SUPREME COURT OF ARIZONA

In the Matter of PETITION TO AMEND RULES OF EVIDENCE and RULE 17.4(f), ARIZONA RULES OF CRIMINAL PROCEDURE	)	Arizona Supreme Court No. R-10-0035 **FILED 09/07/2011**

ORDER
AMENDING THE ARIZONA RULES OF EVIDENCE AND RULE 17.4(f), ARIZONA RULES OF CRIMINAL PROCEDURE

A petition having been filed proposing to amend the Arizona Rules of Evidence and Rule 17.4(f), Arizona Rules of Criminal Procedure, and comments having been received, upon consideration,

IT IS ORDERED that the Rules of Evidence and Rule 17.4(f), Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective January 1, 2012.

DATED this _____ day of September, 2011.

_____
REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
Mark W Armstrong
James D Smith
John A Furlong
Lindsay Simmons
Barbara LaWall
David L Abney
Stanley G Feldman
John M Curtin
Joe Keilp
John A Canby
Elizabeth B Ortiz
Kimberly W MacEachern
Mark C Faull
Amy G Langerman
mwa

ATTACHMENT[1]

ARIZONA RULES OF EVIDENCE

PREFATORY COMMENT TO 2012 AMENDMENTS

The 2012 amendments to the Arizona Rules of Evidence make three different kinds of changes: (1) the Arizona rules have generally been restyled so that they correspond to the Federal Rules of Evidence as restyled. These "restyling" changes are not meant to change the admissibility of evidence; (2) in several instances, the Arizona rules have also been amended to "conform" to the federal rules, and these changes may alter the way in which evidence is admitted (see, e.g., Rule 702); and (3) in some instances, the Arizona rules either retain language that is distinct from the federal rules (see, e.g., Rule 404), or deliberately depart from the language of the federal rules (see, e.g., Rule 412).

The Court has generally adopted the federal rules as restyled, with the following exceptions: Rule 103(d) (Fundamental Error); Rule 302; Rule 404 (Character and Other Acts Evidence); Rule 408(a)(2) (Criminal Use Exception); Rule 611(b) (Scope of Cross-Examination); Rule 706(c) (Compensation for Expert Testimony); and Rule 801(d)(1)(A) (Prior Inconsistent Statements as Non-Hearsay). The restyling is intended to make the rules more easily understood and to make style and terminology consistent throughout the rules and with the restyled Federal Rules. Restyling changes are intended to be stylistic only, and not intended to change any ruling on the admissibility of evidence.

The Court has adopted conforming changes to Rule 103 (Rulings on Evidence); Rule 201 (Judicial Notice); Rule 301 (Presumptions); Rule 407 (Subsequent Remedial Measures); Rule 410 (Plea Discussions); Rules 412-415; Rule 606 (Juror's Competency as a Witness); Rule 608 (Character Evidence); Rule 609 (Impeachment by Criminal Conviction); Rule 611 (Mode of Presenting Evidence); Rule 615 (Excluding Witnesses); Rule 701 (Opinion Testimony by Lay Witnesses); Rule 702 (Testimony by Expert Witnesses); Rule 706 (Court Appointed Experts); Rule 801(d)(2) (Definitions That Apply to This Article; Exclusions from Hearsay); Rule 803(6)(A), (6)(D) and (24) (Hearsay Exceptions Regardless of Unavailability); Rule 804 (b)(1), (b)(3) and (b)(7) (Hearsay Exceptions When Declarant Unavailable); and Rule 807 (Residual Exception).

Conforming changes that are not merely restyling, as well as deliberate departures from the language of the federal rules, are noted at the outset of the comment to the corresponding Arizona rule.

Where the language of an Arizona rule parallels that of a federal rule, federal court decisions interpreting the federal rule are persuasive but not binding with respect to interpreting the Arizona rule.

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[1] Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope; Definitions

~~These rules govern proceedings in courts in the State of Arizona, with the exceptions stated in Rule 1101.~~

(a) Scope. These rules apply to proceedings in courts in the State of Arizona. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.

(b) Definitions. In these rules:

(1) "civil case" means a civil action or proceeding;

(2) "criminal case" includes a criminal proceeding;

(3) "public office" includes a public agency;

(4) "record" includes a memorandum, report, or data compilation;

(5) a "rule prescribed by the Supreme Court" means a rule adopted by the Arizona Supreme Court; and

(6) a reference to any kind of written material or any other medium includes electronically stored information.

Comment to 2012 Amendment

The language of Rule 101 has been amended, and definitions have been added, to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Comment to Original 1977 Rule

These rules apply in all courts, record and nonrecord, in Arizona.

Rule 102. Purpose ~~and Construction~~

~~These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and the promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.~~

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

Comment to 2012 Amendment

The language of Rule 102 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 103. Rulings on Evidence

~~**(a) Effect of erroneous ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and~~

~~(1) *Objection*. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or~~

~~(2) *Offer of proof*. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.~~

~~**(b) Record of offer and ruling.** The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.~~

~~**(c) Hearing of jury.** In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.~~

~~**(d) Fundamental error.** Nothing in this rule precludes taking notice of errors affecting fundamental rights although they were not brought to the attention of the court.~~

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record — either before or at trial — a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) Preventing the Jury from Hearing Inadmissible Evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) Taking Notice of Fundamental Error. A court may take notice of an error affecting a fundamental right, even if the claim of error was not properly preserved.

Comment to 2012 Amendment

Subsection (b) has been added to conform to Federal Rule of Evidence 103(b).

Additionally, the language of Rule 103 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

The substance of subsection (e) (formerly subsection (d)), which refers to "fundamental error," has not been changed to conform to the federal rule, which refers to "plain error," because Arizona and federal courts have long used different terminology in this regard.

Rule 104. Preliminary Questions

~~**(a) Questions of admissibility generally.** Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.~~

~~**(b) Relevancy conditioned on fact.**~~

~~**(c) Hearing of jury.** Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.~~

~~**(d) Testimony by accused.** The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.~~

~~**(e) Weight and credibility.** This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.~~

(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

(b) Relevance That Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) Conducting a Hearing So That the Jury Cannot Hear It. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves the admissibility of a confession;

(2) a defendant in a criminal case is a witness and so requests; or

(3) justice so requires.

(d) Cross-Examining a Defendant in a Criminal Case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

Comment to 2012 Amendment

The language of Rule 104 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 105. ~~Limited Admissibility~~ Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes

~~When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.~~

If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

Comment to 2012 Amendment

The language of Rule 105 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 106. Remainder of or Related Writings or Recorded Statements

~~When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.~~

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time.

Comment to 2012 Amendment

The language of Rule 106 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

~~**(a) Scope of rule.** This rule governs only judicial notice of adjudicative facts.~~

~~**(b) Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.~~

~~**(c) When discretionary.** A court may take judicial notice, whether requested or not.~~

~~**(d) When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.~~

~~**(e) Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.~~

~~**(f) Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.~~

~~**(g) Instructing jury.**.~~

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Comment to 2012 Amendment

The last sentence of subsection (f) (formerly subsection (g)) has been added to conform to Federal Rule of Evidence 201(f), as restyled.

Additionally, the language of Rule 201 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

ARTICLE III. PRESUMPTIONS IN CIVIL CASES ~~ACTIONS AND PROCEEDINGS~~

Rule 301. Presumptions in ~~General in~~ Civil Cases ~~Actions~~ Generally ~~and Proceedings~~

In a civil case, unless a statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

Comment to 2012 Amendment

The language of this rule has been added to conform to Federal Rule of Evidence 301, as restyled.

Rule 302. Applying State Law to Presumptions in Civil Cases ~~Applicability of State Law in Civil Actions and Proceedings~~

Comment to 2012 Amendment

Federal Rule of Evidence 302 has not been adopted because it is inapplicable to state court proceedings.

Comment to Original 1977 Rule

Federal Rule of Evidence 302 was not adopted because of the non-adoption of Rule 301. No other purpose was intended.

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. ~~Definition~~ Test for ~~of~~ ~~"~~Relevant Evidence~~"~~

~~"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.~~

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

Comment to 2012 Amendment

The language of Rule 401 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 402. General Admissibility of Relevant Evidence ~~Generally Admissible; Irrelevant Evidence Inadmissible~~

~~All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of Arizona or by applicable statutes or rules. Evidence which is not relevant is not admissible.~~

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States or Arizona Constitution;
- an applicable statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Irrelevant evidence is not admissible.

Comment to 2012 Amendment

The language of Rule 402 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 403. ~~Exclusion of~~ Excluding Relevant Evidence ~~on Grounds of~~ for Prejudice, Confusion, ~~or~~ Waste of Time, or Other Reasons

~~Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.~~

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Comment to 2012 Amendment

The language of Rule 403 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes

[No change in text.]

Comment to 2012 Amendment

The language of Rule 404 has not been changed in any manner.

Comment to 1997 Amendment

[No change in text.]

Comment to Original 1977 Rule

[No change in text.]

Application

[No change in text.]

Rule 405. Methods of Proving Character

~~**(a) Reputation or opinion.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.~~

~~**(b) Specific instances of conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, or pursuant to Rule 404(c), proof may also be made of specific instances of that person's conduct.~~

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, or pursuant to Rule 404(c), the character or trait may also be proved by relevant specific instances of the person's conduct.

Comment to 2012 Amendment

The language of Rule 405 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Application

Applicable to cases pending on and after that date, except civil cases as to which the final trial date is set to occur between December 1, 1997 and February 1, 1998 and criminal cases as to which the final trial date is set to occur between December 1, 1997 and January 15, 1998.

Rule 406. Habit; Routine Practice

~~Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.~~

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Comment to 2012 Amendment

The language of Rule 406 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 407. Subsequent Remedial Measures

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 407 in order to provide greater clarity regarding the applicable scope of the rule.

Additionally, the language of Rule 407 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Rule 407 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the rule. To improve the language of the rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

Rule 408. Compromise ~~and~~ Offers ~~to Compromise~~ and Negotiations

~~**(a) Prohibited uses.** Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:~~

~~(1) furnishing or offering or promising to furnish - or accepting or offering or promising to accept - a valuable consideration in compromise or attempting to compromise the claim; and~~

~~(2) conduct or statements made in compromise negotiations regarding the claim.~~

~~(b) **Permitted uses.** This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.~~

(a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim.

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Comment to 2012 Amendment

The 2012 amendment does not include any substantive changes and does not include the "criminal use exception" in Federal Rule of Evidence 408(a)(2).

Otherwise, the language of Rule 408 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 408 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the rule. To improve the language of the rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

The reference to "liability" has been deleted on the ground that the deletion makes the rule flow better and easier to read, and because "liability" is covered by the broader term "validity." Courts have not made substantive decisions on the basis of any distinction between validity and liability. No change in current practice or in the coverage of the rule is intended.

Rule 409. ~~Payment of~~ Offers to Pay Medical and Similar Expenses

~~Evidence of furnishing or offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.~~

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

Comment to 2012 Amendment

The language of Rule 409 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 410. ~~Offer to Plead Guilty; Nolo Contendere; Withdrawn Plea of Guilty~~ Pleas, Plea Discussions and Related Statements

(a) Prohibited Uses. Except as otherwise provided by statute, in a civil or criminal case, or administrative proceeding, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

(1) a guilty plea that was later withdrawn;

(2) a nolo contendere or no contest plea;

(3) a statement made during a proceeding on either of those pleas under Arizona Rule of Criminal Procedure 17.4 or a comparable federal procedure; or

(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4):

(1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 410, including the addition of subdivision (b)(2) and the Arizona-specific provision in subdivision (a)(3).

Additionally, the language of Rule 410 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Arizona Rule of Criminal Procedure 17.4(f) has also been amended to conform to its federal counterpart, Federal Rule of Criminal Procedure 11(f).

Rule 411. Liability Insurance

~~Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.~~

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

Comment to 2012 Amendment

The language of Rule 411 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 411 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the rule. To improve the language of the rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition

Comment to 2012 Amendment

Federal Rule of Evidence 412 has not been adopted. *See* A.R.S. § 13-1421 (Evidence relating to victim's chastity; pretrial hearing).

Rule 413. Similar Crimes in Sexual-Assault Cases

Comment to 2012 Amendment

Federal Rule of Evidence 413 has not been adopted. *See* Arizona Rule of Evidence 404(c).

Rule 414. Similar Crimes in Child-Molestation Cases

Comment to 2012 Amendment

Federal Rule of Evidence 414 has not been adopted. *See* Arizona Rule of Evidence 404(c).

Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation

Comment to 2012 Amendment

Federal Rule of Evidence 415 has not been adopted. *See* Arizona Rule of Evidence 404(c).

ARTICLE V. PRIVILEGES

Rule 501. ~~General Rule~~ Privilege in General

~~Except as otherwise required by the Constitution of the United States, the Constitution of Arizona, or by applicable statute or rule, privilege shall be governed by the principles of the common law as they may be interpreted in light of reason and experience, or as they have been held to apply in former decisions.~~

The common law — as interpreted by Arizona courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:

- the United States or Arizona Constitution;
- an applicable statute; or
- rules prescribed by the Supreme Court.

Comment to 2012 Amendment

The language of Rule 501 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) [No change in text.]

(b) [No change in text.]

(c) [No change in text.]

(d) [No change in text.]

(e) [No change in text.]

(f) [No change in text.]

ARTICLE VI. WITNESSES

Rule 601. ~~General Rule of~~ Competency to Testify in General

~~Every person is competent to be a witness except as otherwise provided in these rules or by statute.~~

Every person is competent to be a witness unless these rules or an applicable statute provides otherwise.

Comment to 2012 Amendment

The language of Rule 601 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 602. ~~Lack of~~ Need for Personal Knowledge

~~A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.~~

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Comment to 2012 Amendment

The language of Rule 602 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 603. Oath or Affirmation to Testify Truthfully

~~Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.~~

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

Comment to 2012 Amendment

The language of Rule 603 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 604. Interpreter~~s~~

~~An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation~~.

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

Comment to 2012 Amendment

The language of Rule 604 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 605. ~~Competency of~~ Judge's Competency as a Witness

~~The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.~~

The judge presiding at trial may not testify as a witness at the trial. A party need not object to preserve the issue.

Comment to 2012 Amendment

The language of Rule 605 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 606. ~~Competency of~~ Juror's Competency as a Witness

~~**(a) At the trial.** A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.~~

~~**(b) Inquiry into validity of verdict in civil action.** Upon an inquiry into the validity of a verdict in a civil action, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict, or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror, concerning a matter about which the juror would be precluded from testifying, be received for these purposes.~~**(a) At the Trial.** A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) During an Inquiry into the Validity of a Verdict in a Civil Case.

(1) ***Prohibited Testimony or Other Evidence.*** During an inquiry into the validity of a verdict in a civil case, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) ***Exceptions.*** A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention;

(B) an outside influence was improperly brought to bear on any juror; or

(C) a mistake was made in entering the verdict on the verdict form.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 606, including the addition of subdivision (b)(2)(C). However, subsection (b) has not been applied to criminal cases, as is done in Federal Rule of Evidence 606(b), because the matter is covered by Arizona Rule of Criminal Procedure 24.1(d).

Additionally, the language of Rule 606 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Rule 607. Who May Impeach a Witness

~~The credibility of a witness may be attacked by any party, including the party calling the witness.~~

Any party, including the party that called the witness, may attack the witness's credibility.

Comment to 2012 Amendment

The language of Rule 607 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 608. ~~Evidence of~~ A Witness's Character for Truthfulness or Untruthfulness ~~and Conduct of Witness~~

~~**(a) Opinion and reputation evidence of character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.~~

~~**(b) Specific instances of conduct.** Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross- examination of the witness (1) concerning~~

~~the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.~~

~~The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.~~

(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 608, including changing two references to "credibility" to "character for truthfulness" in subsection (b). Additionally, the language of Rule 608 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Comment to Original 1977 Rule

State v. Superior Court, 113 Ariz. 22, 545 P.2d 946 (1976) is consistent with and interpretative of Rule 608(b).

Rule 609. Impeachment by Evidence of ~~Conviction of~~ a Criminal Conviction ~~Crime~~

~~**(a) General rule.** For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record, if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect, and if the crime (1) was punishable by death or imprisonment in excess of one year under the law~~

~~under which the witness was convicted or (2) involved dishonesty or false statement, regardless of the punishment.~~

~~**(b) Time limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.~~

~~**(c) Effect of pardon, annulment, or certificate of rehabilitation.** Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.~~

~~**(d) Juvenile adjudications.** Evidence of juvenile adjudication is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.~~

~~**(e) Pendency of appeal.** The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.~~

(a) **In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.

(b) Limit on Using the Evidence After 10 Years. This subsection (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 609, including changing "credibility" to "character for truthfulness" in subsection (a) and adding language to the last clause of subdivision (a)(2) to clarify that this evidence may be admitted only "if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement."

Additionally, the language of Rule 609 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent

throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Comment to Original 1977 Rule

Subsection (d) is contrary to the provisions of A.R.S. § 8-207, but in criminal cases due process may require that the fact of a juvenile adjudication be admitted to show the existence of possible bias and prejudice. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). The fact of a juvenile delinquency adjudication may not be used to impeach the general credibility of a witness. The admission of such evidence may be necessary to meet due process standards.

Rule 610. Religious Beliefs or Opinions

~~Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.~~

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Comment to 2012 Amendment

The language of Rule 610 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence ~~Interrogation and Presentation~~

~~**(a) Control by Court; Time Limitations.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment. The court may impose reasonable time limits on the trial proceedings or portions thereof.~~

(a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. A witness may be cross-examined on any relevant matter.

~~**(c) Leading questions.** Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily, leading questions should be permitted on cross-examination. A party may interrogate an unwilling, hostile or biased witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party or a witness whose interests are identified with an adverse party and interrogate that person by leading questions. The witness thus called may be interrogated by leading questions on behalf of the adverse party also.~~

(c) Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

(1) on cross-examination; and

(2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 611, except for subsection (b), which has not been changed.

Additionally, the language of subsections (a) and (c) has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

The 2012 amendment of Rule 611(a) is not intended to diminish a trial court's ability to impose reasonable time limits on trial proceedings, which is otherwise provided for by rules of procedure. Similarly, the 2012 amendment of Rule 611(c) is not intended to change existing practice under which a witness called on direct examination and interrogated by leading questions may be interrogated by leading questions on behalf of the adverse party as well.

Comment to ~~Evidence~~ Rule 611(a), 1995 Amendment

Following are suggested procedures for effective document control:

(1) The trial judge should become involved as soon as possible, and no later than the pretrial conference, in controlling the number of documents to be used at trial.

(2) For purposes of trial, only one number should be applied to a document whenever referred to.

(3) Copies of key trial exhibits should be provided to the jurors for temporary viewing or for keeping in juror notebooks.

(4) Exhibits with text should and, on order of the court, shall be highlighted to direct jurors' attention to important language. Where important to an understanding of the document, that language should be explained during the course of trial.

(5) At the close of evidence in a trial involving numerous exhibits, the trial judge shall ensure that a simple and clear retrieval system, e.g., an index, is provided to the jurors to assist them in finding exhibits during deliberations.

Comment to Original 1977 Rule

The last sentence of (c) changes the Arizona Supreme Court's holding in J. & B. Motors, Inc. v. Margolis, 75 Ariz. 392, 257 P.2d 588 (1953).

Rule 612. Writing Used to Refresh a Witness's Memory

~~If a witness uses a writing to refresh memory for the purpose of testifying, either~~

~~(1) before testifying, if the court in its discretion determines it is necessary in the interests of justice, or~~

~~(2) while testifying,~~

~~an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the action, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.~~

(a) Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

(1) while testifying; or

(2) before testifying, if the court decides that justice requires the party to have those options.

(b) Adverse Party's Options; Deleting Unrelated Matter. An adverse party is entitled to have the writing produced at the hearing, 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 includes unrelated matter, the court must examine the writing 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.

(c) Failure to Produce or Deliver the Writing. If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

Comment to 2012 Amendment

The language of Rule 612 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Comment to Original 1977 Rule

Subparagraphs (1) and (2) of Federal Rule 612 have been reversed in order to clarify the intent of the rule which is to invoke the court's discretion concerning matters used before testifying and to have production as a matter of right of materials used while testifying. The word "action" in the second sentence of the rule replaces "testimony" in the Federal Rule to accord with the broader scope of cross-examination used in Arizona.

Rule 613. Witness's Prior Statements ~~of Witnesses~~

~~**(a) Examining witness concerning prior statement.** In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.~~

~~**(b) Extrinsic evidence of prior inconsistent statement of witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).~~

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

Comment to 2012 Amendment

The language of Rule 613 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 614. Court's Calling ~~and Interrogation of~~ or Examining a Witnesses ~~by Court~~

~~**(a) Calling by court.** The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.~~

~~**(b) Interrogation by court.** The court may interrogate witnesses, whether called by itself or by a party.~~

~~**(c) Objections.** Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.~~

(a) Calling. The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) Examining. The court may examine a witness regardless of who calls the witness.

(c) Objections. A party may object to the court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

Comment to 2012 Amendment

The language of Rule 614 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 615. ~~Exclusion of~~ Excluding Witnesses

~~At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause, or (4) a victim of crime, as defined in Rule 39(a), Rules of Criminal Procedure, who wishes to be present during proceedings against the defendant.~~

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

(a) a party who is a natural person;

(b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;

(c) a person whose presence a party shows to be essential to presenting the party's claim or defense;

(d) a person authorized by statute to be present; or

(e) a victim of crime, as defined by applicable law, who wishes to be present during proceedings against the defendant.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 615, including the addition of subsection (d).

Subsection (e) (formerly subsection (d)), which is a uniquely Arizona provision, has been retained but amended to reflect that "a victim of crime" means a crime victim "as defined by applicable law," which includes any applicable rule, statute, or constitutional provision. The rule previously provided that "a victim of crime" would be "as defined by Rule 39(a), Rules of Criminal Procedure."

Additionally, the language of Rule 615 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Comment to 1991 Amendment

The 1991 amendment to Rule 615 was necessary in order to conform the rule to the victim's right to be present at criminal proceedings, recognized in Ariz. Const. Art. II, § 2.1(A)(3).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Introductory Note to Original 1977 Rules: Problems of Opinion Testimony

The rules in this article are designed to avoid unnecessary restrictions concerning the admissibility of opinion evidence; however, as this note makes clear, an adverse attorney may, by timely objection, invoke the court's power to require that before admission of an opinion there be a showing of the traditional evidentiary prerequisites. Generally, it is not intended that evidence which would have been inadmissible under pre-existing law should now become admissible.

A major objective of these rules is to eliminate or sharply reduce the use of hypothetical questions. With these rules, hypothetical questions should seldom be needed and the court will be expected to exercise its discretion to curtail the use of hypothetical questions as inappropriate and premature jury summations. Ordinarily, a qualified expert witness can be asked whether he has an opinion on a particular subject and then what that opinion is. If an objection is made and the court determines that the witness should disclose the underlying facts or data before giving the opinion, the witness should identify the facts or data necessary to the opinion.

In jury trials, if there is an objection and if facts or data upon which opinions are to be based have not been admitted in evidence at the time the opinion is offered, the court may admit the opinion subject to later admission of the underlying facts or data; however, the court will be expected to exercise its discretion so as to prevent the admission of such opinions if there is any serious question concerning the admissibility, under Rule 703 or otherwise, of the underlying facts or data.

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Comment to 2012 Amendment

The 2012 amendment of Rule 701 adopts Federal Rule of Evidence 701, as restyled.

Rule 702. Testimony by Experts ~~s~~ Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

Comment to 2012 Amendment

The 2012 amendment of Rule 702 adopts Federal Rule of Evidence 702, as restyled. The amendment recognizes that trial courts should serve as gatekeepers in assuring that proposed expert testimony is reliable and thus helpful to the jury's determination of facts at issue. The amendment is not intended to supplant traditional jury determinations of credibility and the weight to be afforded otherwise admissible testimony, nor is the amendment intended to permit a challenge to the testimony of every expert, preclude the testimony of experience-based experts, or prohibit testimony based on competing methodologies within a field of expertise. The trial court's gatekeeping function is not intended to replace the adversary system. Cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.

A trial court's ruling finding an expert's testimony reliable does not necessarily mean that contradictory expert testimony is not reliable. The amendment is broad enough to permit testimony that is the product of competing principles or methods in the same field of expertise. Where there is contradictory, but reliable, expert testimony, it is the province of the jury to determine the weight and credibility of the testimony.

This comment has been derived, in part, from the Committee Notes on Rules—2000 Amendment to Federal Rule of Evidence 702.

Rule 703. Bases of an Expert's Opinion Testimony ~~by Experts~~

~~The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.~~

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Comment to 2012 Amendment

The language of Rule 703 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

All references to an "inference" have been deleted on the grounds that the deletion made the rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Comment to Original 1977 Rule

This rule, along with others in this article, is designed to expedite the reception of expert testimony. Caution is urged in its use. Particular attention is called to the Advisory Committee's Note to the Federal Rules of Evidence which accompanies Federal Rule 703. In addition, it should be emphasized that the standard "if of a type reasonably relied upon by experts in the particular field" is applicable to both

sentences of the rule. The question of whether the facts or data are of a type reasonably relied upon by experts is in all instances a question of law to be resolved by the court prior to the admission of the evidence. If the facts or data meet this standard and form the basis of admissible opinion evidence they become admissible under this rule for the limited purpose of disclosing the basis for the opinion unless they should be excluded pursuant to an applicable constitutional provision, statute, rule or decision.

Evidence which is inadmissible except as it may qualify as being "reasonably relied upon by experts in the particular field" has traditionally included such things as certain medical reports and comparable sales in condemnation actions.

704. Opinion on an Ultimate Issue

~~Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.~~

(a) In General — Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.

(b) Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Comment to 2012 Amendment

Subsection (b) has been added to conform to Federal Rule of Evidence 704, which was amended in 1984 to add comparable language. The new language in the Arizona rule is considered to be consistent with current Arizona law.

Additionally, the language of Rule 704 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

The Court deleted the reference to an “inference” on the grounds that the deletion made the rule flow better and easier to read, and because any “inference” is covered by the broader term “opinion.” Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 705. ~~Disclosure of~~ Disclosing the Facts or Data Underlying an Expert’s Opinion

~~The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.~~

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it— without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

Comment to 2012 Amendment

The language of Rule 705 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The reference to an "inference" has been deleted on the grounds that the deletion made the rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 706. Court Appointed Expert Witnesses

(a) **Appointment Process.** On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

(b) **Expert's Role.** The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

(1) must advise the parties of any findings the expert makes;

(2) may be deposed by any party;

(3) may be called to testify by the court or any party; and

(4) may be cross-examined by any party, including the party that called the expert.

(c) **Compensation.** The expert is entitled to a reasonable compensation, as set by the court. Except as otherwise provided by law, appointment of an expert by the court is subject to the availability of funds or the agreement of the parties concerning compensation.

(d) **Disclosing the Appointment to the Jury.** The court may authorize disclosure to the jury that the court appointed the expert.

(e) **Parties' Choice of Their Own Experts.** This rule does not limit a party in calling its own experts.

Comment to 2012 Amendment

The language of subsection (c) of Rule 706 has been amended to provide, consistent with Federal Rule of Evidence 706, that an expert is entitled to a reasonable compensation, as set by the court.

Additionally, the language of subsections (a), (b), (d), and (e) of the rule has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

ARTICLE VIII. HEARSAY

Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay

~~The following definitions apply under this article:~~

~~**(a) Statement.** A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.~~

~~**(b) Declarant.** A "declarant" is a person who makes a statement.~~

~~**(c) Hearsay.** "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.~~

~~**(d) Statements which are not hearsay.** A statement is not hearsay if~~

~~(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person or~~

~~(2) *Admission by party-opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.~~

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Hearsay. "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) ***A Declarant-Witness's Prior Statement.*** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony;

(B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) identifies a person as someone the declarant perceived earlier.

(2) ***An Opposing Party's Statement.*** The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Comment to 2012 Amendment

The last sentence of Rule 801(d)(2) has been added to conform to Federal Rule of Evidence 801(d)(2). The amendment does not, however, include the requirement in Federal Rule of Evidence 801(d)(1)(A) that a prior inconsistent statement be "given under oath" to be considered as non-hearsay.

Otherwise, the language of Rule 801 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Statements falling under the hearsay exclusion provided by Rule 801(d)(2) are no longer referred to as "admissions" in the title to the subdivision. The term "admissions" is confusing because not all statements covered by the exclusion are admissions in the colloquial sense — a statement can be within

the exclusion even if it "admitted" nothing and was not against the party's interest when made. The term "admissions" also raises confusion in comparison with the Rule 804(b)(3) exception for declarations against interest. No change in application of the exclusion is intended.

Comment to Original 1977 Rule

Evidence which is admissible under the hearsay rules may be inadmissible under some other rule or principle. A notable example is the confrontation clause of the Constitution as applied to criminal cases. The definition of "hearsay" is a utilitarian one. The exceptions to the hearsay rule are based upon considerations of reliability, need, and experience. Like all other rules which favor the admission of evidence, the exceptions to the hearsay rule are counterbalanced by Rules 102 and 403.

Rule 801(d). This subsection of the rule has been modified and is consistent with the United States Supreme Court's version of the Rule and State v. Skinner, 110 Ariz. 135, 515 P.2d 880 (1973).

Rule 802. The Rule Against Hearsay ~~Rule~~

~~Hearsay is not admissible except as provided by applicable constitutional provisions, statutes, or rules.~~

Hearsay is not admissible unless any of the following provides otherwise:

- an applicable constitutional provision or statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Comment on 2012 Amendment

The language of Rule 802 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness ~~Exceptions; Availability of Declarant Immaterial~~

~~The following are not excluded by the hearsay rule, even though the declarant is available as a witness:~~

~~**(1) Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.~~

~~**(2) Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.~~

~~**(3) Then existing mental, emotional, or physical condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.~~

~~**(4) Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.~~

~~**(5) Recorded recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.~~

~~**(6) Records of regularly conducted activity.**~~

~~**(7) Absence of entry in records kept in accordance with the provisions of paragraph (6).** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the non-occurrence or non-existence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.~~

~~**(8) Public records.**~~

~~**(9) Records of vital statistics.** Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.~~

~~**(10) Absence of public record or entry.** To prove the absence of a record, report, statement, or data compilation, in any form, or the non-occurrence or non-existence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.~~

~~**(11) Records of religious organizations.** Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.~~

~~**(12) Marriage, baptismal, and similar certificates.** Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.~~

~~**(13) Family records.** Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.~~

~~**(14) Records of documents affecting an interest in property.** The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.~~

~~**(15) Statements in documents affecting an interest in property.** A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.~~

~~**(16) Statements in ancient documents.** Statements in a document in existence twenty years or more the authenticity of which is established.~~

~~**(17) Market reports, commercial publications.** Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.~~

~~**(18) Learned treatises.** To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.~~

~~**(19) Reputation concerning personal or family history.** Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.~~

~~**(20) Reputation concerning boundaries or general history.** Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.~~

~~**(21) Reputation as to character.** Reputation of a person's character among associates or in the community.~~

~~**(22) Judgment of previous conviction.** Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere or no contest), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the~~

~~judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.~~

~~**(23) Judgment as to personal, family or general history or boundaries.** Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.~~

~~**(24)**~~ The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) ***Present Sense Impression.*** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) ***Excited Utterance.*** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) ***Then-Existing Mental, Emotional, or Physical Condition.*** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) ***Statement Made for Medical Diagnosis or Treatment.*** A statement that:

(A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) ***Recorded Recollection.*** A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) ***Records of a Regularly Conducted Activity.*** A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(7) ***Absence of a Record of a Regularly Conducted Activity.*** Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) ***Public Records.*** A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.

(9) ***Public Records of Vital Statistics.*** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) ***Absence of a Public Record.*** Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(11) ***Records of Religious Organizations Concerning Personal or Family History.*** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) ***Certificates of Marriage, Baptism, and Similar Ceremonies.*** A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

(13) ***Family Records.*** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) ***Records of Documents That Affect an Interest in Property.*** The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

(15) ***Statements in Documents That Affect an Interest in Property.*** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) ***Statements in Ancient Documents.*** A statement in a document that is at least 20 years old and whose authenticity is established.

(17) ***Market Reports and Similar Commercial Publications.*** Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) ***Statements in Learned Treatises, Periodicals, or Pamphlets.*** A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) ***Reputation Concerning Personal or Family History.*** A reputation among a person's family by blood, adoption, or marriage — or among a person's associates or in the community — concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) ***Reputation Concerning Boundaries or General History.*** A reputation in a community — arising before the controversy — concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) ***Reputation Concerning Character.*** A reputation among a person's associates or in the community concerning the person's character.

(22) ***Judgment of a Previous Conviction.*** Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

(23) ***Judgments Involving Personal, Family, or General History or a Boundary.*** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

(24) **[Other exceptions.]** [Transferred to Rule 807.]

(25) ***Former testimony (non-criminal action or proceeding).*** Except in a criminal action or proceeding, testimony given as a witness at another hearing of the same or different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

Comment to 2012 Amendment

To conform to Federal Rule of Evidence 803(6)(A), as restyled, the language "first hand knowledge" in Rule 803(6)(b) has been changed to "knowledge" in amended Rule 803(6)(A). The new language is not intended to change the requirement that the record be made by—or from information transmitted by—someone with personal or first hand knowledge.

To conform to Federal Rules of Evidence 803(24) and 807, Rule 803(24) has been deleted and transferred to Rule 807.

Additionally, the language of Rule 803 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

~~Court~~ Comment to 1994 amendment

For provisions governing former testimony in criminal actions or proceedings, *see* Rule 804(b)(1) and Rule 19.3(c), Rules of Criminal Procedure.

Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness ~~Exceptions; Declarant Unavailable~~

~~**(a) Definition of unavailability.** "Unavailability as a witness" includes situations in which the declarant--~~

~~(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or~~

~~(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or~~

~~(3) testifies to a lack of memory of the subject matter of the declarant's statement; or~~

~~(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or~~

~~(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.~~

~~A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.~~

~~**(b) Hearsay exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:~~

~~(1) *Former testimony* .~~

~~(2) *Statement under belief of impending death.* In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death.~~

~~(3) *Statement against interest.* (4) *Statement of personal or family history.* (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.~~

~~(5) *[Reserved]*~~

~~(6) *Forfeiture by Wrongdoing.* A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.~~

~~(7)~~

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (5); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subsection (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) ***Former Testimony in a Criminal Case.*** Testimony that:

(A) was made under oath by a party or witness during a previous judicial proceeding or a deposition under Arizona Rule of Criminal Procedure 15.3 shall be admissible in evidence if:

(i) The party against whom the former testimony is offered was a party to the action or proceeding during which a statement was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which the party now has (no person who was unrepresented by counsel at the proceeding during which a statement was made shall be deemed to have had the right and opportunity to cross-examine the declarant, unless such representation was waived) and

(ii) The declarant is unavailable as a witness, or is present and subject to cross-examination.

(B) The admissibility of former testimony under this subsection is subject to the same limitations and objections as though the declarant were testifying at the hearing, except that the former testimony offered under this subsection is not subject to:

(i) Objections to the form of the question which were not made at the time the prior testimony was given.

(ii) Objections based on competency or privilege which did not exist at the time the former testimony was given.

(2) ***Statement Under the Belief of Imminent Death.*** In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) ***Statement Against Interest.*** A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) ***Statement of Personal or Family History.*** A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) **[Formerly (7)** ***Other exceptions.*****]** [Transferred to Rule 807.]

(6) ***Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.*** A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.

Comment to 2012 Amendment

Rule 804(b)(1) has been amended to incorporate the language of Arizona Rule of Criminal Procedure 19.3(c).

Rule 804(b)(3) has been amended to conform to Federal Rule of Evidence 804(b)(3), as

amended effective December 1, 2010.

To conform to Federal Rules of Evidence 804(b)(5) and 807, Rule 804(b)(7) has been deleted and transferred to Rule 807.

Additionally, the language of Rule 804 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent

throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

~~Court~~ Comment to 1994 amendment

For provisions governing former testimony in non-criminal actions or proceedings, *see* Rule 803(25).

Rule 805. Hearsay Within Hearsay

~~Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.~~

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

Comment to 2012 Amendment

The language of Rule 805 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 806. Attacking and Supporting the Declarant's Credibility ~~of Declarant~~

~~When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.~~

When a hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Comment to 2012 Amendment

The language of Rule 806 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout

the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 807. Residual Exception

(a) **In General.** Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:

(1) the statement has equivalent circumstantial guarantees of trustworthiness;

(2) it is offered as evidence of a material fact;

(3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and

(4) admitting it will best serve the purposes of these rules and the interests of justice.

(b) **Notice.** The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

Comment to 2012 Amendment

Rule 807 has been adopted to conform to Federal Rule of Evidence 807, as restyled.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 901. Authenticating and Identifying Evidence ~~Requirement of Authentication or Identification~~

~~**(a) General provision.** The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.~~

~~**(b) Illustrations.** By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:~~

~~(1) *Testimony of witness with knowledge*. Testimony that a matter is what it is claimed to be.~~

~~(2) *Nonexpert opinion on handwriting*. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.~~

~~(3) *Comparison by trier or expert witness*. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.~~

~~(4) *Distinctive characteristics and the like*. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.~~

~~(5) *Voice identification*. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.~~

~~(6) *Telephone conversations*. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.~~

~~(7) *Public records or reports*. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.~~

~~(8) *Ancient documents or data compilation*. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence twenty years or more at the time it is offered.~~

~~(9) *Process or system.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.~~

~~(10) *Methods provided by statute or rule.* Any method of authentication or identification provided by applicable statute or rules.~~

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only — not a complete list — of evidence that satisfies the requirement:

(1) ***Testimony of a Witness with Knowledge.*** Testimony that an item is what it is claimed to be.

(2) ***Nonexpert Opinion About Handwriting.*** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) ***Comparison by an Expert Witness or the Trier of Fact.*** A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) ***Distinctive Characteristics and the Like.*** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) ***Opinion About a Voice.*** An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) ***Evidence About a Telephone Conversation.*** For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) ***Evidence About Public Records.*** Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) ***Evidence About Ancient Documents or Data Compilations.*** For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) ***Evidence About a Process or System.*** Evidence describing a process or system and showing that it produces an accurate result.

(10) ***Methods Provided by a Statute or Rule.*** Any method of authentication or identification allowed by a statute or a rule prescribed by the Supreme Court.

Comment to 2012 Amendment

The language of Rule 901 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Comment to Original 1977 Rule

This rule is declaratory of general evidence law and deals only with identification or authentication and not with grounds for admissibility.

Rule 902. Evidence That Is Self-Authenticating ~~Self-Authentication~~

~~Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:~~

~~**(1) Domestic public documents under seal.** A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.~~

~~**(2) Domestic public documents not under seal.** A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.~~

~~**(3) Foreign public documents.** A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification~~

~~may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.~~

~~**(4) Certified copies of public records.** A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any applicable statute or rule.~~

~~**(5) Official publications.** Books, pamphlets, or other publications purporting to be issued by public authority.~~

~~**(6) Newspapers and periodicals.** Printed materials purporting to be newspapers or periodicals.~~

~~**(7) Trade inscriptions and the like.** Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.~~

~~**(8) Acknowledged documents.** Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.~~

~~**(9) Commercial paper and related documents.** Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.~~

~~**(10) Presumptions under statutes.** Any signature, document, or other matter declared by applicable statute to be presumptively or prima facie genuine or authentic.~~

~~**(11) Certified domestic records of regularly conducted activity.** The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person certifying that the record:~~

~~(a) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;~~

~~(b) was kept in the course of the regularly conducted activity; and~~

~~(c) was made by the regularly conducted activity as a regular practice.~~

~~A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.~~

~~**(12) Certified Foreign Records of Regularly Conducted Activity.** In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record:~~

~~(a) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;~~

~~(b) was kept in the course of the regularly conducted activity; and~~

~~(c) was made by the regularly conducted activity as a regular practice.~~

~~The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.~~

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) ***Domestic Public Documents That Are Sealed and Signed.*** A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) ***Domestic Public Documents That Are Not Sealed but Are Signed and Certified.*** A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.

(3) ***Foreign Public Documents.*** A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States

embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) ***Certified Copies of Public Records.*** A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a statute, or a rule prescribed by the Supreme Court.

(5) ***Official Publications.*** A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) ***Newspapers and Periodicals.*** Printed material purporting to be a newspaper or periodical.

(7) ***Trade Inscriptions and the Like.*** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) ***Acknowledged Documents.*** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) ***Commercial Paper and Related Documents.*** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) ***Presumptions Under a Statute.*** A signature, document, or anything else that a statute declares to be presumptively or prima facie genuine or authentic.

(11) ***Certified Domestic Records of a Regularly Conducted Activity.*** The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

(12) ***Certified Foreign Records of a Regularly Conducted Activity.*** In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a statute or Supreme Court rule, must be signed

in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

Comment to 2012 Amendment

The language of Rule 902 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Comment to Original 1977 Rule

The language "general commercial law" in (9) is carried forward from the Federal Rule. In Arizona, the reference is to the Uniform Commercial Code as adopted in this State.

Rule 903. Subscribing Witness's Testimony ~~Unnecessary~~

~~The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.~~

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

Comment to 2012 Amendment

The language of Rule 903 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions That Apply to This Article

~~For purposes of this article the following definitions are applicable:~~

~~**(1) Writings and recordings.** "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.~~

~~**(2) Photographs.** "Photographs" include still photographs, x-ray films, video tapes, and motion pictures.~~

~~**(3) Original.** An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".~~

~~**(4) Duplicate.** A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original.~~

In this article:

(a) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.

(b) A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A "photograph" means a photographic image or its equivalent stored in any form.

(d) An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout — or other output readable by sight — if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.

(e) A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Comment to 2012 Amendment

The language of Rule 1001 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 1002. Requirement of the Original

~~To prove the content of a writing, recording, or photograph, the original writing, recording or photograph is required, except as otherwise provided in these rules or by applicable statute or rule.~~

An original writing, recording, or photograph is required in order to prove its content unless these rules or an applicable statute provides otherwise.

Comment to 2012 Amendment

The language of Rule 1002 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 1003. Admissibility of Duplicates

~~A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.~~

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

Comment to 2012 Amendment

The language of Rule 1003 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 1004. Admissibility of Other Evidence of Contents

~~The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if~~

~~**(1) Originals lost or destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or~~

~~**(2) Original not obtainable.** No original can be obtained by any available judicial process or procedure; or~~

~~**(3) Original in possession of opponent.** At a time when an original was under the control of the party against whom offered, the party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and the party does not produce the original at the hearing; or~~

~~**(4) Collateral matters.** The writing, recording, or photograph is not closely related to a controlling issue.~~

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) an original cannot be obtained by any available judicial process;

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the writing, recording, or photograph is not closely related to a controlling issue.

Comment to 2012 Amendment

The language of Rule 1004 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 1005. Copies of Public Records to Prove Content

~~The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.~~

The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

Comment to 2012 Amendment

The language of Rule 1005 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 1006. Summaries to Prove Content

~~The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.~~

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. And the court may order the proponent to produce them in court.

Comment to 2012 Amendment

The language of Rule 1006 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Comment to Original 1977 Rule

This rule is not intended to change foundation requirements for summaries. The person creating a summary will ordinarily be required to lay the foundation and be available for cross-examination.

Rule 1007. Testimony or Statement of a Party to Prove Content ~~Written Admission of Party~~

~~Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.~~

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Comment to 2012 Amendment

The language of Rule 1007 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 1008. Functions of the Court and Jury

~~When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.~~

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether:

(a) an asserted writing, recording, or photograph ever existed;

(b) another one produced at the trial or hearing is the original; or

(c) other evidence of content accurately reflects the content.

Comment to 2012 Amendment

The language of Rule 1008 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ARTICLE XI. MISCELLANEOUS RULES

Rule 1101. Applicability of the Rules

(a) Courts and magistrates. These rules apply to all courts of the State and to magistrates, and court commissioners and justices of the peace, masters and referees in actions, cases, and proceedings and to the extent hereinafter set forth. The terms "judge" and "court" in these rules include magistrates, court commissioners and justices of the peace.

(b) Proceedings generally. These rules apply generally to civil actions and proceedings, to contempt proceedings except those in which the court may act summarily, and to criminal cases and proceedings except as otherwise provided in the Arizona Rules of Criminal Procedure.

(c) Rule of privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

(d) Exceptions. These rules—except those on privilege—do not apply to grand jury proceedings.

Comment to 2012 Amendment

The title and language of Rule 1101(d) have been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

No changes have been made to Rule 1101(a), (b), and (c).

Comment to Original 1977 Rule

Federal Rule 1101 has been supplanted by one that ~~which~~ conforms to Arizona state practice. *See* also Rule 19.3, Arizona Rules of Criminal Procedure.

Rule 1102. Amendments

These rules may be amended as provided in Rule 28, Rules of the Supreme Court.

Comment to 2012 Amendment

Rule 1102 has been added to be consistent with Federal Rule of Evidence 1102, as restyled.

Rule 1103. Title

These rules may be ~~known and~~ cited as the Arizona Rules of Evidence.

Comment to 2012 Amendment

The language of Rule 1103 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ARIZONA RULES OF CRIMINAL PROCEDURE

Ariz. R. Cr. P. 17.4(f)

Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Arizona Rule of Evidence 410.