

SUMMARY OF RULES OF EVIDENCE

RULE

Rev. DAB 1/30/15

- 401 RELEVANCY** (Evidence tending to make any fact of importance to the case more likely than not to be true or false) Every piece of evidence offered must relate to some issue in the case either directly or by inference.
- 402 Relevant Evidence still sometimes inadmissible** if its probative value is outweighed by the prejudice caused by its admission.
- 404 Character Evidence** is not admissible to Prove Motive EXCEPT: Rule 608 – Impeachment of a Witness & Rule 609 – Evidence of Conviction of a Crime.
- 601 COMPETENCY OF WITNESSES** (The ability of a witness to offer relevant testimony)
- 602 Lack of Personal Knowledge**. Lay Witness can ONLY testify to matters within his PERSONAL Knowledge (NO OPINIONS). Only Experts can testify to matter OUTSIDE their personal knowledge.
- 607 Impeachment of Witnesses**. Witness credibility may be impeached using any relevant evidence on Bias; Motive to Lie; or Memory.
- 609 Prior Criminal Conviction**. Prior Criminal Conviction or guilty plea may be used to impeach a witness' truthfulness UNLESS: it occurred MORE than 10 years ago. BUT, it may STILL be used if the probative value of the evidence outweighs the prejudice of the jury.
- 611(b) Cross-Examination** (A party may be cross examined on any relevant matter; a non-party can only be cross examined on matters within the scope of direct)
- 613(b) Prior Inconsistent Statement**. (Cross examination of a witness with a prior written inconsistent statement is allowed if the party is shown the document & has the chance to explain inconsistencies and his attorney has the opportunity to elicit testimony on re-direct)
- 701 OPINIONS AND EXPERT WITNESSES**. An Expert is someone whose specialized knowledge, experience or skill can assist trier of fact to understand evidence. Experts must testify to a "REASONABLE DEGREE OF (Scientific, Medical) CERTAINTY". Lay opinions/impressions not permitted witness unless rationally based upon the witness' own perception.
- 801 HEARSAY** (Any out of court statement offered to prove the truth of the matter asserted) (A statement that depends for its probative value upon the credibility upon someone who cannot be cross-examined in court)
COMMENT: NON-HEARSAY: Statement **not** offered for its truth, but to: (1) **explain a course of conduct**; (2) **show effect on listener**; (4) **show notice to someone**; (5) **prove motive in criminal case**; (6) **show state of mind of declarant**
- 803 AVAILABLE. STATEMENTS NOT EXCLUDED EVEN IF DECLARANT IS AVAILABLE AS A WITNESS**:
(1) **Present Sense Impression**. A statement made by Declarant WHILE an event was happening or immediately afterward.
(2) **Excited Utterance**. A statement resulting from a startling event. (Spontaneous statement of declarant)
(3) **Statement of THEN-EXISTING mental, emotional or physical impression**. (Example, a witness can testify that he heard a murder victim (declarant) say that she was afraid that her attacker would one day kill her. This is used to show the state of mind of the victim & defendant - and not that he *actually* killed her.
(4) **Statement offered for Purposes of Medical Diagnosis or Treatment**. A statement BY a Patient to a doctor about his condition, pain, medical history, etc., is presumed to be accurate as a person would not lie about his own health in seeking treatment. Does NOT include statements from a doctor TO a patient.
(6) **Records of a Regularly-Conducted Business Activity (Business Records Exception)** record kept in the ordinary course of a business if it was created by a person with knowledge of it's contents & it was made at or about time of the event recorded in the record or (7) **Absence of an entry** kept in ordinary course of business. (8) **Public Records** or reports & (9) **vital statistics**; (12) **marriage, baptismal**; (13) **family records**; (14) & (15) **Documents showing interest in property**; deeds; titles; (16) **ancient documents** 20 yrs old; (19) **Reputation & family history**; (21) **reputation as to character in community**; (22) **criminal judgment** record
- 804(a) Unavailability Defined**: "Unavailability means: not in court or prohibited from testifying, senile or refuses to testify despite a court order; testifies he can't remember a written statement given)
- 804(b) UNAVAILABLE. STATEMENTS NOT EXCLUDED ONLY IF THE DECLARANT IS UNAVAILABLE AS A WITNESS**: (1) **Former Testimony** (witness testified in prior hearing or deposition & opposing party had chance to cross-exam.; (2) **Dying Declaration** (witness believed he was dying); (3) **Statement against interest** (he wouldn't say it if it wasn't true); (25) **Statement Against Interest**. Any record of a Party Opponent that was made or adopted by that party that is against his interest.
- 901 AUTHENTICATION AND IDENTIFICATION** – Documentary, demonstrative and real evidence, including, things, documents, photos, diagrams, etc. must be authenticated by testimony sufficient to support a finding that the evidence fairly and accurately depicts what it purports to depict BEFORE they can be admitted as evidence. Examples: (1) testimony of witness; (2) handwriting by person familiar or expert; (4) distinctive characteristics; (5) voice ID; (6) telephone conversations/calls placed to a published number/known business; (7) handwriting on public records; (8) ancient documents; (9) Process or system showing that a process or system produces an accurate result; (10) Methods provided by law