

119th Congress, 2d Session - - - - - House Document 119-151

AMENDMENTS TO THE FEDERAL RULES OF
EVIDENCE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT
OF THE UNITED STATES

TRANSMITTING

AN AMENDMENT TO THE FEDERAL RULES OF EVIDENCE THAT
HAS BEEN ADOPTED BY THE SUPREME COURT, PURSUANT TO
28 U.S.C. 2074(a); PUBLIC LAW 100-702, SEC. 401(a); (102 STAT.
4649)



MAY 7, 2026.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

69-011

WASHINGTON : 2026

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 8, 2026.

Hon. MIKE JOHNSON,
Speaker, United States House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to submit to the Congress an amendment to the Federal Rules of Evidence that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying the amended rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 16, 2025; a blackline version of the rule with committee note; an excerpt from the September 2025 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 2025 report of the Advisory Committee on Evidence Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

April 8, 2026

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Evidence are amended to include an amendment to Rule 801.

[*See infra* pp. __ __ __.]

2. The foregoing amendment to the Federal Rules of Evidence shall take effect on December 1, 2026, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Evidence in accordance with the provisions of Section 2074 of Title 28, United States Code.

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

**Rule 801. Definitions That Apply to This Article;
Exclusions from Hearsay**

* * * * *

(d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

(1) *A Declarant-Witness's Prior Statement.*

The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony;

(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper

FEDERAL RULES OF EVIDENCE

influence or motive in so
testifying; or

- (ii) to rehabilitate the declarant's
credibility as a witness when
attacked on another ground;

or

- (C) identifies a person as someone the
declarant perceived earlier.

* * * * *



THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

HONORABLE ROBERT J. CONRAD, JR.
Secretary

October 16, 2025

MEMORANDUM

To: Chief Justice of the United States
Associate Justices of the Supreme Court

From: Judge Robert J. Conrad, Jr.
Secretary

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF
EVIDENCE

By direction of the Judicial Conference of the United States, and pursuant to the authority conferred in 28 U.S.C. § 331, I am pleased to transmit a proposed amendment to Rule 801 of the Federal Rules of Evidence. The Judicial Conference has approved the amendment and recommends that the Court adopt it and transmit it to Congress pursuant to law.

For your assistance in considering the proposed amendment, I enclose:

- (1) Clean and blackline copies of the amended rule.
- (2) An excerpt from the report of the Committee on Rules of Practice and Procedure (Standing Committee) to the Judicial Conference for its September 2025 session.
- (3) An excerpt from the report of the Advisory Committee on Evidence Rules to the Standing Committee for its June 2025 meeting.

Enclosures

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF EVIDENCE¹**

1 **Rule 801. Definitions That Apply to This Article;**
2 **Exclusions from Hearsay**

3 * * * * *

4 **(d) Statements That Are Not Hearsay.** A statement
5 that meets the following conditions is not hearsay:

6 **(1) *A Declarant-Witness's Prior Statement.***

7 The declarant testifies and is subject to cross-
8 examination about a prior statement, and the
9 statement:

10 **(A)** is inconsistent with the declarant's
11 testimony ~~and was given under~~
12 ~~penalty of perjury at a trial, hearing,~~
13 ~~or other proceeding or in a deposition;~~

14 **(B)** is consistent with the declarant's
15 testimony and is offered:

¹ Matter to be omitted is lined through.

- 16 (i) to rebut an express or implied
17 charge that the declarant
18 recently fabricated it or acted
19 from a recent improper
20 influence or motive in so
21 testifying; or
- 22 (ii) to rehabilitate the declarant's
23 credibility as a witness when
24 attacked on another ground;
25 or
- 26 (C) identifies a person as someone the
27 declarant perceived earlier.

28 * * * * *

29 **Committee Note**

30 The amendment provides that a prior inconsistent
31 statement by a witness subject to cross-examination is
32 admissible over a hearsay objection, even where the prior
33 statement was not given under penalty of perjury at a trial,
34 hearing, or other proceeding or in a deposition. The
35 Committee has determined, as have a number of states, that
36 delayed cross-examination under oath is sufficient to allay
37 the concerns addressed by the hearsay rule. As the original

38 Advisory Committee noted, the dangers of hearsay are
39 “largely nonexistent” because the declarant is in court and
40 can be cross-examined about the prior statement and the
41 underlying subject matter, and the trier of fact “has the
42 declarant before it and can observe his demeanor and the
43 nature of his testimony as he denies or tries to explain away
44 the inconsistency.” Adv. Comm. Note to Rule 801(d)(1)(A),
45 (quoting California Law Revision Commission). A major
46 advantage of the amendment is that it avoids the need to give
47 a confusing jury instruction that seeks to distinguish between
48 substantive and impeachment uses for prior inconsistent
49 statements. The amendment also eliminates the distinction
50 that currently exists between prior inconsistent and prior
51 consistent statements. For both types of statements, if they
52 are admissible for purposes of assessing the witness’s
53 credibility, they are admissible as substantive proof.

54 The original rule, requiring that the prior statement
55 be made under oath at a formal hearing, is unduly narrow
56 and has generally been of use only to prosecutors, where
57 witnesses testify at the grand jury and then testify
58 inconsistently at trial. The original rule was based on three
59 premises. The first was that a prior statement under oath is
60 more reliable than a prior statement that is not. While this is
61 probably so, the ground of substantive admissibility is that
62 the prior statement was made by the very person who is
63 produced at trial and subject to cross examination about it,
64 under oath. Thus any concerns about reliability are well
65 addressed by cross-examination and the factfinder’s ability
66 to view the demeanor of the person who made the statement.
67 The second premise was a concern that statements not made
68 at formal proceedings could be difficult to prove. But there
69 is no reason to think that an unrecorded prior inconsistent
70 statement is any more difficult to prove than any other
71 unrecorded fact. And any difficulties in proof can be taken
72 into account by the court under Rule 403. See the Committee

73 Note to the 2023 amendment to Rule 106. The third premise
74 was that if a witness denies making the prior statement, then
75 cross-examination becomes difficult. But there is effective
76 cross-examination in the very denial. *See Nelson v. O'Neil*,
77 402 U.S. 622, 629 (1971) (noting that the declarant's denial
78 of the prior statement "was more favorable to the respondent
79 than any that cross-examination by counsel could possibly
80 have produced, had [the declarant] affirmed the statement as
81 his").

82 Nothing in the amendment mandates that a prior
83 inconsistent statement is sufficient evidence of a claim or
84 defense. The rule governs admissibility, not sufficiency.

85 The amendment does not change the Rule 613(b)
86 requirements for introducing extrinsic evidence of a prior
87 inconsistent statement.

Excerpt: Standing Committee Report to the Judicial Conference – September 2025 Session

Agenda E-19
Rules
September 2025

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:

The Committee on Rules of Practice and Procedure (Standing Committee or Committee)
met on June 10, 2025. All members participated. * * *

* * * * *

FEDERAL RULES OF EVIDENCE

Amended Rule Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules recommended for final approval
amendments to Rule 801 (Definitions That Apply to This Article; Exclusions from Hearsay).
The Standing Committee unanimously approved the Advisory Committee's recommendation.
Rule 801 (Definitions That Apply to This Article; Exclusions from Hearsay)

Current Rule 801(d)(1)(A) excludes from the definition of hearsay a declarant-witness's
prior inconsistent statements only if the witness gave the prior statement under penalty of perjury
in a prior proceeding or deposition. The proposed amendment to Rule 801 eliminates the
requirement that the prior inconsistent statement be offered under penalty of perjury and allows
any prior inconsistent statement by a declarant-witness to be admissible as substantive evidence,
subject to exclusion under Rule 403 (Excluding Relevant Evidence for Prejudice, Confusion,
Waste of Time, or Other Reasons). This proposed amendment conforms Rule 801(d)(1)(A)'s

Excerpt: Standing Committee Report to the Judicial Conference – September 2025 Session

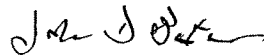
approach to that taken in Rule 801(d)(1)(B) for prior consistent statements and eliminates potential confusion from limiting instructions.

The committee note was revised after publication and public comment to underscore the amended rule's parallel treatment of prior consistent and inconsistent statements and to emphasize that the rule governs admissibility rather than sufficiency of the evidence.

Recommendation: That the Judicial Conference approve the proposed amendments to Evidence Rule 801 as set forth in Appendix C and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,



John D. Bates, Chair

Paul J. Barbadoro	Troy A. McKenzie
Todd Blanche	Patricia Ann Millett
Elizabeth J. Cabraser	Andrew J. Pincus
Louis A. Chaiten	D. Brooks Smith
Joan N. Ericksen	Kosta Stojilkovic
Stephen A. Higginson	Jennifer G. Zipps
Edward M. Mansfield	

* * * * *

Excerpt: Advisory Committee Report to Standing Committee – June 2025 Meeting

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

JOHN D. BATES
CHAIR

CAROLYN A. DUBAY
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

ALLISON H. EID
APPELLATE RULES

REBECCA B. CONNELLY
BANKRUPTCY RULES

ROBIN L. ROSENBERG
CIVIL RULES

JAMES C. DEVER III
CRIMINAL RULES

JESSE M. FURMAN
EVIDENCE RULES

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Jesse M. Furman, Chair
Advisory Committee on Evidence Rules

RE: Report of the Advisory Committee on Evidence Rules^{*}

DATE: May 15, 2025

I. Introduction

The Advisory Committee on Evidence Rules (the “Committee”) met on May 2, 2025, at the Administrative Office in Washington, D.C. The Committee reviewed a proposal for an amendment to Rule 801(d)(1)(A) that had been released for public comment and considered five other proposed amendments to the Evidence Rules. The Committee recommends final approval of the proposed amendment to Rule 801(d)(1)(A) and recommends that two proposed amendments be released for public comment: an amendment to Rule 609 and a new Rule 707 to regulate machine-generated evidence.

^{*} A copy of the full committee report can be found in the June 2025 Standing Committee agenda book publicly available on www.uscourts.gov.

Excerpt: Advisory Committee Report to Standing Committee – June 2025 Meeting

* * * * *

II. Action Items**A. Proposed Amendment to Rule 801(d)(1)(A) for Final Approval**

The Committee recommends final approval of a proposed amendment to Rule 801(d)(1)(A). Currently, Rule 801(d)(1)(A) provides for a very limited exemption from the hearsay rule for prior inconsistent statements of a testifying witness: The prior statement is admissible over a hearsay objection only when it is made under oath at a formal proceeding. Thus, while all prior inconsistent statements are admissible for impeachment purposes, very few are admissible as substantive evidence. It follows that, in the typical case, a court upon request has to instruct the jury that a prior inconsistent statement may be used to impeach the witness's credibility but may not be used as proof of a fact.

The amendment as released for public comment would provide that all prior inconsistent statements admissible for impeachment are also admissible over a hearsay objection. Exclusion is still possible under Rule 403. The amendment tracks the 2014 change to Rule 801(d)(1)(B), which provides that all prior consistent statements admissible to rehabilitate a witness are also admissible as substantive evidence (again, subject to Rule 403). This convergence of substantive and credibility use dispenses with the need for confusing limiting instructions with respect to all prior statements of a testifying witness.

The amendment adopts the position of the original Advisory Committee, which proposed that all prior inconsistent statements would be admissible over a hearsay objection. As the original Advisory Committee noted, the dangers of hearsay are “largely nonexistent” for such statements because the declarant is in court and can be cross-examined about the prior statement and the underlying subject matter. That is, the trier of fact “has the declarant before it and can observe the demeanor and the nature of his testimony as he denies it or tries to explain away the inconsistency.” Adv. Comm. Note to Rule 801(d)(1)(A) (quoting California Law Revision Commission). The amendment is consistent with the practice of many states, including California.

The Committee received eight public comments on the proposed amendment to Rule 801(d)(1)(A). The comments were largely very positive. Comments from the Federal Magistrate Judges' Association, the American College of Trial Lawyers, and the National Association of Criminal Defense Lawyers were all in favor of the proposed amendment.

At its meeting, the Committee considered the public comments and, by a vote of 8-1, recommended final approval of the proposed amendment to Rule 801(d)(1)(A). The Department of Justice, which had abstained on whether to release the proposed amendment for public comment, voted in favor of final approval of the rule amendment.

The Committee recommends final approval of the proposed amendment, and the accompanying Committee Note—which are attached to this Report.

* * * * *

