

FILED

April 30, 2019

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

ADM10-8047

**ORDER PROMULGATING AMENDMENT TO THE
MINNESOTA RULES OF EVIDENCE**

ORDER

The Supreme Court Advisory Committee on the Rules of Evidence recommended an amendment to Rule 1101 of the Rules of Evidence. The proposed amendment is a response to our decision in *State v. Willis*, 898 N.W.2d 642 (Minn. 2017), and our contemporaneous order requesting a recommendation on possible amendments to Rule 1101. We opened a public-comment period and written comments were filed in support of the committee's recommendation. We held a public hearing on March 27, 2019. A member of the committee and a representative of the Office of the Minnesota Appellate Public Defender spoke at the hearing.

We have carefully considered the committee's recommendation for rule amendment and have thoroughly evaluated the oral and written comments. After that review, we have concluded that the recommended amendment to the Rules of Evidence is well-advised and will save time and resources without harming the quality of justice. Therefore, the amendment to Rule 1101 will be adopted with a modification clarifying the restitution hearings covered by the amendment.

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the attached amendment to the Rules of Evidence be, and the same is, prescribed and promulgated to be effective as of July 1, 2019. The rule as promulgated will be effective in all cases filed on or after the effective date of the amendment. The inclusion of the committee comment is for convenience and does not reflect court approval of the comment.

Dated: April 30, 2019

BY THE COURT:



Lorie S. Gildea
Chief Justice

Amendment to Minnesota Rules of Evidence

[Note: In the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words]

Rule 1101. Rules Applicable

(a) Except as otherwise provided in subdivisions (b) and (c), these rules apply to all actions and proceedings in the courts of this state.

(b) Rules inapplicable. The rules other than those with respect to privileges do not apply in the following situations:

(1) *Preliminary questions of fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) *Grand jury.* Proceedings before grand juries.

(3) *Miscellaneous proceedings.* Proceedings for extradition or rendition; probable cause hearings; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; ~~and~~ proceedings with respect to release on bail or otherwise; and criminal expungement proceedings.

(4) Contempt proceedings in which the court may act summarily.

(c) Restitution hearings. For restitution hearings held under Minn. Stat. § 611A.045, subd. 3(b), these rules apply except that the foundation for admission of documentary evidence offered under Rule 803(6) may be provided by affidavit, or statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, in lieu of testimony.

Committee Comment—2019

Rule 1101 has been amended to clarify the applicability of the Rules of Evidence to criminal restitution and expungement hearings. In *State v. Willis*, 898 N.W.2d 642 (Minn. 2017), the Minnesota Supreme Court held that the Rules of Evidence apply to criminal restitution hearings held under Minn. Stat. § 611A.045. It then referred the matter to the advisory committee for review. The advisory committee determined that the Rules of Evidence should continue to apply to restitution hearings, but that the standards for admissibility of hearsay should be relaxed. This approach is intended to ease the burden on victims presenting receipts for expenses, while also ensuring fair and accurate restitution awards.

The rule was also amended to clarify that the Rules of Evidence do not apply to criminal expungement proceedings held under Minn. Stat. ch. 609A. This amendment is consistent with existing practice in Minnesota.