

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

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**MEMORANDUM**

**TO:** Honorable Jeffrey S. Sutton, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Honorable Sidney A. Fitzwater, Chair  
Advisory Committee on Evidence Rules

**DATE:** December 2, 2013

**RE:** Report of the Advisory Committee on Evidence Rules

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**I. Introduction**

The Advisory Committee on Evidence Rules (the “Committee”) was scheduled to meet on October 11, 2013 at the University of Maine School of Law, in Portland, Maine. A symposium to consider the intersection of the Evidence Rules and emerging technologies was to have been held in conjunction with the meeting. The meeting and symposium were canceled, however, due to the government shutdown. Both have been rescheduled for April 4, 2014 at the University of Maine School of Law.

**II. Action Items**

**No action items.**

### **III. Information Items**

#### **A. Proposed Amendment to Rule 803(10)**

The amendment to Rule 803(10) that the Standing Committee approved at its June 2012 meeting took effect on December 1, 2013.

#### **B. Proposed Amendments to Rules 801(d)(1)(B) and 803(6)-(8)**

The proposed amendments to Rules 801(d)(1)(B) and 803(6)-(8) that the Standing Committee approved at its June 2013 meeting for transmittal to the Judicial Conference were approved by the Judicial Conference on the consent calendar at its September 2013 meeting and have been transmitted to the Supreme Court for consideration.

#### **C. *Crawford v. Washington* and the Hearsay Exceptions in the Evidence Rules**

As previous reports have noted, the Committee continues to monitor case law developments after the Supreme Court's decision in *Crawford v. Washington*, in which the Court held that the admission of "testimonial" hearsay violates the accused's right to confrontation unless the accused has an opportunity to confront and cross-examine the declarant.

The Reporter regularly provides the Committee a case digest of all federal circuit cases discussing *Crawford* and its progeny. The goal of the digest is to enable the Committee to keep current on developments in the law of confrontation as they might affect the constitutionality of the Federal Rules hearsay exceptions.

#### **D. "Continuous Study" of the Evidence Rules**

The Committee is responsible for engaging in a "continuous study" of the need for any amendments to the Federal Rules of Evidence. The grounds for possible amendments include (1) a split in authority about the meaning of a rule; (2) a disparity between the text of a rule and the way that the Rule is actually being applied in courts; and (3) difficulties in applying a rule, as experienced by courts, practitioners, and academic commentators.

Under this standard, the Reporter has raised the following possible amendments for the Committee's consideration: (1) amending Rule 106 to provide that statements may be used for completion even if they are hearsay; (2) clarifying that Rule 607 does not permit a party to impeach its own witness if the only reason for calling the witness is to present otherwise inadmissible evidence to the jury; (3) clarifying that Rule 803(5) can be used to admit statements made by one person and recorded by another; (4) clarifying the business duty requirement in Rule 803(6); and (5) resolving a dispute in the courts over whether prior testimony in a civil case may be admitted against one who was not a party at the time the testimony was given. The Reporter is also working on other proposals with respect to the hearsay rule (e.g., to abrogate Rule 803(16), the ancient documents exception).

#### **IV. Minutes of the Fall 2013 Meeting**

Because the meeting was canceled, there are no draft of the minutes of the Committee's fall 2013 meeting.