

AMENDMENTS TO THE FEDERAL RULES OF
EVIDENCE

COMMUNICATION

FROM

**THE CHIEF JUSTICE, THE SUPREME
COURT OF THE UNITED STATES**

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE THAT
HAVE BEEN ADOPTED BY THE COURT, PURSUANT TO 28 U.S.C.
2074



MAY 5, 1998.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PRINTING OFFICE

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

CHAMBERS OF
THE CHIEF JUSTICE

RECEIVED
MAY 22 1998
U.S. SUPREME COURT
WASHINGTON, D.C.

April 24, 1998

Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress the amendments to the Federal Rules of Evidence that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

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,



SUPREME COURT OF THE UNITED STATES

April 24, 1998

ORDERED:

1. That the Federal Rules of Evidence be, and they hereby are, amended by including therein amendments to Evidence Rule 615.

[See *infra.*, pp. ___ ___.]

2. That the foregoing amendments to the Federal Rules of Evidence shall take effect on December 1, 1998, 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 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.

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

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, or (4) a person authorized by statute to be present.



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

November 12, 1997

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 Rule 615 of 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.

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 Evidence.


Leonidas Ralph Mecham

Attachments

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

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

**AMENDMENTS TO THE
FEDERAL RULES OF EVIDENCE**

Rules Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules submitted proposed amendments to Federal Rules of Evidence 615 (Exclusion of Witnesses). The amendment would expand the list of witnesses who may not be excluded from attending a trial to include any victim as defined in the Victim's Rights and Restitution Act of 1990 and the Victim Rights Clarification Act of 1997. The amendment is intended to conform to the two Acts. These laws provide that: (1) a victim-witness is entitled to attend the trial unless the witness' testimony would be materially affected by the testimony at trial; and (2) a victim-witness who may testify at a later sentencing proceeding cannot be excluded from the trial for that reason. ✓

The advisory committee's proposed amendment was limited to witnesses specifically defined by the two victim rights' statutes. The Standing Rules Committee concluded that a more expansive amendment was preferable to account for any other existing or future statutory exception. It revised the proposed amendment to extend to any "person authorized by statute to be present." The Committee also agreed with the request to forward the proposed amendments directly to the Judicial Conference without publishing them for public comment. Under the governing, *Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure* the "Standing Committee may eliminate the public notice and comment requirement if, in the case of a technical or conforming amendment, it determines that

notice and comment are not appropriate or necessary.” The Standing Rules Committee determined that the proposed amendment, as revised, was a conforming amendment.

The proposed amendment to the Federal Rules of Evidence, as recommended by your Committee, appears in Appendix E together with an excerpt from the advisory committee report.

Recommendation: That the Judicial Conference approve the proposed amendment to Evidence Rule 615 and transmit it to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

Agenda F-18 (Appendix E)
Rules
September 1997

ALICEMARIE H. STOTLER
CHAIR
PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

JAMES K. LOGAN
APPELLATE RULES

ADRIAN G. DUPLANTIER
BANKRUPTCY RULES

PAUL V. NIEMEYER
CIVIL RULES

D. LOWELL JENSEN
CRIMINAL RULES

FERN M. SMITH
EVIDENCE RULES

TO: Honorable Alicemarie H. Stotler, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Fern M. Smith, Chair
Advisory Committee on Evidence Rules

DATE: May 1, 1997

RE: Report of the Advisory Committee on Evidence Rules

I. Introduction

The Advisory Committee on Evidence Rules met on April 14th and 15th in Washington, D.C. At the meeting, the Committee approved two items for action by the Standing Committee--proposed amendments to two Evidence Rules with the recommendation that they be published for public comment.

* * * * *

II. Action Items

* * * * *

B. Rule 615. Sequestration of Witnesses.

Evidence Rule 615, which currently requires a court to exclude witnesses from the trial on motion of one of the parties, is in conflict with two subsequently enacted statutes designed to protect the rights of victims of crime. The Victim's Rights and

The Standing Committee on Rules of Practice and Procedure voted to send the proposed amendments to Evidence Rule 615 to the Judicial Conference without publication for public comment in accordance with established procedures, because the proposed change is a conforming amendment.

attend trial proceedings unless her testimony would be materially affected by the testimony at trial. The Victim Rights Clarification Act provides that a victim-witness's potential testimony at a sentencing proceeding cannot be the basis for exclusion from the trial. The proposed amendment to Evidence Rule 615 incorporates the relevant provisions of these two Acts. This amendment is, in the Committee's view, necessary to ensure that the Evidence Rules comport with these legislative enactments. The proposed amendment is attached to this Report.

Recommendation: The Evidence Rules Committee recommends that the amendment to Evidence Rule 615 be published for public comment.

* * * * *

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

Rule 615. Exclusion of Witnesses

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

COMMITTEE NOTE

The amendment is in response to: (1) the Victim's Rights and Restitution Act of 1990, 42 U.S.C. § 10606, which guarantees, within certain limits, the right of a crime victim to attend the trial; and (2) the Victim Rights Clarification Act of 1997 (18 U.S.C. § 3510).

* New matter is underlined.