

AMENDMENTS TO THE FEDERAL RULES OF
EVIDENCE

COMMUNICATION

FROM

THE CHIEF JUSTICE OF THE
UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE ADOPTED
BY THE COURT, PURSUANT TO 28 U.S.C. 2076



APRIL 27, 1988.—Referred to the Committee on the Judiciary and ordered
to be printed

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

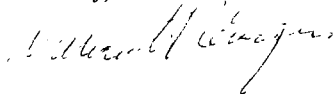
April 25, 1988

Dear Mr. Speaker:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress amendments to the Federal Rules of Evidence which have been adopted by the Supreme Court pursuant to Section 2076 of Title 28, United States Code.

Accompanying these rules is an excerpt from the report of the Judicial Conference of the United States containing the Advisory Committee notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,



Honorable James C. Wright, Jr.
Speaker of the House of Representatives
Washington, D. C. 20510

(III)

SUPREME COURT OF THE UNITED STATES

April 25, 1988

ORDERED:

1. That the Federal Rules of Evidence be, and they hereby are, amended by including therein amendments to Rules 101, 602, 608, 613, 615, 902, and 1101, as herein after set forth:

[See infra., pp. _____]

2. That the foregoing changes in the Federal Rules of Evidence shall take effect on ~~November~~ 1, 1988.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing changes in the rules of evidence in accordance with the provisions of Section 2076 of Title 28, United States Code.

**AMENDMENTS TO THE
FEDERAL RULES OF EVIDENCE**

Rule 101. Scope

These rules govern proceedings in the courts of the United States and before United States bankruptcy judges and United States magistrates, to the extent and with the exceptions stated in rule 1101.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

**Rule 608. Evidence of Character and
Conduct of Witness**

* * * * *

(b) **Specific instances of conduct.**—Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the

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witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Rule 613. Prior Statements of Witnesses

* * * * *

(b) **Extrinsic evidence of prior inconsistent statement of witness.**—Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

Rule 615. Exclusion of Witnesses

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an

officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

* * * * *

Rule 902. Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

* * * * *

(3) **Foreign public documents.**—A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all

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parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

Rule 1101. Applicability of Rules

(a) **Courts and magistrates.**—These rules apply to the United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the District Court for the Northern Mariana Islands, the United States Courts of Appeals, the United States Claims Court, and to United States bankruptcy judges and United States magistrates, in the actions, cases, and proceedings and to the extent hereinafter set forth. The terms "judge" and "court" in these rules include United States bankruptcy judges and United States magistrates.

* * * * *

(e) **Rules applicable in part.**—In the following proceedings these rules apply to the extent that matters of evidence are not provided for in the statutes which govern procedure therein or in other rules prescribed by the Supreme Court pursuant to statutory authority: the trial of minor and petty offenses by United States magistrates; review of agency actions when the facts are subject to trial de novo under section 706(2)(F) of title 5, United States Code; review of orders of the Secretary of Agriculture under section 2 of the Act entitled "An Act to authorize association of producers of

agricultural products" approved February 18, 1922 (7 U.S.C. 292), and under sections 6 and 7(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f, 499g(c)); naturalization and revocation of naturalization under sections 310-318 of the Immigration and Nationality Act (8 U.S.C. 1421-1429); prize proceedings in admiralty under sections 7651-7681 of title 10, United States Code; review of orders of the Secretary of the Interior under section 2 of the Act entitled "An Act authorizing associations of producers of aquatic products" approved June 25, 1934 (15 U.S.C. 522); review of orders of petroleum control boards under section 5 of the Act entitled "An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes", approved February 22, 1935 (15 U.S.C. 715d); actions for fines, penalties, or forfeitures under part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581-1624), or under the Anti-Smuggling Act (19 U.S.C. 1701-1711); criminal libel for condemnation, exclusion of imports, or other proceedings under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301-392); disputes between seamen under sections 4079, 4080, and 4081 of the Revised Statutes (22 U.S.C. 256-258); habeas corpus under sections 2241-2254 of title 28, United States Code; motions to vacate, set aside or correct sentence under section 2255 of title 28, United States Code; actions for penalties for refusal to transport

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destitute seamen under section 4578 of the Revised Statutes (46 U.S.C. 679); actions against the United States under the Act entitled "An Act authorizing suits against the United States in admiralty for damage caused by and salvage service rendered to public vessels belonging to the United States, and for other purposes", approved March 3, 1925 (46 U.S.C. 781-790), as implemented by section 7730 of title 10, United States Code.

EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN;
AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED
STATES

II. Technical Amendments

On August 1, 1987, amendments to the Civil Criminal, and Bankruptcy Rules, submitted by the Supreme Court in March, took effect in the absence of congressional action. On October 1, 1987, gender-neutralizing amendments to the Federal Rules of Evidence, which the Supreme Court also submitted to Congress in March, took effect failing congressional action. The Office of the Law Revision Counsel, U. S. House of Representatives, has identified a number of technical errors in some of these amendments. Your committee has reviewed these errors and has approved appropriate amendments to correct them. The amendments are set out in the Appendix and are accompanied by Advisory Committee notes explaining that they are purely technical in nature.

Your Committee recommends that these proposed amendments be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

**AMENDMENTS TO THE
FEDERAL RULES OF EVIDENCE***

Rule 101. Scope

1 These rules govern proceedings in the courts of the United
2 States and before United States bankruptcy judges and United States
3 magistrates, to the extent and with the exceptions stated in Rrule
4 1101.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 602. Lack of Personal Knowledge

1 A witness may not testify to a matter unless evidence is
2 introduced sufficient to support a finding that the witness has
3 personal knowledge of the matter. Evidence to prove personal
4 knowledge may, but need not, consist of the witness' own
5 testimony. This rule is subject to the provisions of Rrule 703,
6 relating to opinion testimony by expert witnesses.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**Rule 608. Evidence of Character and
Conduct of Witness**

* * * * *

1 (b) **Specific instances of conduct.**—Specific instances of the
2 conduct of a witness, for the purpose of attacking or supporting the

*New matter is underscored; matter to be omitted is lined through.

2

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3 witness' credibility, other than conviction of crime as provided in
 4 Rrule 609, may not be proved by extrinsic evidence. They may,
 5 however, in the discretion of the court, if probative of truthfulness
 6 or untruthfulness, be inquired into on cross-examination of the
 7 witness (1) concerning the witness' character for truthfulness or
 8 untruthfulness, or (2) concerning the character for truthfulness or
 9 untruthfulness of another witness as to which character the witness
 10 being cross-examined has testified.

11 The giving of testimony, whether by an accused or by any other
 12 witness, does not operate as a waiver of the accused's or the witness'
 13 privilege against self-incrimination when examined with respect to
 14 matters which relate only to credibility.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 613. Prior Statements of Witnesses

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1 (b) **Extrinsic evidence of prior inconsistent statement of**
 2 **witness.**—Extrinsic evidence of a prior inconsistent statement by a
 3 witness is not admissible unless the witness is afforded an
 4 opportunity to explain or deny the same and the opposite party is
 5 afforded an opportunity to interrogate the witness thereon, or the
 6 interests of justice otherwise require. This provision does not apply
 7 to admissions of a party-opponent as defined in Rrule 801(d)(2).

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 615. Exclusion of Witnesses

1 At the request of a party the court shall order witnesses
 2 excluded so that they cannot hear the testimony of other witnesses,
 3 and it may make the order of its own motion. This rule does not
 4 authorize exclusion of (1) a party who is a natural person, or (2) an
 5 officer or employee of a party which is not a natural person
 6 designated as its representative by its attorney, or (3) a person
 7 whose presence is shown by a party to be essential to the
 8 presentation of the party's cause.

* * * * *

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 902. Self-Authentication

1 Extrinsic evidence of authenticity as a condition precedent to
 2 admissibility is not required with respect to the following:

* * * * *

3 (3) **Foreign public documents.**—A document purporting to be
 4 executed or attested in an official capacity by a person authorized
 5 by the laws of a foreign country to make the execution or
 6 attestation, and accompanied by a final certification as to the
 7 genuineness of the signature and official position (A) of the
 8 executing or attesting person, or (B) of any foreign official whose
 9 certificate of genuineness of signature and official position relates
 10 to the execution or attestation or is in a chain of certificates of

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11 genuineness of signature and official position relating to the
 12 execution or attestation. A final certification may be made by a
 13 secretary of an embassy or legation, consul general, consul, vice
 14 consul, or consular agent of the United States, or a diplomatic or
 15 consular official of the foreign country assigned or accredited to the
 16 United States. If reasonable opportunity has been given to all
 17 parties to investigate the authenticity and accuracy of official
 18 documents, the court may, for good cause shown, order that they be
 19 treated as presumptively authentic without final certification or
 20 permit them to be evidenced by an attested summary with or
 21 without final certification.

COMMITTEE NOTE

These two sentences were inadvertently eliminated from the 1987 amendments. The amendment is technical. No substantive change is intended

Rule 1101. Applicability of Rules

1 (a) **Courts and magistrates.**—These Rrules apply to the United
 2 States district courts, the District Court of Guam, the District
 3 Court of the Virgin Islands, the District Court for the Northern
 4 Mariana Islands, the United States Courts of Appeals, the United
 5 States Claims Court, and to United States bankruptcy judges and
 6 United States magistrates, in the actions, cases, and proceedings and
 7 to the extent hereinafter set forth. The terms "judge" and "court" in
 8 these rules include United States bankruptcy judges and United
 9 States magistrates.

* * * * *

10 (e) **Rules applicable in part.**—In the following proceedings
11 these rules apply to the extent that matters of evidence are not
12 provided for in the statutes which govern procedure therein or in
13 other rules prescribed by the Supreme Court pursuant to statutory
14 authority: the trial of minor and petty offenses by United States
15 magistrates; review of agency actions when the facts are subject to
16 trial de novo under section 706(2)(F) of title 5, United States Code;
17 review of orders of the Secretary of Agriculture under section 2 of
18 the Act entitled "An Act to authorize association of producers of
19 agricultural products" approved February 18, 1922 (7 U.S.C. 292),
20 and under sections 6 and 7(c) of the Perishable Agricultural
21 Commodities Act, 1930 (7 U.S.C. 499f, 499g(c)); naturalization and
22 revocation of naturalization under sections 310-318 of the
23 Immigration and Nationality Act (8 U.S.C. 1421-1429); prize
24 proceedings in admiralty under sections 7651-7681 of title 10,
25 United States Code; review of orders of the Secretary of the Interior
26 under section 2 of the Act entitled "An Act authorizing associations
27 of producers of aquatic products" approved June 25, 1934 (15 U.S.C.
28 522); review of orders of petroleum control boards under section 5 of
29 the Act entitled "An Act to regulate interstate and foreign
30 commerce in petroleum and its products by prohibiting the shipment
31 in such commerce of petroleum and its products produced in viola-
32 tion of State law, and for other purposes", approved February 22,
33 1935 (15 U.S.C. 715d); actions for fines, penalties, or forfeitures
34 under part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581-

35 1624), or under the Anti-Smuggling Act (19 U.S.C. 1701-1711);
36 criminal libel for condemnation, exclusion of imports, or other
37 proceedings under the Federal Food, Drug, and Cosmetic Act (21
38 U.S.C. 301-392); disputes between seamen under sections 4079, 4080,
39 and 4081 of the Revised Statutes (22 U.S.C. 256-258); habeas corpus
40 under sections 2241-2254 of title 28, United States Code; motions to
41 vacate, set aside or correct sentence under section 2255 of title 28,
42 United States Code; actions for penalties for refusal to transport
43 destitute seamen under section 4578 of the Revised Statutes (46
44 U.S.C. 679); actions against the United States under the Act entitled
45 "An Act authorizing suits against the United States in admiralty for
46 damage caused by and salvage service rendered to public vessels
47 belonging to the United States, and for other purposes", approved
48 March 3, 1925 (46 U.S.C. 781-790), as implemented by section 7730
49 of title 10, United States Code.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.