

**FOR IMMEDIATE RELEASE**

**September 27, 2010**

## **SUPREME COURT ANNOUNCES ILLINOIS RULES OF EVIDENCE**

The Illinois Supreme Court has approved, and promulgated on Monday Illinois Rules of Evidence in codified form aimed at expediting the trial process and improving the administration of justice in Illinois courts.

The Illinois Rules of Evidence, as they will be known, was a primary goal of Chief Justice Thomas R. Fitzgerald and represents nearly a two-year effort by a Special Supreme Court Committee.

“The new rules of evidence will provide the bar of Illinois easy access to the Illinois law of evidence and be of enormous value to practicing lawyers in the state and the litigants they represent,” said Chief Justice Fitzgerald. “I want to express thanks to all those members of the Special Committee who gave their tireless efforts to complete a large task with diligence and efficiency.”

The codified version of the state’s evidentiary rules represents a crowning achievement during the tenure of Chief Justice Fitzgerald, who recently announced his retirement effective October 25. He stated it as a goal when he became Chief on September 6, 2008, and urged his colleagues on the Court to convene the Special Committee.

The Committee, under the chairmanship of Appellate Justice Donald C. Hudson of the Second Judicial District, was empaneled on November 24, 2008. It immediately went to work, proposed several drafts, and held public hearings before the final product was approved by the Court during its September term.

Before codification, the rules of evidence in Illinois were dispersed throughout case law--that is, they were contained in the findings and rulings by the Illinois Supreme Court and the appellate courts; statutes; and other Illinois Supreme Court rules. It required attorneys and judges to research and ascertain the applicable rules from a number of sources.

“Trial practice requires that the most frequently used rules of evidence be readily accessible, preferably in an authoritative form,” said Justice Hudson, echoing the Committee’s published comments. “The Committee believes that all of the basic rules of evidence in one easily accessible, authoritative source will substantially increase the efficiency of the trial process as well as expedite the resolution of cases on trial for the benefit of the practicing bar, the judiciary and the litigants involved.

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### New Evidence Rules Add One

“The Committee further believes that the codification and promulgation of the Illinois Rules of Evidence will serve to improve the trial process itself as well as the quality of justice in Illinois.”

The codified rules were proposed consistent with several principles:

–Codification: They incorporate the current state of the law of evidence in Illinois whenever the Illinois Supreme Court or Appellate Court has clearly spoken on a principle of evidentiary law;

–Statutes: They avoid all instances affecting the validity of existing statutes promulgated by the Illinois legislature; and the rules do not preclude the legislature from acting in the future with respect to the law of evidence in a manner not in conflict with the Illinois Rules of Evidence.

–Modernization: Noncontroversial developments in the law of evidence as reflected in the Federal Rules of Evidence and 44 jurisdictions surveyed by the Committee were incorporated into the Illinois Rules. Justice Hudson said the Rules contain 14 instances of modernization, and they are delineated in the Committee Commentary to the Rules.

“They were determined to be appropriate and reflect modern developments in the law of evidence as well as being consistent with the weight of authority in other jurisdictions,” Justice Hudson said.

–Limited changes: According to the commentary, the Rules contain changes in only two areas: one, dealing with opinion testimony (in Rules 405 and 608); and the second, allowing a hearsay statement under Rule 803(3) as to the existing state of mind or physical condition of a person even if that person would be available as a witness.

The Committee made, and the Supreme Court approved, some revisions to an earlier draft, based on public hearings May 18 in Chicago and May 20 in Springfield as well as from written comments it had received. Those changes included:

–Revising Rule 101 to clarify that the rules do not intend to abrogate or supercede any existing statutory rules of evidence;

–Temporarily reserving Rule 407 which dealt with remedial measures taken in product liability cases until the Supreme Court rules on a pending case, *Jablonski v. Ford Motor Co.*

–Revising Rule 702 to affirm that Illinois remains a state adhering to the core principles of the *Frye* test for admissibility of scientific evidence as set forth in *Donaldson v. Central Illinois Public Service Co.*, 199 Ill. 2<sup>nd</sup> 63 (2002).

–Reserving Rule 803(18), which as originally drafted would have created a hearsay exception for learned treatises in accordance with the Federal Rules of Evidence.

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### New Evidence Rules

#### Add Two

–Revising Rule 801(d)(1)(A) to omit a proposed change to Illinois law which would have provided for substantive admissibility of prior inconsistent statements in civil proceedings.

The Illinois Rules of Evidence represents another significant achievement of Chief Justice Thomas R. Fitzgerald, who will exit his tenure as Chief Justice almost a year early due to illness which forces his retirement. Codification of evidence law in Illinois was a daunting task, though it had widespread support in principle once it was announced as a goal by the Chief Justice.

“From beginning to end, this was not only the Chief Justice’s idea, but he made it a dynamic process as well,” said Warren Wolfson, vice chair of the Committee and dean of the DePaul University College of Law. “He met with us. He inspired us to move quickly and diligently. He made clear to us what he had in mind as far as codifying Illinois law without any radical changes.

“He was kind of like our spiritual leader in this effort. He didn’t just name a committee, and forget about it. “This is clearly his legacy.”

The rules go into effect January 1, 2011.

In addition to Justice Hudson and Mr. Wolfson, other members of the Special Committee are:

Appellate Justices Robert L. Carter of the Third Judicial District in Ottawa and Nathaniel R. Howse Jr. of the First Judicial District Cook County; State Sen. Arthur J. Wilhelmi, D-Joliet, chairman of the Senate Judiciary Committee; and State Rep. Tom Cross, House Republican Leader from Plainfield; Circuit Court Judge Heidi Ladd of the Sixth Judicial Circuit in Champaign; and Associate Judge Dennis J. Porter of the Circuit Court of Cook County.

Other members are attorneys Gino L. DiVito, retired appellate judge now of Tabet, DiVito & Rothstein, LLC, Chicago; Eileen Letts of Green and Letts, Chicago; Shannon M. McNulty of the Clifford Law Offices, Chicago; Robert Neiryneck of Costigan & Wollrab PC, Bloomington; Michael Scodro, solicitor general in the Illinois Attorney General’s office; Todd Smith of Power Rogers & Smith, Chicago; Brian K. Trentman, public defender of Washington County; Michael J. Warner, Michael J. Warner & Associates.

Special advisor to the Committee is Michael Graham, professor of law at the University of Miami School of Law, and author of Cleary & Graham’s “The Handbook of Illinois Evidence.”

Ralph Ruebner, associate dean for academic affairs and professor at The John Marshall Law School, serves as reporter for the Committee.

Marcia M. Meis, senior attorney with the Administrative Office of the Illinois Courts, under Director Cynthia Y. Cobbs, served as AOIC liaison to the Committee.

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