

**AMENDMENTS TO THE
FEDERAL RULES OF EVIDENCE**

COMMUNICATION

FROM

**THE CHIEF JUSTICE OF
THE UNITED STATES**

TRANSMITTING

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



**APRIL 22, 1993.—Referred to the Committee on the Judiciary and ordered
to be printed**

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WASHINGTON : 1993

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

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1993

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 that have been adopted by the Supreme Court pursuant to Section 2072 of Title 28, United States Code. While the Court is satisfied that the required procedures have been observed, this transmittal does not necessarily indicate that the Court itself would have proposed these amendments in the form submitted.

Accompanying these rules are excerpts 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 Thomas S. Foley
Speaker of the House of Representatives
Washington, D.C. 20515

(III)

SUPREME COURT OF THE UNITED STATES

THURSDAY, APRIL 22, 1993

ORDERED:

1. That the Federal Rules of Evidence for the United States District Courts be, and they hereby are, amended by including therein amendments to Evidence Rules 101, 705, and 1101.

[See infra., pp. _____ .]

2. That the foregoing amendments to the Federal Rules of Evidence shall take effect on December 1, 1993, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Evidence in accordance with the provisions of Section 2072 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 the United States bankruptcy judges and United States magistrate judges, to the extent and with the exceptions stated in rule 1101.

**Rule 705. Disclosure of Facts or Data Underlying
Expert Opinion**

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Rule 1101. Applicability of Rules

(a) **Courts and judges.** 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 magistrate judges, in the actions, cases, and proceedings and to the extent hereinafter set forth. The terms "judge" and "court" in these

RULES OF EVIDENCE

rules include United States bankruptcy judges and United States magistrate judges.

* * * *

(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 misdemeanors and other petty offenses before United States magistrate judges; * * * *

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

November 27, 1992

MEMORANDUM TO THE CHIEF JUSTICE OF THE UNITED STATES
AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I have the honor to transmit herewith for the consideration of the Court proposed amendments to the Federal Rules of Civil Procedure and proposed amendments to the Federal Rules of Evidence. The Judicial Conference recommends that these amendments be approved by the Court and transmitted to the Congress pursuant to law.

The changes recommended by the Conference include: proposed new Civil Rule 4.1; proposed amendments to Civil Rules 1, 4, 5, 11, 12, 15, 16, 26, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 50, 52, 53, 54, 58, 71A, 72, 73, 74, 75, and 76; proposed new Forms 1A, 1B, and 35; proposed abrogation of Form 18-A; proposed amendments to Forms 2, 33, 34, and 34A; and proposed amendments to Evidence Rules 101, 705, and 1101.

For your assistance in considering these proposed amendments, I am also transmitting an excerpt from the Report of the Committee on Rules of Practice and Procedure to the Judicial Conference and the Report of the Advisory Committee on the Federal Rules of Civil Procedure.



L. Ralph Mecham

Enclosures

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
SEPTEMBER 1992**

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF
THE JUDICIAL CONFERENCE OF THE UNITED STATES:**

VI. Amendments to the Federal Rules of Evidence.

The Advisory Committee on the Federal Rules of Civil Procedure also submitted to your Committee proposed amendments to Evidence Rules 702 and 705 and proposed amendments to Evidence Rules 101 and 1101 to change the term "magistrate" to "magistrate judge."

Proposed Rules 702 and 705 were circulated for public comment in August, 1991. Public hearings were held in Los Angeles, California, on November 21, 1991, and in Atlanta, Georgia, on February 19-20, 1992. After considering the responses to the public submission, and in the light of the proposed reactivation of an Advisory Committee on the Federal Rules of Evidence, your Committee decided to refer the proposed amendment of Rule 702 to the new Advisory Committee.

Your Committee, however, recommends approval of the proposed amendment of Rule 705, together with the technical amendments of Rules 101 and 1101, which have not been published. These proposals are set forth in Appendix G.

Recommendation: That the Judicial Conference approve the proposed amendments to Rules 101, 705, and 1101 of the Federal Rules of Evidence and transmit them to the Supreme Court for its consideration with the recommendation that they be approved by the Court and transmitted to Congress pursuant to law.

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF EVIDENCE^{1/}**

Rule 101. Scope

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

COMMITTEE NOTES

This revision is made to conform the rule to changes made by the Judicial Improvements Act of 1990.

**Rule 705. Disclosure of Facts or Data Underlying
Expert Opinion**

1 The expert may testify in terms of opinion or
2 inference and give reasons therefor without ~~prior~~
3 ~~disclosure of~~ first testifying to the underlying
4 facts or data, unless the court requires
5 otherwise. The expert may in any event be
6 required to disclose the underlying facts or data
7 on cross-examination.

COMMITTEE NOTES

This rule, which relates to the manner of presenting testimony at trial, is revised to avoid an arguable conflict with revised Rules 26(a)(2)(B) and 26(e)(1) of the Federal Rules of Civil Procedure or

1. New matter is underlined; matter to be omitted is lined through.

RULES OF EVIDENCE

with revised Rule 16 of the Federal Rules of Criminal Procedure, which require disclosure in advance of trial of the basis and reasons for an expert's opinions.

If a serious question is raised under Rule 702 or 703 as to the admissibility of expert testimony, disclosure of the underlying facts or data on which opinions are based may, of course, be needed by the court before deciding whether, and to what extent, the person should be allowed to testify. This rule does not preclude such an inquiry.

Rule 1101. Applicability of Rules

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

14 * * * *

15 (e) **Rules applicable in part.** In the
 16 following proceedings these rules apply to the
 17 extent that matters of evidence are not provided

RULES OF EVIDENCE

18 for in the statutes which govern procedure
19 therein or in other rules prescribed by the
20 Supreme Court pursuant to statutory authority:
21 the trial of ~~minor~~ misdemeanors and other petty
22 offenses ~~by~~ before United States magistrates
23 judges; * * * *

COMMITTEE NOTES

This revision is made to conform the rule to changes in terminology made by Rule 58 of the Federal Rules of Criminal Procedure and to the changes in the title of United States magistrates made by the Judicial Improvements Act of 1990.

