

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on August 28, 2014, the following order was made and entered:

**RE: NOTICE OF CORRECTION
TO RULE 612(b) AND THE COMMENT ON RULE 611 OF THE
WEST VIRGINIA RULES OF EVIDENCE**

By order issued June 2, 2014, the Court approved revisions to the West Virginia Rules of Evidence, to become effective September 2, 2014. Upon additional review, the Court is of the opinion that a correction is necessary in Rule 612(b), in order to clarify the role of the Rules of Evidence in certain depositions. In addition, a slight correction to the comment on Rule 611 is necessary. Additions are shown by underlining, and deletions are shown by strikethrough.

Rule 612. Writing Used to Refresh a Witness's Memory (In Part)

(b) Adverse Party's Options; Deleting Unrelated Matter. An adverse party is entitled to have the writing or object produced at the trial, ~~or~~ hearing, or deposition to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing or object includes unrelated matter, the court must examine the writing or object in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

COMMENT ON RULE 612

Rule 612 was taken from the federal counterpart with the following substantive and stylistic changes. The entire rule was modified to include the phrase "an object" taken from the state rule. Rule 612(b) was modified to include the word "trial" taken from the state rule that was not contained in the federal rule. Rule 612(c) was modified to include the phrase "if production of the writing or object at the trial or hearing is impracticable, the court may order it made available for inspection." The requirement in the existing state rule that in a criminal case the court must strike testimony or declare a mistrial was removed. ~~References to "deposition" in the current state rule were removed because the Rules of Evidence do not apply to depositions.~~ This rule is applicable to depositions and deposition testimony.

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Rule 611. Mode and order of Examining Witnesses and Presenting Evidence

COMMENT ON RULE 611 (IN PART)

The limitation of cross-examination to the "subject matter of direct examination" in Rule 611(b)(2) is not intended to restrict cross-examination only to those facts elicited during ~~cross~~ direct examination.

The Rules attached to the Court's June 2, 2014 order and posted to the Court's website have been updated to reflect this correction. The Clerk is directed to provide a copy of this order to all publishers who normally receive notice of rule changes.

A True Copy

Attest: //s// Rory L. Perry II
Clerk of Court

