

**AMENDMENTS TO THE FEDERAL RULES OF
EVIDENCE**

COMMUNICATION

FROM

**THE CHIEF JUSTICE OF THE
SUPREME COURT**

TRANSMITTING

**VARIOUS AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE
ADOPTED BY THE COURT, PURSUANT TO 28 U.S.C. 2076**



**MARCH 2, 1987.—Referred to the Committee on the Judiciary and ordered
to be printed**

U.S. GOVERNMENT PRINTING OFFICE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

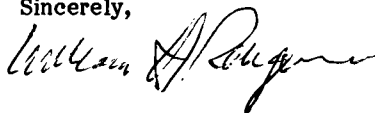
March 2, 1987

Dear Mr. Speaker:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress various amendments to the Federal Rules of Evidence which have been adopted by the Supreme Court pursuant to Section 2076 of Title 28, United States Code.

Accompanying these rules is an excerpt from the report of the Judicial Conference of the United States containing the Advisory Committee notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,



Honorable James E. Wright, Jr.
Speaker of the House of Representatives
Washington, D. C. 20515

SUPREME COURT OF THE UNITED STATES

MARCH 2, 1987

ORDERED:

1. That the Federal Rules of Evidence be, and they hereby are, amended by including therein amendments to Rules 101, 104, 106, 404, 405, 411, 602, 603, 604, 606, 607, 608, 609, 610, 611, 612, 613, 615, 701, 703, 705, 706, 801, 803, 804, 806, 902, 1004, 1007 and 1101, as hereinafter set forth:

[See infra., pp. _____ .]

2. That the foregoing changes in the Federal Rules of Evidence shall take effect on October 1, 1987.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing changes in the rules of evidence in accordance with the provisions of Section 2076 of Title 28, United States Code.

**AMENDMENTS TO THE
FEDERAL RULES OF EVIDENCE**

Rule 101. Scope

These rules govern proceedings in the courts of the United States and before United States bankruptcy judges and United States magistrates, to the extent and with the exceptions stated in Rule 1101.

Rule 104. Preliminary Questions

* * * * *

(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.

* * * * *

**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

FEDERAL RULES OF EVIDENCE

statement which ought in fairness to be considered contemporaneously with it.

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

(a) **Character evidence generally.**--Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) **Character of accused.**--Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

* * * * *

(b) **Other crimes, wrongs, or acts.**--Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

* * * * *

(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, proof may also be made of specific instances of that person's conduct.

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.

Rule 602. Lack of 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.

Rule 603. Oath or Affirmation

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.

FEDERAL RULES OF EVIDENCE

Rule 604. Interpreters

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.

Rule 606. Competency of Juror as 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 or indictment.**—Upon an inquiry into the validity of a verdict or indictment, 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 indictment 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.

Rule 607. Who May Impeach

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

**Rule 608. Evidence of Character and
Conduct of Witness**

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(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.

**Rule 609. Impeachment by Evidence of
Conviction of Crime**

(a) **General rule.**—For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a

FEDERAL RULES OF EVIDENCE

crime shall be admitted if elicited from the witness or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant, or (2) involved dishonesty or false statement, regardless of the punishment.

* * * * *

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.

**Rule 611. Mode and Order of Interrogation
and Presentation**

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(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. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Rule 612. Writing Used to Refresh Memory

Except as otherwise provided in criminal proceedings by section 3500 of title 18, United States Code, if a witness uses a writing to refresh memory for the purpose of testifying, either—

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Rule 613. 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).

Rule 615. Exclusion of 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

FEDERAL RULES OF EVIDENCE

authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of 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.

* * * * *

Rule 70L. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 703. Bases of 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.

**Rule 705. Disclosure of Facts or Data
Underlying Expert Opinion**

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of 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.

Rule 706. Court Appointed Experts

(a) **Appointment.**--The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

* * * * *

Rule 80L. Definitions

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.

* * * * *

(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, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, 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.

**Rule 803. Hearsay Exceptions; Availability
of Declarant Immaterial**

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

* * * * *

(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.

* * * * *

(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

FEDERAL RULES OF EVIDENCE

12

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.

* * * * *

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

* * * * *

(24) **Other exceptions.**—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be

admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

**Rule 804. Hearsay 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

FEDERAL RULES OF EVIDENCE

attendance (or in the case of a hearsay exception under subdivisions (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:

* * * * *

(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 impending death.

(3) **Statement against interest.**--A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A

statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

* * * * *

(5) **Other exceptions.**—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

**Rule 806. Attacking and Supporting 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.

Rule 902. Self-Authentication

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

* * * * *

(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.

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**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—

* * * * *

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

* * * * *

**Rule 1007. Testimony or 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.

Rule 1101. Applicability of Rules

(a) **Courts and magistrates.**—These Rules apply to the United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the District Court for the Northern Mariana Islands, the United States Courts of Appeals, the United States Claims Court, and to United States bankruptcy judges and United States magistrates, in the actions, cases, and proceedings and to the extent hereinafter set forth. The terms "judge" and "court" in these rules include United States bankruptcy judges and United States magistrates.

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**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN, AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

IV. The Advisory Committees on Civil and Criminal Rules have submitted to your Committee proposed amendments to the Evidence Rules eliminating all gender-specific language from the Evidence Rules. These proposed amendments are set out in Appendix F and are accompanied by Committee Notes explaining their purpose and intent.

Your Committee recommends that the proposed gender-neutralizing amendments to the Evidence Rules be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

**PROPOSED AMENDMENTS
TO THE FEDERAL RULES OF EVIDENCE***

Rule 101. Scope

1 These rules govern proceedings in the courts of the United
2 States and before United States bankruptcy judges and United States
3 magistrates, to the extent and with the exceptions stated in Rule
4 1101.

COMMITTEE NOTE

United States bankruptcy judges are added to conform this rule with Rule 1101(b) and Bankruptcy Rule 9017.

Rule 104. Preliminary Questions

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1 (c) **Hearing of jury.**—Hearings on the admissibility of
2 confessions shall in all cases be conducted out of the hearing of the
3 jury. Hearings on other preliminary matters shall be so conducted
4 when the interests of justice require₂ or₇ when an accused is a
5 witness₇ if he and so requests.

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

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

*New matter is underlined; matter to be omitted is lined through.

FEDERAL RULES OF EVIDENCE

**Rule 106. Remainder of or Related Writings
or Recorded Statements**

1 When a writing or recorded statement or part thereof is
2 introduced by a party, an adverse party may require ~~him~~ the
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4 writing or recorded statement which ought in fairness to be
5 considered contemporaneously with it.

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7 prosecution to rebut the same;

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 5 ~~of the witness himself.~~ This rule is subject to the provisions of Rule
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FEDERAL RULES OF EVIDENCE

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 4 opposing party shall be afforded an opportunity to object out of the
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6 (b) **Inquiry into validity of verdict or indictment.**—Upon an
 7 inquiry into the validity of a verdict or indictment, a juror may not
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11 assent to or dissent from the verdict or indictment or concerning ~~his~~
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FEDERAL RULES OF EVIDENCE

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

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 615. Exclusion of Witnesses

1 At the request of a party the court shall order witnesses
 2 excluded so that they cannot hear the testimony of other witnesses,
 3 and it may make the order of its own motion. This rule does not
 4 authorize exclusion of (1) a party who is a natural person, or (2) an
 5 officer or employee of party which is not a natural person
 6 designated as its representative by its attorney, or (3) a person
 7 whose presence is shown by a party to be essential to the
 8 presentation of ~~his~~ the party's cause.

* * * * *

FEDERAL RULES OF EVIDENCE

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 701. Opinion Testimony by Lay Witnesses

1 If the witness is not testifying as an expert, ~~his~~ the witness'
 2 testimony in the form of opinions or inferences is limited to those
 3 opinions or inferences which are (a) rationally based on the
 4 perception of the witness and (b) helpful to a clear understanding of
 5 ~~his~~ the witness' testimony or the determination of a fact in issue.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 703. Bases of Opinion Testimony by Experts

1 The facts or data in the particular case upon which an expert
 2 bases an opinion or inference may be those perceived by or made
 3 known to ~~him~~ the expert at or before the hearing. If of a type
 4 reasonably relied upon by experts in the particular field in forming
 5 opinions or inferences upon the subject, the facts or data need not
 6 be admissible in evidence.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

**Rule 705. Disclosure of Facts or Data
Underlying Expert Opinion**

1 The expert may testify in terms of opinion or inference and
 2 give ~~his~~ reasons therefor without prior disclosure of the underlying
 3 facts or data, unless the court requires otherwise. The expert may

FEDERAL RULES OF EVIDENCE

4 in any event be required to disclose the underlying facts or data on
5 cross-examination.

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 706. Court Appointed Experts

1 (a) **Appointment.**--The court may on its own motion or on the
2 motion of any party enter an order to show cause why expert
3 witnesses should not be appointed, and may request the parties to
4 submit nominations. The court may appoint any expert witnesses
5 agreed upon by the parties, and may appoint expert witnesses of its
6 own selection. An expert witness shall not be appointed by the court
7 unless ~~he~~ the witness consents to act. A witness so appointed shall
8 be informed of ~~his~~ the witness' duties by the court in writing, a copy
9 of which shall be filed with the clerk, or at a conference in which
10 the parties shall have opportunity to participate. A witness so
11 appointed shall advise the parties of ~~his~~ the witness' findings, if any;
12 ~~his~~ the witness' deposition may be taken by any party; and ~~he~~ the
13 witness may be called to testify by the court or any party. ~~He~~ The
14 witness shall be subject to cross-examination by each party,
15 including a party calling ~~him as a witness~~ the witness.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

FEDERAL RULES OF EVIDENCE

Rule 80L. Definitions

16 The following definitions apply under this article:

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

* * * * *

20 (d) **Statements which are not hearsay.**—A statement is not
21 hearsay if—

22 (1) **Prior statement by witness.**—The declarant
23 testifies at the trial or hearing and is subject to cross-
24 examination concerning the statement, and the statement is
25 (A) inconsistent with ~~his~~ the declarant's testimony, and was
26 given under oath subject to the penalty of perjury at a trial,
27 hearing, or other proceeding, or in a deposition, or (B)
28 consistent with ~~his~~ the declarant's testimony and is offered to
29 rebut an express or implied charge against ~~him~~ the declarant
30 of recent fabrication or improper influence or motive, or (C)
31 one of identification of a person made after perceiving ~~him~~
32 the person; or

33 (2) **Admission by party-opponent.**—The statement is
34 offered against a party and is (A) ~~his~~ the party's own
35 statement in either ~~his~~ an individual or a representative
36 capacity or (B) a statement of which ~~he~~ the party has
37 manifested ~~his~~ an adoption or belief in its truth, or (C) a
38 statement by a person authorized by ~~him~~ the party to make a

39 statement concerning the subject, or (D) a statement by ~~his~~
 40 the party's agent or servant concerning a matter within the
 41 scope of ~~his~~ the agency or employment, made during the
 42 existence of the relationship, or (E) a statement by a
 43 coconspirator of a party during the course and in furtherance
 44 of the conspiracy.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

**Rule 803. Hearsay Exceptions; Availability
 of Declarant Immaterial**

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

* * * * *

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

* * * * *

12 (18) **Learned treatises.**—To the extent called to the
 13 attention of an expert witness upon cross-examination or
 14 relied upon by ~~him~~ the expert witness in direct examination,

15 statements contained in published treatises, periodicals, or
16 pamphlets on a subject of history, medicine, or other science
17 or art, established as a reliable authority by the testimony or
18 admission of the witness or by other expert testimony or by
19 judicial notice. If admitted, the statements may be read into
20 evidence but may not be received as exhibits.

21 (19) **Reputation concerning personal or family**
22 **history.**—Reputation among members of his a person's family
23 by blood, adoption, or marriage, or among his a person's
24 associates, or in the community, concerning a person's birth,
25 adoption, marriage, divorce, death, legitimacy, relationship
26 by blood, adoption, or marriage, ancestry, or other similar
27 fact of his personal or family history.

* * * * *

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

* * * * *

30 (24) **Other exceptions.**—A statement not specifically
31 covered by any of the foregoing exceptions but having
32 equivalent circumstantial guarantees of trustworthiness, if
33 the court determines that (A) the statement is offered as
34 evidence of a material fact; (B) the statement is more
35 probative on the point for which it is offered than any other
36 evidence which the proponent can procure through reasonable
37 efforts; and (C) the general purposes of these rules and the
38 interests of justice will best be served by admission of the
statement into

39 evidence. However, a statement may not be admitted under
 40 this exception unless the proponent of it makes known to the
 41 adverse party sufficiently in advance of the trial or hearing
 42 to provide the adverse party with a fair opportunity to
 43 prepare to meet it, ~~his~~ the proponent's intention to offer the
 44 statement and the particulars of it, including the name and
 45 address of the declarant.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

**Rule 804. Hearsay Exceptions;
 Declarant Unavailable**

- 1 (a) **Definition of unavailability.**—"Unavailability as a witness"
 2 includes situations in which the declarant—
- 3 (1) is exempted by ruling of the court on the ground of
 4 privilege from testifying concerning the subject matter of ~~his~~
 5 the declarant's statement; or
- 6 (2) persists in refusing to testify concerning the
 7 subject matter of ~~his~~ the declarant's statement despite an
 8 order of the court to do so; or
- 9 (3) testifies to a lack of memory of the subject
 10 matter of ~~his~~ the declarant's statement; or
- 11 (4) is unable to be present or to testify at the hearing
 12 because of death or then existing physical or mental illness or
 13 infirmity; or
- 14 (5) is absent from the hearing and the proponent of
 15 ~~his~~ a statement has been unable to procure ~~his~~ the declarant's
 16 attendance (or in the case of a hearsay exception under

FEDERAL RULES OF EVIDENCE

17 subdivisions (b)(2), (3), or (4), ~~his~~ the declarant's attendance or
18 testimony) by process or other reasonable means.

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

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

* * * * *

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

31 (3) **Statement against interest.**—A statement which
32 was at the time of its making so far contrary to the
33 declarant's pecuniary or proprietary interest, or so far tended
34 to subject ~~him~~ the declarant to civil or criminal liability, or
35 to render invalid a claim by ~~him~~ the declarant against
36 another, that a reasonable ~~man~~ person in ~~his~~ the declarant's
37 position would not have made the statement unless he
38 ~~believed~~ believing it to be true. A statement tending to
39 expose the declarant to criminal liability and offered to
40 exculpate the accused is not admissible unless corroborating
41 circumstances clearly indicate the trustworthiness of the
42 statement.

FEDERAL RULES OF EVIDENCE

* * * * *

43 (5) **Other exceptions.**—A statement not specifically
44 covered by any of the foregoing exceptions but having
45 equivalent circumstantial guarantees of trustworthiness, if
46 the court determines that (A) the statement is offered as
47 evidence of a material fact; (B) the statement is more
48 probative on the point for which it is offered than any other
49 evidence which the proponent can procure through reasonable
50 efforts; and (C) the general purposes of these rules and the
51 interests of justice will best be served by admission of the
52 statement into evidence. However, a statement may not be
53 admitted under this exception unless the proponent of it
54 makes known to the adverse party sufficiently in advance of
55 the trial or hearing to provide the adverse party with a fair
56 opportunity to prepare to meet it, ~~his~~ the proponent's
57 intention to offer the statement and the particulars of it,
58 including the name and address of the declarant.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

**Rule 806. Attacking and Supporting Credibility
of Declarant**

1 When a hearsay statement, or a statement defined in Rule
2 801(d)(2),(C),(D), or (E), has been admitted in evidence, the
3 credibility of the declarant may be attacked, and if attacked may be

FEDERAL RULES OF EVIDENCE

17

4 supported, by any evidence which would be admissible for those
 5 purposes if declarant had testified as a witness. Evidence of a
 6 statement or conduct by the declarant at any time, inconsistent with
 7 ~~his~~ the declarant's hearsay statement, is not subject to any
 8 requirement that ~~he~~ the declarant may have been afforded an
 9 opportunity to deny or explain. If the party against whom a hearsay
 10 statement has been admitted calls the declarant as a witness, the
 11 party is entitled to examine ~~him~~ the declarant on the statement as if
 12 under cross-examination.

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

Rule 902. Self-Authentication

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

* * * * *

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

11 (3) **Foreign public documents.**—A document
 12 purporting to be executed or attested in ~~his~~ an official
 13 capacity by a person authorized by the laws of a foreign

FEDERAL RULES OF EVIDENCE

14 country to make the execution or attestation, and
 15 accompanied by a final certification as to the genuineness of
 16 the signature and official position (A) of the executing or
 17 attesting person, or (B) of any foreign official whose
 18 certificate of genuineness of signature and official position
 19 relates to the execution or attestation or is in a chain of
 20 certificates of genuineness of signature and official position
 21 relating to the execution or attestation.

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

**Rule 1004. Admissibility of Other
 Evidence of Contents**

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

* * * * *

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

* * * * *

COMMITTEE NOTE

The amendments are technical. No substantive change is intended.

**Rule 1007. Testimony or Written
Admission of Party**

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

COMMITTEE NOTE

The amendment is technical. No substantive change is intended.

Rule 1101. Applicability of Rules

1 (a) **Courts and magistrates.**—These Rules apply to the United
2 States district courts, the District Court of Guam, the District
3 Court of the Virgin Islands, the District Court for the ~~District of the~~
4 ~~Canal Zone~~ Northern Mariana Islands, the United States Courts of
5 Appeals, the United States Claims Court, and to United States
6 bankruptcy judges and United States magistrates, in the actions,
7 cases, and proceedings and to the extent hereinafter set forth. The
8 terms "judge" and "court" in these rules include United States
9 bankruptcy judges and United States magistrates.

* * * * *

COMMITTEE NOTE

Subdivision (a) is amended to delete the reference to the District Court for the District of the Canal Zone, which no longer exists, and to add the District Court for the Northern Mariana Islands. The United States bankruptcy judges are added to conform the subdivision with Rule 1101(b) and Bankruptcy Rule 9017.