Federal Evidence Review

Highlighting Recent Federal Evidence Cases & Developments

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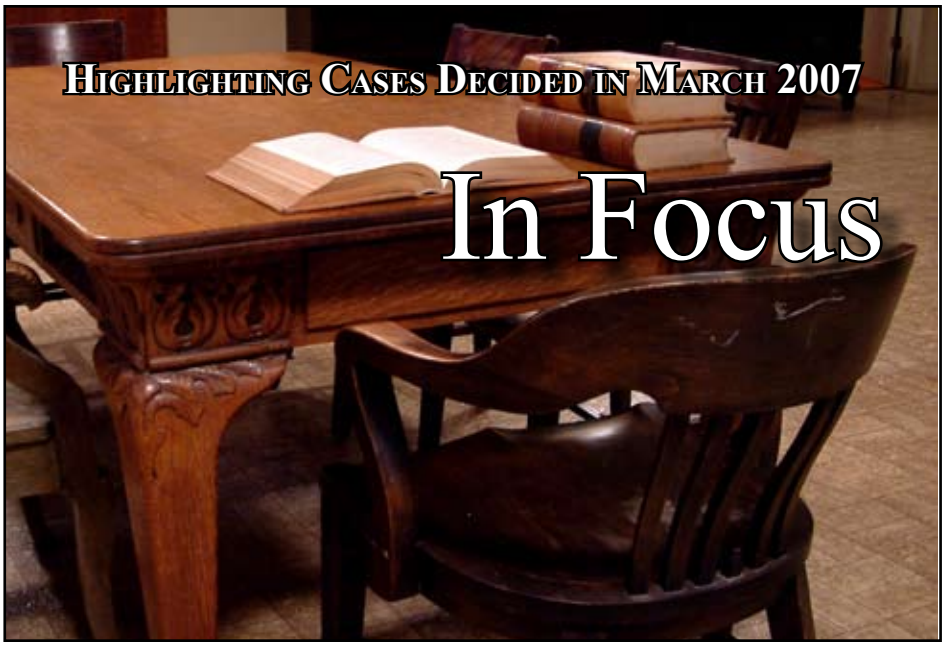

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Lead Story: FRE 301 & Evidentiary Presumptions – Ten Common Questions & Misconceptions

FRE 301 sets forth a general rule for the federal courts in civil cases that presumptions do not affect the burden of persuasion, but they do affect the burden of production. FRE 301 (noting the civil presumption "does not shift" to the other side "the burden of proof in the sense of the risk of nonpersuasion"). This rule is unlike most rules of evidence because it does not have any direct bearing on the admission or exclusion of evidence. The rule specifies the procedural impact of being able to secure admission or exclusion of evidence. In this Lead Story*, some common questions and misconceptions concerning the evidence doctrines embodied in FRE 301 are explored.*

Q1: Why Is There An Evidence Rule Governing Civil Presumptions?

FRE 301 expressly applies in civil cases. According to the legislative history, FRE 301 does not treat a presumption as evidence, but rather requires their use as a device that helps the court and parties "deal[] with evidence," specifying which party bears the risk of failing to prove elements of a civil case. FRE 301 has been described as facilitating a variety of purposes, including (a) easing the presentation of necessary evidence; (b) allocating the evidentiary burden; (c) promoting efficiency; and (d) attaining definitiveness or finality.

❖ **Ease Presentation Of Necessary Evidence:** The use of presumptions promotes the policy goal of making certain claims or defenses easier to establish. *See, e.g., Hood v. Knappton Corp.*, 986 F.2d 329, 331-32 (9th Cir. 1993) (it was proper for court to place burden of proof on defendant owner of vessel that drifted and caused damage to prove it was not negligent in accident since admiralty law presumption of negligence shifts burden of persuasion to an unmoored vessel's owner).

❖ **Allocate Evidentiary Burden:** Presumptions also have the effect of placing the burden of producing evidence on a particular party, often the party with better access to the evidence. As some cases have noted:

✓*Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 255 n.8 (1981) ("The word 'presumption' properly used refers only to a device for allocating the production burden.")

✓*Oxman v. WLS-TV*, 846 F.2d 448, 453 (7th Cir. 1988) (presumption that results in defendant having to produce evidence of nondiscriminatory motive once employee establishes prima facie case of age discrimination is designed to resolve the serious evidentiary problems the plaintiff would otherwise face in proving age discrimination)

✓*Routen v. West*, 142 F.3d 1434, 1440 (Fed. Cir.) ("The presumption affords a party, for whose benefit the presumption runs, the luxury of not having to produce specific evidence to establish the point at issue. When the predicate evidence is established that triggers the presumption, the further evidentiary gap is filled by the presumption."), *cert. denied* 525 U.S. 962 (1998)

❖ **Efficiency:** Presumptions advance efficient litigation by streamlining necessary findings, based upon an overall idea that what is presumed is more likely to be true. *See, e.g., Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 22 (1976) (coal miner diagnosed with "Black Lung" disease is "irrebuttably presumed" to be totally disabled and entitled to benefits).

❖ **Definitiveness Or Finality:** Presumptions promote the attaining of definitiveness or finality. *See, e.g., A.C. Aukerman Co. v. R.L. Chaides Constr. Co.,* 960 F.2d 1020, 1037-38 (Fed. Cir. 1992) (when a patentee delays bringing suit for more than six years after patentee knew or should have known of alleged infringement, the court

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