
AMENDMENTS TO FEDERAL RULES OF EVIDENCE

The following amendments to the Federal Rules of Evidence were prescribed by the Supreme Court of the United States on April 11, 1997, pursuant to 28 U.S.C. §2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1324. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U.S.C. §2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier reference to the Federal Rules of Evidence, see 409 U.S. 1132. For earlier publication of the Federal Rules of Evidence, and amendments thereto, see 441 U.S. 1005, 480 U.S. 1023, 485 U.S. 1049, 493 U.S. 1173, 500 U.S. 1001, 507 U.S. 1187, and 511 U.S. 1187.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 11, 1997

*To the Senate and House of Representatives of the United
States of America in Congress Assembled:*

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,

(Signed) WILLIAM H. REHNQUIST
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 11, 1997

ORDERED:

1. That the Federal Rules of Evidence be, and they hereby are, amended by including therein amendments to Evidence Rules 407, 801, 803(24), 804(b)(5), and 806, and new Rules 804(b)(6) and 807.

[See *infra*, pp. 1327–1329.]

2. That the foregoing amendments to the Federal Rules of Evidence shall take effect on December 1, 1997, 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.

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Rule 407. Subsequent remedial measures.

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction.

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Rule 801. Definitions.

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(d) Statements which are not hearsay.

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(2) *Admission by party-opponent.*—The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or

(D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the

declarant and the party against whom the statement is offered under subdivision (E).

Rule 803. Hearsay exceptions; availability of declarant immaterial.

(24) [Transferred to Rule 807.]

Rule 804. Hearsay exceptions; declarant unavailable.

(b) *Hearsay exceptions.*

(5) [Transferred to Rule 807.]

(6) *Forfeiture by wrongdoing.*—A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 806. Attacking and supporting credibility of declarant.

When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Rule 807. Residual exception.

A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court de-

termines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.