

**Committee  
on  
Rules of  
Evidence**

**2000 Membership**

Thomas C. Raup, Esq., *Chair*+  
Charles B. Gibbons, Esq., *Chair*++  
Honorable Richard A. Lewis, *Vice Chair*#  
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Raymond J. Bradley, Esq.\*  
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Vincent J. Grogan, Esq.##  
Patrick J. O'Connor, Esq.  
Bernard W. Smalley, Esq.  
Lee C. Swartz, Esq.\*\*  
Ellen M. Viakley, Esq.  
Leonard Packel, Esq., *Official Reporter*

**Staff:**

Richard L. Kearns, *Staff Counsel*  
Suzanne Creavey, *Office Manager*

- \* Died 5-00
- \*\* Appointed 5-25-00
- + Resigned 6-1-00
- ++ Appointed chair 6-1-00
- # Appointed vice chair 6-1-00
- ## Appointed 6-1-00

**Legal Authorization:**

Pa. Constitution, Article V, § 10(c)  
42 Pa. C.S., § 1722

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## History/Background

The Committee on Rules of Evidence was created on September 8, 1998, by the Supreme Court of Pennsylvania as an advisory body to the Court, assisting the Court in fulfilling its constitutional and statutory responsibility to prescribe general rules governing all court proceedings in Pennsylvania's Unified Judicial System. It is the successor to the Ad Hoc Committee on Evidence, which was appointed by the Supreme Court in 1994 and which developed the Pennsylvania Rules of Evidence that were adopted in 1998.

In its advisory capacity, the committee studies and makes recommendations to the Court about matters affecting evidence law in the Commonwealth. The committee monitors the practical application of the new rules as well as developments in evidence law in Pennsylvania and in other jurisdictions, as reflected in case law and statutory changes that have occurred since the rules' adoption. In addition, the committee continues to review and respond to the various questions that have been raised by judges, lawyers and court personnel.

## Membership and Staff

The first members of the committee on Rules of Evidence were appointed by the Court for initial one-, two- and three-year terms, commencing October 1, 1998. Subsequent appointees have been appointed for three-year terms, with a two-term limit. The committee membership in 2000 consisted of one Common Pleas Court judge, eight attorneys in private practice and a law professor, all of whom have extensive backgrounds in trial practice and procedure and are from different geographical areas of Pennsylvania.

Committee staff consists of one part-time attorney and an office manager. The committee maintains its office in Mechanicsburg at the AOPC's central site.

## Publication

Prior to completing a rule proposal for submission to the Supreme Court, the committee publishes an explanatory "Report" describing the committee's proposal. This process gives members of the bench, bar and public an opportunity to comment on the proposal. The reports are published in the *Pennsylvania Bulletin*, the *Atlantic Reporter 2d* (*Pennsylvania Reporter Series*), and various local bar publications and also may be found at the Unified Judicial System's home page at [www.courts.state.pa.us](http://www.courts.state.pa.us), under Supreme Court Committees. (Note: Some proposals are submitted to the Court without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice, because exigent circumstances exist that warrant prompt action, or because the proposed changes are technical or perfunctory in nature.)

The committee considers all publication comments and, when appropriate, will modify a proposal before a final recommendation is submitted to the Court.

When the court adopts a recommendation, the committee prepares a "Final Report" explaining the recommendation, including any post-publication modifications. These "Final Reports", which are published with the Court's orders, are useful sources of information about the rule changes and the committee's considerations in developing the proposal.

## 2000 Activities

The Committee on Rules of Evidence met three times in 2000, twice in Philadelphia and once in Hershey, with several subcommittee meetings and conference calls being held to address specific issues that came up between meetings.

The committee members continued in 2000 to participate in various programs and seminars about the rules. These sessions

provide the members with excellent opportunities to answer questions and gather input about the rules.

The committee also continued its work with members of the legislature concerning the interplay between the Rules of Evidence and existing evidentiary statutes.

## 2000 Committee Action

The committee submitted to the Supreme Court three recommendations for evidence rule changes in 2000. They are described below and are listed in the Status of Recommendations chart which follows this report.

**Recommendation No. 1, Rules of Evidence 2000:** Amendment to Rule 104 and revisions to the Comments to Rules 103 and 601 to conform the rules with the holding in *Commonwealth v. Washington*, 722 A2d, 643 (Pa. 1998) with regard to holding **hearings on competency** outside the hearing of the jury. Remanded to the committee on February 7, 2001.


**Recommendation No. 2, Rules of Evidence 2000:** Amendments to Rule 405 to conform the rule to the holding in *Commonwealth v. Morgan*, 739 A2d, 1033 (Pa. 1999) with regard to **cross-examination of reputation witnesses** in criminal cases. Adopted July 20, 2000, effective October 1, 2000. (See “Final Report” at 30 *Pa.B.* 3920 (August 5, 2000) and 754-756 A.2d Advanced Sheets (*Pennsylvania Reporter Series*.)

**Recommendation No. 3, Rules of Evidence 2000:** Amendments to Rule 410 and revisions of the Comments to Rules 104, 408, 604, 609 and 1003 to conform the cross-references to the Rules of Criminal Procedure with the **renumbering of the Rules of Criminal Procedure** and the revision of the Comment to Rule 802 to update the **reference to 42 Pa.C.S. § 5985.1** to conform to the October 18, 2000, amendments to the statute. Adopted March 29, 2001, effective April 1, 2001. (See “Final Report” at 31 *Pa.B.* 1995 (April 14, 2001), and 746 A.2d No.4, 747 A.2d No.1 (April 14, 2000) Advanced Sheets (*Pennsylvania Reporter Series*.)

## Looking Ahead to 2001

The committee plans to continue to monitor the Rules of Evidence and the case law interpreting the rules and evidence law as members of the bench and bar become more familiar with using the rules. It will also continue to work with members of the legislature on the statutory/rule project begun in 1998.

## Contact Person

Anyone wanting additional information about the Committee on Rules of Evidence or who have questions about the rules themselves may contact the committee through its Staff Counsel, Richard L. Kearns, Esq., at (717) 795-2119, or by writing to him at 5035 Ritter Road, Suite 800; Mechanicsburg, PA 17055. 

Status of Recommendations		
Recommendation	Subject	Status
1, 2000	Amendment to Rule 104, revisions to Comments to Rules 103, 601	Remanded to committee 2-7-01
2, 2000	Amendments to Rule 405	Adopted 7-20-00, effective 10-1-00
3, 2000	Amendments to Rule 410, revisions to Comments to Rules 104, 408, 604, 609 and 1003	Adopted 3-29-01, effective 4-14-01

Table 3.5.1