

Delaware Supreme Court Amends the Delaware Uniform Rules of Evidence

By an order dated November 28, 2017, the Delaware Supreme Court has amended the Delaware Uniform Rules of Evidence. These amendments are effective January 1, 2018. The rule amendments are available on the [Court's website](#).

The amendments are based on the recommendation of the Trial Procedures Subcommittee, a subcommittee of the permanent Advisory Committee on Supreme Court Rules, Rules of Civil Procedure, and Rules of Evidence. The Trial Procedures Subcommittee was established to, among other things, review the Delaware Uniform Rules of Evidence and consider whether the Delaware Uniform Rules of Evidence, which are largely based on the Federal Rules of Evidence, should be amended to incorporate changes made to the Federal Rules of Evidence. The Trial Procedures Subcommittee concluded that the Delaware Uniform Rules of Evidence should be amended to incorporate stylistic, non-substantive changes made to the Federal Rules of Evidence in 2011.

The Trial Procedures Subcommittee also determined that substantive changes should be made to Delaware Uniform Rule of Evidence 502 and, upon the consideration and recommendation of a subcommittee to the previous Permanent Advisory Committee on the Delaware Uniform Rules of Evidence, Delaware Rule of Evidence 801(d)(1)(B). Rule 502 was amended to make clear that attorney-client privilege covers communications with in-house counsel, including entities that are owned or controlled by foreign affiliates. Rule 801(d)(1)(B) was amended to incorporate a change to Federal Rule of Evidence 801(d)(1)(B) that permitted the admission of a testifying witness' prior consistent statements as substantive evidence. This amendment is limited to civil cases. 11 *Del. C.* § 3507 continues to govern the substantive use of consistent and inconsistent out of court statements in criminal cases.

The amendments are effective on January 1, 2018 and shall govern in all proceedings commenced thereafter and, insofar as just and practicable, all proceedings then pending.

If you have any questions, please contact William S. Montgomery, Supreme Court Administrator, at william.montgomery@state.de.us or (302) 651-3906.