

# AMENDMENTS TO FEDERAL RULES OF CIVIL AND CRIMINAL PROCEDURE<sup>1</sup>

EFFECTIVE JULY 1, 1975

Section 3 of the Act of Jan. 2, 1975, Pub. L. 93-595, 88 Stat. 1926, enacting the Federal Rules of Evidence and related amendments to the Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure, provides as follows:

"SEC. 3. The Congress expressly approves the amendments to the Federal Rules of Civil Procedure, and the amendments to the Federal Rules of Criminal Procedure, which are embraced by the orders entered by the Supreme Court of the United States on November 20, 1972,<sup>[2]</sup> and December 18, 1972,<sup>[3]</sup>

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<sup>1</sup> See Reporter's Note, 409 U. S. 1132. The full text of the Federal Rules of Evidence as prescribed by the Court, is set forth in H. R. Doc. No. 93-46, pp. 1-43 (1973), together with THE CHIEF JUSTICE's letter of submittal, *id.*, at iii.

<sup>2</sup> The order of November 20, 1972, reads in pertinent part as set forth below. The full text of that order is printed in H. R. Doc. No. 93-46, *supra*, at v.

"ORDERED:

"3. That subdivision (c) of Rule 30 and [Rule] 44.1 of the Federal Rules of Civil Procedure be, and they hereby are, amended . . . to read [as set forth, *infra*, at 1134, 1136].

"4. That subdivision (c) of Rule 32 of the Federal Rules of Civil Procedure be, and it hereby is, abrogated . . . .

"5. That Rules 26, 26.1, and 28 of the Federal Rules of Criminal Procedure be, and they hereby are, amended . . . to read [as set forth, *infra*, at 1136].

"6. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit the foregoing new rules and amendments to and abrogation of existing rules to the Congress at the beginning of its next regular

[Footnote 3 is on p. 1134]

and such amendments shall take effect on the one hundred and eightieth day beginning after the date of the enactment of this Act.”

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The amendments to the Federal Rules of Civil Procedure<sup>4</sup> read as follows:

*Rule 30. Depositions upon oral examination*

(c) *Examination and cross-examination; record of examination; oath; objections.*—Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Federal Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

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session, in accordance with the provisions of Title 18 U. S. C. § 3771 and Title 28 U. S. C. §§ 2072 and 2075.”

<sup>3</sup> The order of December 18, 1972, reads in pertinent part as set forth below. The full text of that order is printed in H. R. Doc. No. 93-46, *supra*, at VIII.

“ORDERED:

“1. That Rule 43 of the Federal Rules of Civil Procedure, as amended by Order of this Court entered November 20, 1972, be, and it hereby is, further amended . . . to read [as set forth, *infra*, at 1135].

“2. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit the foregoing amendment of Rule 43 of the Federal Rules of Civil Procedure to the Congress at the beginning of its next regular session in accordance with the provisions of Title 28, U. S. C. § 2072.”

<sup>4</sup> For earlier publication of the Federal Rules of Civil Procedure and the amendments thereto, see 308 U. S. 645, 308 U. S. 642, 329 U. S. 839, 335 U. S. 919, 341 U. S. 959, 368 U. S. 1009, 374 U. S. 861, 383 U. S. 1029, 389 U. S. 1121, 398 U. S. 977, and 401 U. S. 1017.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

*Rule 32. Use of depositions in court proceedings*

[Subdivision (c) is abrogated.]

*Rule 43. Taking of testimony*

(a) *Form.*—In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an Act of Congress or by these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court.

[(b) *Scope of examination and cross-examination*]  
(Abrogated)

[(c) *Record of excluded evidence*] (Abrogated)

(d) *Affirmation in lieu of oath.*—Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) *Evidence on motions.*—When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(f) *Interpreters.*—The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

*Rule 44.1. Determination of foreign law*

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

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The amendments to the Federal Rules of Criminal Procedure<sup>5</sup> read as follows:

*Rule 26. Taking of testimony*

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an Act of Congress or by these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court.

*Rule 26.1. Determination of foreign law*

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

*Rule 28. Interpreters*

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.

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<sup>5</sup> For earlier publication of the Federal Rules of Criminal Procedure and the amendments thereto, see 327 U. S. 821, 335 U. S. 917, 949, 346 U. S. 941, 350 U. S. 1017, 383 U. S. 1087, 389 U. S. 1125, 401 U. S. 1025, 406 U. S. 979, 415 U. S. 1056, and 416 U. S. 1001.