

TEXAS SUPREME COURT ADVISORY

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COURT APPROVES RESTYLED TEXAS EVIDENCE RULES

Comment period begins on changes to make the rules easier to use

The Texas Supreme Court has adopted revised [evidence rules](#) intended essentially to mirror the recently restyled Federal Rules of Evidence and, as with the federal rules, to make them easier to read and use.

The Court's adoption triggers a comment period that ends February 28, 2015. Final approval of the restyled rules will be effective April 1, 2015.

"With clearer language and a better format, the rules of evidence should be much easier for trial lawyers and judges to use," Chief Justice Nathan L. Hecht said. "The many people who worked on this project built on the restyled federal rules, adapted them to Texas but with the objective of keeping our rules as consistent as possible with the federal rules and without changing Texas evidence law."

In its [order](#) approving the revised evidence rules, the Court explained that rules numbers did not change, but new formatting includes indented subparagraphs, establishing vertical rather than horizontal lists in the rules for clear presentation. Changes also strike inconsistent, ambiguous, redundant, repetitive or archaic words.

The order also notes: "The restyled rules minimize the use of redundant 'intensifiers.' These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The absence of intensifiers in the restyled rules does not change their substantive meaning."

In two rules substantive changes have been made:

¶ Amendments to Rule 511 align Texas law with Federal Rule of Evidence 502 on waiving privilege by voluntary disclosure.

¶ Amendments to Rule 613 retain the requirement that a witness be given an opportunity to explain or deny (a) a prior inconsistent statement or (b) circumstances or a statement showing bias or interest, but the requirement is no longer part of the foundation that an examining attorney must lay before introducing extrinsic evidence of the statement or its circumstances.

Martha Newton, the Court's rules attorney who shepherded the rules project, credited law Professor Steven Goode, a noted evidence expert at the University of Texas, for drafting the rules changes with assistance from the State Bar's Administration of Rules of Evidence Committee and the Supreme Court Advisory Committee. The combined effort drew seasoned trial lawyers and judges in several drafting and reviewing stages.

"Their product was exceptional," Newton said, "and the product of several years of hard work."

The Texas restyling project began after revisions to the federal rules were completed in 2011 and approved by the U.S. Supreme Court. Two federal district judges from Texas, Sidney A. Fitzwater of Dallas and Lee H. Rosenthal of Houston, led Judicial Conference committees working on the federal rules.

Changes to Rule 902(10), approved August 19, 2014, included restyling changes. The Court's order does not make further changes to that rule.