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Overview of the September 2, 2014 Amendments to the West Virginia Rules of Evidence

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The Supreme Court of Appeals of West Virginia amended the West Virginia Rules of Evidence ("Rules"), effective September 2, 2014, by Order dated June 2, 2014.[1] The majority of the Rules have undergone amendment to align in form and organization with the Federal Rules of Evidence. Certain amendments incorporate more substantive alterations, for example to reflect consistency with West Virginia case law. *See, e.g.*, Rule 404 (modified to reflect the requirements of *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516 (1994); *see also* Rule 702 (modified consistent with the holdings in *Wilt v. Buracker*, 191 W. Va. 39, 443 S.E.2d 196 (1993), *Gentry v. Mangum*, 195 W. Va. 512, 466 S.E.2d 171 (1995) and, more recently, *Harris v. CSX Transportation*, 232 W. Va. 617, 753 S.E.2d 275 (2013)). This article is not intended to address each and every revision made; rather, this article provides an overview of the current Rules, discusses amendments to the prior state versions and compares the Rules to their federal counterparts. A complete review of the Rules is recommended for each legal practitioner.

The following Rules all remain substantively the same as their prior versions, with stylistic modifications to parallel their federal counterparts: **Rule 105. Limiting Evidence That is Not Admissible Against Other Parties or for Other Purposes**; **Rule 401. Test for Relevant Evidence**; **Rule 402. General Admissibility of Relevant Evidence**; **Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons**; **Rule 405. Methods for Proving Character**; **Rule 406. Habit; Routine Practice**; **Rule 409. Offers to Pay Medical and Similar Expenses**; **Rule 410. Pleas, Plea Discussions, and Related Statements**; **Rule 501. Privilege in General**; **Rule 602. Need for Personal Knowledge**; **Rule 603. Oath or Affirmation to Testify Truthfully**; **Rule 604. Interpreter**;

[1] A Notice of Correction for Rule 608(a) regarding reputation or opinion evidence was entered on June 25, 2014. A Notice of Correction for Rule 612(b) regarding an adverse party's options concerning a writing used to refresh a witness's memory was entered on August 28, 2014.

Rule 605. Judge's Competency as a Witness; **Rule 610. Religious Beliefs or Opinions**; **Rule 613. Witness's Prior Statement**; **Rule 614. Court's Calling or Examining a Witness**; **Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion**; **Rule 801. Definitions that Apply to This Article; Exclusions from Hearsay**; **Rule 803. Exceptions to the Rule Against Hearsay**; **Rule 805. Hearsay Within Hearsay**; **Rule 806. Attacking and Supporting the Declarant's Credibility**; **Rule 901. Authenticating or Identifying Evidence**; **Rule 903. Subscribing Witness's Testimony**; **Rule 1001. Definitions That Apply to This Article**; **Rule 1002. Requirement of the Original**; **Rule 1003. Admissibility of Duplicates**; **Rule 1005. Copies of Public Records to Prove Content**; **Rule 1007. Testimony or Statement of a Party to Prove Content**; and **Rule 1004. Admissibility of Other Evidence of Content**. Notably, the comments to Rules 401, 402, 403, 405, 406, 409, 410, 805 and 806 all expressly state, "There is no intent to change any result in any ruling on evidence admissibility."

Rule 101. Scope is separated into subsections (a) and (b). Subsection (a) incorporates grammatical changes only and is substantially the same as the prior version of Rule 101. Subsection (b) has been added to mirror its federal counterpart to include specific definitions for "civil case", "criminal case", "public office", "record" and "rule prescribed by the Supreme Court of Appeals of West Virginia." It also specifies, consistent with the federal rule, that any reference to a writing throughout the Rules includes electronically stored information (ESI). This language demonstrates the recognition of the continuing shift in the legal field from tangible documents to information maintained in electronic form.

Rule 102. Purpose aligns with its federal counterpart with one (1) notable exception. The federal version of this rule states, "These rules ***should*** be construed . . .", while the amended state rule provides, "These rules ***shall*** be construed . . ." While this seemingly minor difference

may not appear to be of importance, the legal impact of "shall" versus "should" may be significant, since the term "shall" often is viewed as denoting a mandatory requirement while the term "should" often is interpreted as a guideline or recommendation.

Rule 103. Rulings on Evidence incorporates stylistic changes to the prior state rule that were taken verbatim from the federal rule. While subsections (a), (c), (d) and (e) were included in the prior version of Rule 103, subsection (b) is entirely new. It provides, "Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal." This provision reduces the occurrence of redundant objections regarding issues already adjudicated. The comment included with this rule is an important one, specifying that "boilerplate, generalized motions *in limine* are inadequate and tantamount to not making any objection at all and will not preserve error." It advises that motions *in limine* should not be filed or granted without sufficient context to the trial court, noting for example that motions that simply ask the trial court to prohibit hearsay testimony or the mention of insurance are a waste of judicial resources.

Rule 104. Preliminary Questions appears markedly different from the prior version of the rule, but the substance is the same. It is consistent in style with its federal counterpart, with one notable difference: the federal version of the rule does not address a hearing on the admissibility of evidence seized as a result of a search and seizure; however, the state rule consistently has specified that any hearing involving the admissibility of evidence seized as a result of search and seizure must be held outside the presence of the jury.

Rule 106. Remainder of or Related Writings or Recorded Statements includes one (1) significant amendment from the prior Rule 106 and the federal version. The earlier state version and current federal version permit an adverse party to "require" the introduction of any

part or other writing or recorded statement in the event that a party introduces all or part of a writing or recorded statement. The current Rule 106 clarifies that a party may "request" (i.e., not "require") such introduction, and that the trial court "should limit the introduction . . . to information that is relevant or assists the jury to place the entire writing or recorded statement in evidence." As the comment expressly states: "The adverse party does not have the absolute right to place the entire writing or recorded statement in evidence."

Rule 201. Judicial Notice of Adjudicative Facts incorporates stylistic changes from the prior rule and also adds an obligation upon parties with respect to noticed facts. The court no longer is automatically required to instruct the jury to accept a noticed fact as conclusive (in a civil case) or instruct the jury that it may or may not accept the noticed fact as conclusive (in a criminal case). A party now must request that the court give such an instruction. This is an important addition that practitioners should be aware of to ensure that such requests are made as necessary.

Rule 301. Presumptions in Civil Cases Generally remains similar to the prior version of the rule. The amended version is taken verbatim from the federal rule, but adds the qualifier that this rule also applies to "proceedings not otherwise provided for by statute or by these rules."

Rule 404. Character Evidence; Crimes or Other Acts is amended to reflect the content of the federal rule, with modification. The amended rule incorporates the requirements set forth in *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516 (1994), i.e., that the party seeking admission of evidence of a crime, wrong, or other act must identify the specific purpose for which the evidence is being offered and cannot merely cite or mention the possible uses listed in Rule 404(b). As the comment notes, the amended rule also broadens the requirement in

subsection (b)(2)(A) of reasonable notice to every party, as opposed to only requiring such notice by the state in a criminal prosecution. In addition, the prior Rule 404(a)(3) regarding the character of a victim of a sexual offense has been reformulated and now is addressed in new Rule 412, the rape shield rule.

Rule 407. Subsequent Remedial Measures includes several substantive amendments from the prior version and now is the same as its federal counterpart. The new rule substitutes "injury or harm" for "event" in the first sentence so that it now reads: "When measures are taken that would have made an earlier ***injury or harm*** less likely to occur, evidence of the subsequent measures is not admissible to prove . . ." In addition, the new rule includes language important for products liability practitioners by expressly prohibiting the admissibility of evidence of subsequent measures to prove "a defect in a product or its design" or "a need for a warning or instruction."

Rule 408. Compromise Offers and Negotiations takes language both from the prior state rule and the federal rule. It specifies that evidence of compromise offers and negotiations is not admissible to prove or disprove the validity or amount of a disputed claim (included in both the federal and prior state rule), the liability of a party in a disputed claim (included in the prior state rule but not included in the federal rule), or to impeach by a prior inconsistent statement or a contradiction (not included in the prior state rule but included in the federal rule). Included under the compromise offers and negotiations umbrella are "furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and conduct or a statement made during compromise negotiations about the claim." The federal rule but not the state rule provides an exception in subsection (a)(2) to the exclusion of such evidence if the conduct or statement is

"offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority." The current state Rule 408(b) includes the final two sentences of the previous version of the state rule with respect to the potential admissibility of evidence offered in the course of compromise negotiations and when presented for another reason.

Rule 411. Liability Insurance adopts the language of the federal rule, but adds an important qualifier in the second sentence that is not found in the federal rule: "But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or, ***if controverted***, proving agency, ownership or control." In conjunction with this provision, practitioners should review the decision by the Supreme Court of Appeals of West Virginia in *Barrett v. Retton*, 2014 W. Va. LEXIS 1256 (Nov. 21, 2014) in the context of Rule 411 and the potential admissibility of evidence of insurance company payments to expert witnesses. Additionally, the new rule adds the following clarification with respect to the potential admissibility of evidence that a person was or was not insured against liability: "This evidence may be admissible against a party that places in controversy the issues of the party's poverty, inability to pay, or financial status."

Rule 412. Sex-Offense Cases: the Victim's Sexual Behavior or Predisposition, is a new rape shield rule and, as noted in the comment, "is intended to provide the standard for the introduction of evidence of a victim's sexual history. The rule supersedes the rape shield statute, W. Va. Code § 61-8B-11, to the extent that the statute is in conflict with the rule." This new rule is extensive and tracks its federal counterpart with two (2) exceptions found in the provisions of Rule 412(a)(3) and Rule 412(b)(1)(C), which are meant to incorporate terms contained in West

Virginia's current rape shield laws. Rule 412(a)(3) states that the following evidence shall not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

> evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct in any prosecution in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, mentally defective, or mentally incapacitated.

Rule 412(b)(1)(C), on the other hand, sets forth an exception to the general inadmissibility of the conduct of the victim, providing that the court may admit:

> evidence of specific instances of the victim's sexual conduct with persons other than defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver is new and is modeled after the federal rule. It addresses waiver of the attorney-client privilege and work product by disclosure in a court or agency proceeding and the impact of unintentional disclosure with respect to the same. The Supreme Court of Appeals of West Virginia decisions in *State ex rel. Allstate Ins. Co. v. Gaughan*, 203 W. Va. 358, 508 S.E.2d 75 (1998) (inadvertent disclosure) and *State ex rel. McCormick v. Zakaib*, 189 W. Va. 258, 430 S.E.2d 316 (1993) (waiver of attorney-client and work product privileges as to subject matter) address areas covered by the Rule, and presumably are superseded to the extent that they may be deemed in conflict. Per the comment to the new rule, subsection (c)(2) of the federal rule—disclosure made in a state proceeding not subject of a state-court order concerning waiver is not a waiver in a federal proceeding if the disclosure is not a waiver under the law of the state where the disclosure occurred—has been eliminated because it is not needed under West Virginia law. The

comment notes that attorney-client privilege determinations in West Virginia are governed by the law of the forum.[2]

Rule 601. Competency to Testify in General has a new title and removes the exception to competency as a witness if provided for by statute. The current rule states, "Every person is competent to be a witness except as otherwise provided for by these rules."

Rule 606. Juror's Competency as a Witness overall remains substantively the same as the previous version, and maintains certain differences with respect to the federal rule. No amendments were made to Rule 606(a), which differs from the federal rule by specifying that "[a] member of the jury ***shall not*** testify as a witness before that jury in the trial of the case in which the juror is sitting" and that no objection is necessary to preserve that point. The federal version provides that a juror "may not" testify, thereby creating a potential ambiguity as to whether the court has discretion to allow a juror to testify, and mandates that the court give a party an opportunity to object. The comment to the new state rule provides, "To avoid the misleading impression that a trial court has discretion to allow a juror to testify at trial, the existing provision remains in the rule." Rule 606(b) remains substantially the same as the prior state rule, but tracks the federal rule format.

Rule 607. Who May Impeach a Witness has a new title but otherwise has not been changed. Its federal counterpart incorporates alternative language, but substantively is the same.

Rule 608. A Witness's Character for Truthfulness or Untruthfulness is materially the same as the prior state rule, but has been amended to match its federal counterpart with one

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[2] For this proposition, the comment cites to *Kessel v. Leavitt*, 204 W. Va. 95, 184-85, 511 S.E.2d 720, 809-10 (1998), which states:

> In the realm of conflicts of laws, we previously have held that "matters relating to the substantive rights of the parties are governed by the law of the place where the injury occurred, while matters pertaining to remedial rights are controlled by the law of the forum." Syl. pt. 2, *Forney v. Morrison*, 144 W. Va. 722, 110 S.E.2d 840 (1959). With specific regard to conflicts involving evidentiary matters, we have noted that "the admissibility or inadmissibility of evidence pertains to the remedy and is governed by the law of the forum." Syl. pt. 3, *Forney*, *id.*

exception retained from the prior state rule: while Rule 608(b) provides that the court may allow cross-examination of specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness, that permission does not extend to the accused. The federal rule does not include such a qualifier for the accused.

Rule 609. Impeachment by Evidence of a Criminal Conviction is the same as the previous version with respect to subsection (a). Subsections (b) through (e) generally incorporate stylistic changes consistent with the federal rule, but remain substantively the same as the previous state version. The only material difference from the federal rule is that subsection (b) of the current state rule provides that evidence of a conviction more than ten (10) years prior "is admissible only if the court determines, in the interests of justice, that. . ." The federal version omits any language regarding a court determination in the interests of justice, providing simply that evidence of a conviction more than ten (10) years prior "is admissible only if . . ."

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence pulls from both the federal rule and the previous state rule. Subsection (a) regarding the court's control over witness examination mirrors the federal rule and does not materially differ from the previous state rule. Subsection (b) regarding the scope of cross-examination is identical to the prior state rule, which is different than the federal rule. The state rule is more liberal with respect to the scope of cross-examination of a party, permitting such cross-examination to cover any matter relevant to any issue in the case. Cross-examination of a non-party is limited to the subject matters covered during the direct examination. The comment notes that this limitation "is not intended to restrict cross-examination only to those facts elicited during direct

examination."[3] Subsection (c)(2) of the state rule provides that leading questions are permitted with an expert witness, in addition to a hostile witness, an adverse party or a witness identified with an adverse party. The federal rule omits "expert witness" from the list of witnesses warranting leading questions.

Rule 612. Writing Used to Refresh a Witness's Memory takes portions both from the federal rule and prior state version, but is identical to its federal counterpart with respect to overall organization. While the federal rule limits the item used to refresh a witness's memory to a "writing", the current state rule allows for a witness's memory to be refreshed through an "object" as well, consistent with the prior state rule. Subsection (c) of the rule includes a new provision not found in the previous version or the federal rule, that "[i]f production of the writing or object at the trial or hearing is impracticable, the court may order it to be made available for inspection." Additionally, the prior requirement that the court must strike testimony or declare a mistrial in the event that the prosecution does not produce such writing or objection, make it available for inspection, or deliver it has been removed.

Rule 615. Excluding Witnesses mirrors the federal rule and has one notable change from the prior state version. Subsection (d) is new and provides that the rule does not authorize the exclusion of a person the court believes should be permitted to be present to hear other witnesses' testimony.

Rule 701. Opinion Testimony by Lay Witnesses is the same as the prior state rule, but includes new subsection (c), which states that opinion testimony by lay witnesses is limited to

[3] The comment notes, "'The subject matter of direct [examination] does not mean literally the precise facts developed on direct. It means the subject matter opened up.' *State v. Deitz*, 182 W. Va. 544, 551, 390 S.E.2d 15, 22 (1990) (quoting F. Cleckley, *Handbook on Evidence for West Virginia Lawyers* § 3.3(D)(3) (2d ed. 1986) (emphasis omitted)."

that which is "not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." This aligns with the rule's federal counterpart.

Rule 702. Testimony by Expert Witnesses is materially modified to include new subsection (b), which formalizes the holdings by the Supreme Court of Appeals of West Virginia regarding the admissibility of expert witness testimony in *Wilt v. Buracker*, 191 W. Va. 39, 443 S.E.2d 196 (1993) and *Gentry v. Mangum*, 195 W. Va. 512, 466 S.E.2d 171 (1995) and, more recently, *Harris v. CSX Transportation*, 232 W. Va. 617, 753 S.E.2d 275 (2013). Subsection (b) sets forth the *Daubert* factors, but limits the reliability analysis by the court (in exercising its "gatekeeper" function) to "expert testimony based on a novel scientific theory, principle, methodology, or procedure."[4] This amendment is consistent with the fact that West Virginia has not, to date, adopted the United States Supreme Court's decision in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

Rule 703. Bases of an Expert's Opinion Testimony is identical to its federal counterpart and substantially similar to the prior state version, with the exception of the final sentence, which states, "But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect." This language is consistent with the holding of the Supreme Court of Appeals of West Virginia in Syllabus Point 3 of *Doe v. Wal-Mart*, 210 W. Va. 664, 558 S.E.2d 663 (2001), to wit:

> An expert witness may testify about facts he/she reasonably relied upon to form his/her opinion even though such facts would otherwise be inadmissible as

[4] It is important to note that the amendments to the Rules as originally proposed by the Committee on the Revision of the Rules of Evidence extended the *Daubert* factors/reliability analysis to all expert testimony, not just that based on a novel scientific theory, principle, methodology, or procedure. *See* Proposed Revisions to the West Virginia Rules of Evidence (Public Comment Version), pp. 31-33, *available at* http://www.courtswv.gov/legal-community/court-rules/Orders/2013/WVRE-09162013.pdf. The proposed amendment is identical to the federal rule.

> hearsay if the trial court determines that the probative value of allowing such testimony to aid the jury's evaluation of the expert's opinion substantially outweighs its prejudicial effect. If a trial court admits such testimony, the jury should be instructed that the otherwise inadmissible factual evidence is not being admitted to establish the truth thereof but solely for the limited purpose of informing the jury of the basis for the expert's opinion.

Rule 704. Opinion on Ultimate Issue remains the same as the prior version and maintains one notable distinction from its federal counterpart. The federal rule provides that expert witnesses must not state any opinion about the defendant's mental state or condition that constitutes an element of the crime charged or the defense. The state rule since October 16, 1985, when that same language was repealed, consistently has omitted that provision, pursuant to case law. *See State v. Dietz*, 192 W. Va. 554, 550 n. 3, 390 S.E.2d 15, 21 n. 3 (1990), *referencing State v. Swiger*, 175 W. Va. 578, 588 n. 10, 336 S.E.2d 541, 551 n. 10 (1985) and *State v. Smith*, 178 W. Va. 104, 107-08 n. 1, 358 S.E.2d 199, 191 n. 1 (1987).

Rule 706. Court-Appointed Expert Witnesses is the same as the prior state version with one minor exception: the language concerning payable compensation from funds which may be provided by law in proceedings involving just compensation under the Fifth Amendment has been removed.

Rule 802. The Rule Against Hearsay mirrors the prior state version and substantively tracks the federal rule. However, the language in the federal rule regarding federal statute and other rules prescribed by the Supreme Court is inapplicable to the state rule and so is not included.

Rule 804. Hearsay Exceptions; Declarant Unavailable parallels the federal rule and incorporates stylistic amendments to the prior state version with one exception, consistent with *State Farm Fire & Cas. Co. v. Printz*, 231 W. Va. 96, 743 S.E.2d 907 (2013). The Supreme Court of Appeals of West Virginia in that case invalidated the Dead Man's Statute set forth in

West Virginia Code § 57-3-1 (1937) and held, "In actions, suits or proceedings by or against the representatives of deceased persons, witness testimony and documentary evidence pertaining to any statement of the deceased, whether written or oral, shall not be excluded solely on the basis of competency." *Id.* at Syl. Pt. 7. The current state rule acknowledges the potential admissibility of statements by a decedent through the addition of subsection (b)(5), which states:

> (5) Statement of a Deceased Person. In actions, suits or proceedings by or against the representatives of deceased persons, including proceedings for the probate of wills, any statement of the deceased—whether oral or written—shall not be excluded as hearsay provided the trial judge shall first find as a fact that the statement:
>
> (A) was made by the decedent; and
> (B) was made in good faith and on decedent's personal knowledge; and
> (C) was made under circumstances that indicate it was trustworthy.

Rule 807. Residual Exception is a new state rule and is the same as its federal counterpart. It provides that even if not included within the list of hearsay exceptions set forth in Rules 803 or 804, a hearsay statement is not excluded by the rule against hearsay if:

> (1) the statement has equivalent circumstantial guarantees of trustworthiness;
> (2) it is offered as evidence of a material fact;
> (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
> (4) admitting it will best serve the purposes of these rules and the interests of justice.

The proponent of such a statement is required to provide "reasonable notice" prior to any trial or hearing of the intent to offer the statement so that the adverse party has a fair opportunity to meet it. The declarant's name and address must be included as part of this notice by the proponent.

Rule 902. Self-Authentication mirrors the previous state version with two exceptions, found in subsections (11) and (12), which are taken from the federal rule. Subsection (11) explains that extrinsic evidence of authenticity as a condition precedent to admissibility is not required for "[t]he original or copy of a domestic record that meets the requirements of Rule

803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a state statute or a rule prescribed by the Supreme Court." The proponent of such a document is required to provide to an adverse party "reasonable written notice" of the intent to offer the record so as to allow a fair opportunity to challenge. The document and certification must be made available for inspection. Subsection (12) provides that extrinsic evidence of authenticity as a condition precedent to admissibility is not required for "the original or a copy of a foreign record that meets the requirements of Rule 902(11)" so long as the certification is "signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed." The same notice requirements set forth in subsection (11) also are applicable to foreign records.

Rule 1006. Summaries to Prove Content tracks its federal counterpart with two minor exceptions: first, the state rule specifies that the proponent of a summary, chart or calculation to prove the content of voluminous writings, recordings or photographs need not make those items available for inspection and copying if they are identified and previously produced by any party; second, the state rule replaces "them" with "the originals or duplicates" in the last sentence of the rule, for clarification.

Rule 1008. Functions of Court and Jury is substantially similar to both the prior state version and the federal rule. It addresses the admissibility of secondary evidence to prove contents of writings, recordings or photographs that depend on the fulfillment of a condition of fact. The rule does include a grammatical amendment to the prior state version to clarify that "in a jury trial, the jury determines—in accordance with Rule 104(b)—any issue about: (a) whether the asserted writing, recording or photograph ever existed, or (b) whether another writing,

recording, or photograph produced at the trial is the original, or (c) whether other evidence of content correctly reflects the content."

Rule 1101. Applicability incorporates two (2) amendments to the prior state version. The current rule provides that the West Virginia Rules of Evidence do not apply to, *inter alia*, the "granting or revoking probation or supervised release." The prior version did not include language regarding supervised release. Also, subsection (b)(5) is new and provides that the West Virginia Rules of Evidence do not apply to depositions as those are governed by the West Virginia Rules of Civil Procedure.[5]

Rule 1102. Title is the exact same as the previous state rule.

The final edition of the amended Rules, along with the Notices of Correction for Rules 608(a) and 612(b), is available through the "Recent Rules Orders" page of the West Virginia State Bar's website (http://www.courtswv.gov/legal-community/recent-rules-orders.html) and can be downloaded directly at: http://www.courtswv.gov/legal-community/court-rules/Orders/2014/8-28-14RulesEvidenceFinalCorrected.pdf.[6] Although this edition does not include strikethrough and underlining due to the extensive restyling/reformatting of the rules, "comments" are included with each rule that identify and explain the amendments.

[5] However, note the language of Rule 612(b) regarding writings or objects used to refresh a witness's memory, which states, "An adverse party is entitled to have the writing or object produced at the trial, hearing, ***or deposition*** to inspect it . . ."

[6] The amendments to the Rules as originally proposed by the Committee on the Revision of the Rules of Evidence can be found here: http://www.courtswv.gov/legal-community/court-rules/Orders/2013/WVRE-09162013.pdf.