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## Restyled Rules of Evidence

Simpler. Easier to read. Easier to understand. These describe the Federal Rules of Evidence after their first top-to-bottom restyling since they were drafted and enacted 36 years ago. Now add award winning to the description. The 2011 Burton Award for Reform in Law—one of the nation's most prestigious legal writing awards—was presented to the Judicial Conference Advisory Committee on Evidence Rules for its work in restyling the rules.

"The revision is intended to make the Evidence Rules easier to read, and to clarify, simplify, and modernize them without altering their substantive meaning," said Judge Robert L. Hinkle (N. D. Fla.). "There will be no change at all in the meaning or application of any rule. A judge or lawyer would get the right result using either a restyled rule or the old version. However, we think the chance of misunderstanding the rule is much smaller using the restyled version."

The Rules of Evidence were the last of the procedural rules of the federal courts to be drafted and, in 1975, to be enacted into law. In the fall of 2007, the Advisory Committee on Evidence Rules undertook a comprehensive style revision project, following the successful restyling of the Federal Rules of Appellate, Criminal, and Civil Procedure. The project was guided by Hinkle, the then-chair of the Evidence Rules Committee. It was a major undertaking. The Evidence Rules encompass 68 separate rules addressing topics from hearsay to attorney-client privilege, relevancy of evidence, and expert testimony.



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The Committee began by dividing the Evidence Rules into three parts and working systematically through them. Any proposed change could be one of "style"—in which event, the decision was made by the Style Subcommittee of the Committee on Rules of Practice and Procedure—or one of "substance."

Term usage was standardized, and the use of ambiguous words, such as "shall," minimized along with outdated or archaic terms, intensifiers, and redundant terms and cross references. Rule numbers and citations were preserved to minimize the effects on research, but subdivisions were rearranged in some rules for greater clarity and simplicity. But terms were retained that have acquired special status from years of

case law interpretation.

Proposed changes to the Evidence Rules involved multiple reviews by the Committee Reporter and Fordham law professor Dan Capra, style consultant Professor Joe Kimble from the Thomas M. Cooley Law School in Lansing, Michigan, the Advisory Committee members, the special Style Subcommittee of the Standing Committee, and the Standing Committee itself.

Only after that complete review was the entire package released for public comment.

"There were two concerns about the project at the outset," said Hinkle.

"First, we had to make sure we didn't inadvertently change the substance of a rule. We met that challenge by having a reporter, Professor Dan Capra, who has an encyclopedic knowledge of the rules, and by having dozens of incredibly conscientious judges and lawyers go over the rules again and again to make sure nothing slipped through. The second concern is inherent in any drafting project with dozens of participants who are all good writers. There is no perfect way to write something, and there is always a risk that strong views will derail a project. But our legal-writing expert, Professor Joe Kimble, is both a gifted writer and patient with those holding different views.

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Professor Capra was equally patient. And we had committee members who worked hard, understood the process, were flexible when they needed to be, and kept their senses of humor.”

“The public comments were strongly favorable,” said Hinkle. “The Committee on the Federal Rules of Evidence of the American College of Trial Lawyers said its members ‘commented, time and again, on the excellent work’ shown by the restyling. The American Bar Association Section of Litigation said the changes ‘will lead to clearer rules that will be of great benefit to the practicing bar and the public.’ Several law professors said the restyling will make it easier for students to learn the rules.”

After the public comment period, the Committee went back through the entire set of evidence rules to ensure consistency and to address issues that applied to all evidence rules, such as how to refer to a public office or agency, or how to refer to the electronic form of any document. The restyled evidence rules, after approval by the Supreme Court, were transmitted to Congress and will take effect on December 1, 2011, unless Congress enacts legislation to the contrary.

“The restyling project really was a team effort with many who deserve credit,” said Hinkle. “Professors Kimble and Capra did a superb job. Each advisory committee member devoted hours to the project and brought an important perspective; each made suggestions that made it into the final product. ABA representatives attended meetings and provided important input, and the public comments helped. The style subcommittee members—Judges Jim Teilborg (D. Ariz.) and Marilyn L. Huff (S.D. Calif.) and attorney William J. Maledon—did an enormous amount of very good work, sometimes under tight deadlines. The Standing Committee—and especially Judges Harris Hartz (10th Cir.) and Reena Raggi (2nd Cir.) and Duke Law School Dean David Levi—did a thorough top-to-bottom review that further improved the product. It all ran smoothly because projects on the watch of Standing Committee chair Judge Lee Rosenthal (S.D. Tex.) and reporter Dan Coquillette run smoothly, without anyone noticing how they made it happen.”