  
July 19, 2022

1. Education

- a. The Michigan Supreme Court should require mandatory continuing education for attorneys in Michigan. As part of that program, any attorney appearing in a trial or appellate criminal proceeding should be required to include one annual course on forensic science evidence prior to appearing in a criminal proceeding.
- b. For appointed trial attorneys, the Michigan Indigent Defense Commission should modify their training standard per MCL 780.989(a) and MCL 780.991(2)(e) to add a mandatory forensic science requirement for a certain number of hours per year. Once the MIDC makes this modification process through the Department of Licensing and Regulatory Affairs, the state would be required to fund these new trainings as they are implemented by local indigent defense funding units.
- c. For appellate attorneys, a similar requirement should be adopted by the Appellate Defender Commission for attorneys from the State Appellate Defender Office and the Michigan Appellate Assigned Counsel System.
- d. Under the recent mandatory judicial education order of the Michigan Supreme Court, the Judicial Education Board should include an annual requirement for forensic science evidence education for all judges. The Supreme Court should appoint members of the Judicial Education Board who are experienced and/or knowledgeable in forensic science evidence.
- e. American Academy of Forensic Sciences accreditation should be a requirement for any school offering forensic science education. The Education Committee also supports laboratory procedures which train new employees who do not have degrees in criminal justice or forensic science in the Daubert basic requirements for the admissibility of forensic science evidence in court.

2. Testimony

The Michigan Supreme Court should amend MRE 702 to correspond with proposed amendments to FRE 702 to improve the quality of Daubert hearings, set the evidentiary standard and burden at Daubert hearings, and reinforce the gatekeeping obligation of the trial judge. The revision is as follows:

*FRE 702 current revision*

*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 has demonstrated to the court that it is more likely than not that:*

- a) 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;*
- b) the testimony is based on sufficient facts or data;*
- c) the testimony is the product of reliable principles and methods; and*

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

3. Evidence and Discovery - The committee has not yet reached a consensus regard mandatory disclosure of DNA materials and will continue discussing this issue.

4. Jury Instructions

- a. Expert Witness Instruction - the Michigan Supreme Court delete M Crim JI 5.10 Expert Witness and replace it with the statement that “No instruction regarding expert witness testimony should be given”.
- b. Anti “CSI” Instruction - the Michigan Supreme Court add a section to the Michigan Criminal Jury Instructions stating that “No instruction should be given concerning the adequacy of police investigation or the so-called “CSI effect”.