

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

1. IN RE: AMENDMENTS TO TENNESSEE RULES OF EVIDENCE

FILED DECEMBER 10, 2003

ORDER

The Court adopts the attached amendments effective July 1, 2004, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 615 EXCLUSION OF WITNESSES

RULE 803 HEARSAY EXCEPTIONS.

FOR THE COURT:

FRANK F. DROWOTA, III,
CHIEF JUSTICE

TENNESSEE RULES OF EVIDENCE

RULE 615
EXCLUSION OF WITNESSES

[add new Advisory Commission Comment, below, to existing Comments]

Advisory Commission Comment

Expert witnesses generally should be considered “essential persons” and therefore should not be sequestered. In *State v. Bane*, 57 S.W.3d 411, 423 (Tenn. 2001), the Court stated: “[W]e believe that the dangers Rule 615 is intended to prevent generally do not arise with regard to expert witnesses in any proceeding.”

TENNESSEE RULES OF EVIDENCE

RULE 803
HEARSAY EXCEPTIONS

[Revise the fourth paragraph of the Advisory Commission Comment to Rule 803(1.2) (“Admission by Party-Opponent”) to read as follows:]

Advisory Commission Comment

....

The final sentence is intended to abolish the distinction between evidentiary (unsworn) and judicial

(sworn) admissions. Unless made conclusive by statute or another court rule, such as Tenn. R. Civ. P. 36.02 on requests for admission, party admissions are subject to being explained away by contradictory proof. But the final sentence is not intended to affect the doctrine of judicial estoppel. That doctrine involves two separate lawsuits and bars contradiction by a party in the second suit of that party's sworn statement in the first suit. See *Marcus v. Marcus*, 993 S.W.2d 596 (Tenn. 1999). In contrast the last sentence of this evidence rule contemplates a single lawsuit in which a party's admissions, sworn or not, can be contradicted.