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Hon. Jesse M. Furman
Chair, Advisory Committee on Federal Rules of Evidence
U.S. District Judge

Dear Judge Furman:

I write to voice my continued support for the amendment to Federal Rule of Evidence 609 that was approved by both the Advisory and Standing Committees but was subsequently blocked by members of the Executive Committee. For the reasons explained below, I urge the respective committees to take whatever steps are necessary to restore the amendment to its path to the Judicial Conference. Doing so will enhance the prospects for this much needed reform and restore public confidence in the judicial rulemaking process.

For me, this rulemaking began in 2023, when I was invited by the Advisory Committee to present on the evidence rule most needing change. The answer is Rule 609. Recognizing the urgency and importance of the task, I submitted a written proposal to eliminate Rule 609, summarizing my and others' research, and traveled to Minnesota to address the Committee in person.¹ My presentation sparked an intensive question and answer session. During this questioning, and at the urging of Committee members, I recommended, as a potentially more palatable alternative, eliminating only Rule 609(a)(1), the most problematic aspect of the rule.²

In the wake of my presentation, there appeared to be substantial support on the Committee to amend Rule 609, with the Committee specifically debating the elimination of Rule 609(a)(1) at subsequent meetings.³ This sparked a formal response from the DOJ, which submitted a lengthy 2024 letter in opposition. In the midst of the Committee's ongoing deliberation over multiple meetings, the Committee reporter proposed a further moderated position, keeping Rule 609(a)(1) but adjusting its language test to decrease the frequency of the most problematic impeachment. The DOJ ultimately tipped the balance by announcing that it would support this (second) compromise. The Committee subsequently adopted that proposal as the much-needed reform of Rule 609.

¹ My written proposal as well as the presentation and question and answer period were later published. See Bellin, *Eliminating Rule 609 to Provide a Fair Opportunity to Defend Against Criminal Charges: A Proposal to the Advisory Committee on the Federal Rules of Evidence*, 92 Fordham L. Rev. 2471, 2472 (2024); 92 Fordham L. Rev. 2375 (2024) (symposium).

² "[T]here is an obvious fallback position ... to just limit impeachment to what's already in Rule 609(a)(2), meaning only convictions like perjury, embezzlement, the convictions where an element of the offense is lying." *Id.* at 2387.

³ See, e.g., Minutes of the Meeting of April 19, 2024.

The Committee's vote triggered the lengthy process that governs rulemaking in the federal courts. This process is created by statute and governed by regulation. Under 28 U.S.C. § 2073, the Judicial Conference is required to "prescribe and publish the procedures for the consideration of proposed rules under this section." The Conference has done so.

Judicial Conference regulations set out the following path for a proposed rule amendment:

(1) Advisory Committee → (2) Standing Committee → (3) Public Comment → (4) Advisory Committee → (5) Standing Committee → (6) Judicial Conference → (7) Supreme Court → (8) Congress⁴

After exhaustive study, testimony and written submissions, the Rule 609 amendment passed steps 1 to 4 above. It was, then, unanimously approved by the Standing Committee (step 5). Judicial Conference Regulation 440.30.20(d) makes the next step unmistakable:

"The Standing Committee will transmit to the Judicial Conference the proposed rule changes and committee notes that it approves, together with the advisory committee report."⁵

Despite this regulatory command, the Rule 609 amendment never made it "to the Judicial Conference." There does not appear to be an official record of what happened, but there are two secondhand accounts. The Standing Committee's September 2026 [report](#) explains:

"The Advisory Committee on Evidence Rules recommended for final approval proposed amendments to Evidence Rule 609. The Standing Committee unanimously approved the Advisory Committee's recommendations. ... In August 2026, the Executive Committee, during its preparation of the proposed discussion and consent calendars for the September 2026 Judicial Conference session, called the Standing Committee's attention to several concerns with the proposed amendments and requested further examination.... In response to these concerns, the Standing Committee in August 2026 unanimously voted to withdraw the recommendation and to return the proposal to the Advisory Committee on Evidence Rules to allow it to further consider the proposed amendments in light of these concerns."

In a September 18, 2026, [memo](#) to the Advisory Committee on Evidence Rules, the Reporter, Daniel Capra, offers a similar account:

"By a unanimous vote, the Standing Committee approved the proposed amendments for final approval at its meeting in June. In the ordinary course, a Rule that makes it through that gauntlet would be put on the Judicial Conference consent calendar and approved for consideration by

⁴ Jud. Conf. Reg. 440.20.50, 440.30.20.

⁵ *Id.* § 440.30.20(d); see also *In re Pangang Group*, 901 F.3d 1046, 1050 (9th Cir. 2018) ("After evaluating and responding to such comments, the Advisory Committee may recommend a final rule or amendment to the Standing Committee. The Standing Committee then makes an independent recommendation to the Judicial Conference, which in turn recommends the proposed changes to the Supreme Court."); Scott Dodson, *The Making of the Supreme Court Rules*, 90 Geo. Wash. L. Rev. 866, 877 (2022) ("If the Standing Committee approves a rule amendment, the Standing Committee transmits the approved changes, together with the advisory committee's report, to the Judicial Conference.").

the Supreme Court. Last month, however, members of the Executive Committee of the Judicial Conference raised concerns about the proposed amendments. After discussion, the Standing Committee elected to withdraw the proposed amendments from the Judicial Conference and send the Rule back to the Advisory Committee for further consideration in light of the concerns by members of the Executive Committee. This memo considers the concerns expressed about the proposed amendments, as voiced by Judge Sutton, the current Chair of the Executive Committee, and Judge Colloton, the Executive Committee's Liaison to the Standing Committee."

These reports explain the amendment's failure to appear on the Judicial Conference's agenda at its September meeting. Members of the Executive Committee apparently disagreed with the amendment's substance.⁶

The Executive Committee's removal of the amendment from consideration by the Judicial Conference is objectionable on multiple levels. It is an affront to the countless groups and individuals who dutifully participated in the formal, three-year process to assist the members of the Advisory and Standing Committees (including the Federal Defender and DOJ representatives) reach consensus on a modest yet important reform of Rule 609. And even more importantly, the Executive Committee's action appears flatly inconsistent with the statute and regulations governing federal judicial rulemaking. As noted above, the rulemaking process is not a casual endeavor that can be ground to a halt with a phone call, hallway conversation, or email from a belatedly interested judge. It is created by statute and governed by regulations. And these legal authorities make clear that there is no substantive step between Standing Committee approval and consideration by the Judicial Conference.

Further, even if there were such a step, the Executive Committee would not be involved. The Executive Committee has no substantive rulemaking role. As the Judiciary's [own](#) materials explain,

"The Executive Committee of the Judicial Conference serves as the senior executive arm of the Conference, acting on its behalf between sessions on matters requiring emergency action as authorized by the Chief Justice; **the Executive Committee is not otherwise a policymaking committee of the Judicial Conference.**"⁷

⁶ As discussed in the Reporter's memo to the Committee, the substantive objections raised by these members are the same objections considered and defeated throughout the process.

⁷ The Executive Committee was created by the Judicial Conference and [authorized](#) only to do the following:

- take "emergency action" when the Judicial Conference is not in session;
- "review the reports and recommendations of Conference committees and structure a Conference agenda consisting of a consent and a discussion calendar";
- "publish procedures for assembling Conference and committee agendas so that interested persons will know how to get matters before the Conference and its committees";
- "review the jurisdiction of each committee and resolve jurisdictional disputes among committees";
- "make recommendations with respect to needs of the judiciary that should be addressed or planned for";
- "establish a legislative liaison group to monitor the legislative situation and maintain improved judicial legislative relations."

The regulations authorize the Executive Committee to “review the reports and recommendations of Conference committees and structure a Conference agenda consisting of a consent and a discussion calendar.” But there is no suggestion in the statute or regulations that the ministerial task of separating items on the agenda into either the “consent” or “discussion calendar” allows the Executive Committee to *remove* proposed amendments from the calendar altogether.

Plus, even if the Executive Committee had rulemaking authority, it would be required to exercise that authority in accordance with the governing statute, 28 U.S.C. § 2073, which states: “Each meeting for the transaction of business under this chapter by *any committee appointed under this section* shall be open to the public” and “shall be preceded by sufficient notice to enable all interested persons to attend.” It is not clear how the Executive Committee deliberated on the Rule 609 amendment, but I can find no public record of a noticed meeting, a vote, or the Committee’s deliberations. Since the Executive Committee’s membership appears to be confidential, the public does not even know who to blame for the apparent demise of this critical reform. It goes without saying that the disappearance in an extra-legal puff of smoke of the Advisory Committee’s most significant rulemaking in decades would undermine the legitimacy of the federal judiciary and its rulemaking process. The good news is that this damage can be repaired by enacting the Rule 609 amendment.

In sum, the irregular process that blocked the Rule 609 amendment creates an extra-legal precedent that, if allowed to stand, jeopardizes the integrity of the federal courts’ rulemaking process beyond this one amendment. The committees involved should undo this precedent by returning the Rule 609 amendment on its path to the Judicial Conference for consideration. This will not only vindicate the participation of countless individuals in the amendment process but uphold the laws and regulations that govern federal judicial rulemaking.

Sincerely,



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