

**IN THE
SUPREME COURT OF PENNSYLVANIA**

IN RE: Promulgation of New Rule of Civil Procedure 207.1 Governing Motion to Exclude Expert Testimony Which Relies Upon Novel Scientific Evidence	:	NO. 351
	:	
	:	CIVIL PROCEDURAL RULES
	:	
	:	DOCKET NO. 5

ORDER

PER CURIAM:

AND NOW, this 22nd day of January, 2001, new Pennsylvania Rule of Civil Procedure 207.1 is promulgated to read as attached hereto.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2001.

Rule 207.1. Motion to Exclude Expert Testimony Which Relies Upon Novel

Scientific Evidence

(a) If a party moves the court to exclude expert testimony which relies upon novel scientific evidence, on the basis that it is inadmissible under Pa.R.E. 702 or 703,

(1) the motion shall contain:

(i) the name and credentials of the expert witness whose testimony is sought to be excluded,

(ii) a summary of the expected testimony of the expert witness, specifying with particularity that portion of the testimony of the witness which the moving party seeks to exclude,

(iii) the basis, set forth with specificity, for excluding the evidence,

(iv) the evidence upon which the moving party relies, and

(v) copies of all relevant curriculum vitae and expert reports;

(2) any other party need not respond to the motion unless ordered by the court;

(3) the court shall initially review the motion to determine if, in the interest of justice, the matter should be addressed prior to trial. The court, without further proceedings, may determine that any issue of admissibility of expert testimony be deferred until trial; and

(4) the court shall require that a response be filed if it determines that the matter should be addressed prior to trial.

NOTE: This rule establishes procedures for motions to exclude expert testimony which relies upon novel scientific evidence. The rule does not address the requirements for the admission of expert testimony under Pa.R.E. 702

and 703, which are governed by case law. It also does not address motions under those rules on other grounds.

The court has discretion in the manner in which it determines the motion. While depositions of expert witnesses and evidentiary hearings are available to the court for this purpose, they should be utilized in limited circumstances. See the limitations set forth in Rule 4003.5 governing discovery of expert testimony.

In deciding whether to address prior to trial the admissibility of the testimony of an expert witness, the following factors are among those which the court should consider: the dispositive nature or significance of the issue to the case, the complexity of the issue involved in the testimony of the expert witness, the degree of novelty of the proposed evidence, the complexity of the case, the anticipated length of trial, the potential for delay of trial, and the feasibility of the court evaluating the expert witness' testimony when offered at trial.

When a ruling on a pre-trial motion to exclude the testimony of an expert witness is deferred until trial, the trial judge may choose to decide the motion (1) before the expert witness testifies on the basis of evidence offered outside the presence of the jury or (2) after the expert witness testifies on the basis of testimony offered at trial, in which event the trial judge will strike the testimony of the expert witness if it is found to be inadmissible under Pa.R.E. 702 or 703. However, hearings on preliminary matters must be conducted outside the presence of the jury "when the interests of justice require." See Pa.R.E. 104.

(b) A party is not required to raise the issue of the admissibility of testimony of an expert witness prior to trial unless the court orders the party to do so.

Explanatory Comment

The purpose of new Rule 207.1 is to provide the procedure for pre-trial motions concerning the admissibility of expert testimony which relies upon novel scientific evidence.

By the Civil Procedural
Rules Committee

Rea Boylan Thomas
Chair