# Volume 5

## **CHAPTER 1 GENERAL PROVISIONS**

Rule	101 S	cope
§	101.1	Scope and organization of these volumes
§	101.2	Purpose and history of Rule 101
§	101.3	Rules are subject to constitutional requirements—
		Generally
§	101.4	—Whether a criminal defendant may introduce exculpatory evidence despite the rules
8	101.5	Relationship between evidence rules and statutes
_	101.6	Relationship between evidence rules and statutes
8	101.0	rules; ethical considerations; illegally obtained evidence
§	101.7	History of evidence rules, status of drafters' comments
§	101.8	Status of pre-ER Washington case law, federal case law, cases from other states
§	101.9	Changes in evidence law, when effective
_		Law review articles and other commentary on evidence
		generally
Rule	102 P	urpose and Construction
		Purpose and history of Rule 102
		ulings on Evidence
_	103.1	Purpose and history of Rule 103
	103.2	Pretrial rulings (motions in limine)—Generally
	103.3	—Other pretrial motions distinguished
	103.4	—Procedure for motion in limine
	103.5	—Ruling on motion
		—Foundations for appeal
		Objection at trial must be timely and specific—Generally
§	103.8	—Timeliness, motions to strike, continuing objections, speaking objections, and courtroom protocol
§	103.9	Expert witnesses
		—Multiple party cases
_		—Specificity
_		—Voir dire of witness
		Waiver of objections—Generally
		—"Opening the door"
		Evidence to explain, clarify, or contradict
		—Stipulations or other agreements regarding
3		admissibility

§ 103.17 —Other considerations relating to waiver § 103.18 Offer of proof to preserve error in exclusion of evidence— Generally § 103.19 —Procedure § 103.20 —Pretrial determinations § 103.21 —Amount of detail and specificity required § 103.22 Keeping inadmissible evidence from the jury, assuming facts not in evidence § 103.23 Appellate review of evidentiary rulings—Generally § 103.24 —Harmless error § 103.25 —Harmless constitutional error § 103.26 Law review articles and other commentary on Rule 103 Rule 104 Preliminary Questions § 104.1 Purpose and history of Rule 104 § 104.2 Overview—The key distinction between preliminary determinations and conditional relevance § 104.3 Preliminary determinations made by judge—Generally § 104.4 —Burden of proof on preliminary determinations -Rules of evidence inapplicable to preliminary § 104.5 determinations § 104.6 Conditional relevance—Generally —Role of judge limited in determining conditional § 104.7 relevance —Jury does not literally rule on admissibility § 104.8 § 104.9 —Examples of conditional relevance § 104.10 Keeping prejudicial matters from the jury § 104.11 Testimony by accused on preliminary matter § 104.12 Weight and credibility § 104.13 Law review articles and other commentary on Rule 104 Rule 105 Limited Admissibility § 105.1 Purpose and history of Rule 105 § 105.2 Limiting instructions—Generally § 105.3 Limiting instructions, instructions to disregard— Sufficiency, constitutional considerations § 105.4 Law review articles and other commentary on Rule 105 Rule 106 Remainder of Related Writings or Recorded Statements § 106.1 Purpose and history of rule 106 § 106.2 Related evidence may be introduced contemporaneously— Generally § 106.3 —Whether admissibility of related evidence is subject to other rules § 106.4 Situations beyond Rule 106—Unrecorded oral conversations § 106.5 —Admissibility at a later time § 106.6 Law review articles and other commentary on Rule 106

#### CHAPTER 2 JUDICIAL NOTICE

- Purpose and history of Rule 201 § 201.1 Judicial notice of adjudicative facts—Definition of § 201.2 adjudicative fact § 201.3 —Personal knowledge of judge distinguished
  - § 201.4 —Matters of common knowledge

Rule 201 Judicial Notice of Adjudicative Facts

- § 201.5 —Facts that can be readily verified
- § 201.6 —When judicial notice is mandatory
- § 201.7 —Procedure for taking judicial notice
- § 201.8 —Effect of judicial notice, jury instructions
- § 201.9 Judicial notice of court records, testimony
- § 201.10 Judicial notice of law—Generally
- § 201.11 —State and local law
- § 201.12 —Federal law
- § 201.13 —Law of another state
- § 201.14 —Law of a foreign country
- § 201.15 —Roles of judge and jury in determining foreign law
- § 201.16 Judicial notice of legislative facts
- § 201.17 Judicial notice on appeal
- § 201.18 Law review articles and other commentary on Rule 201

#### CHAPTER 3 BURDEN OF PROOF AND PRESUMPTIONS

- Rule 301 Presumptions in General in Civil and Actions and Proceedings [Reserved]
  - § 301.1 The burden of producing evidence
  - § 301.2 Burden of proof in civil cases
  - § 301.3 Clear, cogent, and convincing evidence in civil cases
  - Ş 301.4 Burden of proof in juvenile court
  - § 301.5 Burden of proof in criminal cases—Generally
  - 301.6 —Proof of affirmative defenses
  - 301.7 —Appellate review
  - § 301.8 Presumptions generally
  - § 301.9 Other concepts distinguished
  - § 301.10 Example presumptions
  - § 301.11 Establishing the basic fact
  - § 301.12 Effect of unchallenged presumption
  - § 301.13 Effect of challenged presumptions in civil cases— Generally
  - § 301.14 —When presumption only shifts the burden of producing evidence
  - § 301.15 —When presumption affects the burden of proof
  - § 301.16 —Presumptions not within previous sections
  - § 301.17 Conflicting presumptions

- § 301.18 Constitutional restrictions on presumptions—Criminal cases
- § 301.19 —Civil cases
- § 301.20 Law review articles and other commentary on burden of proof and presumptions

#### **CHAPTER 4 RELEVANCY AND ITS LIMITS**

- Rule 401 Definition of "Relevant Evidence"
  - § 401.1 Introduction to Chapter 4
  - § 401.2 Purpose and history of Rule 401
  - § 401.3 Relevant evidence defined—Generally
  - § 401.4 —Probative value
  - § 401.5 —Materiality
  - § 401.6 —Stipulations and undisputed issues
  - § 401.7 Trial court discretion and fact-specific holdings limit value of case law
- § 401.8 Law review articles and other commentary on Rule 401
- Rule 402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible
  - § 402.1 Purpose and history of Rule 402
  - § 402.2 Effect of statutes and other court rules purporting to make evidence inadmissible or admissible
  - § 402.3 Defendant's right to fair trial—Effect upon relevance of exculpatory evidence
  - § 402.4 Conduct revealing consciousness of guilt or other wrongdoing—Generally—Criminal cases
  - § 402.5 —Civil Cases—Apologies, expressions of sympathy, and the like
  - § 402.6 —Destruction, loss, concealment, or alteration of evidence—Spoliation
  - § 402.7 —Fraud, misconduct, obstruction of justice
  - § 402.8 The missing witness rule—Generally
  - § 402.9 —Procedure, comment by counsel, jury instructions
  - § 402.10 Failure to produce witness or other evidence—Claim of privilege
  - § 402.11 Similar accidents, injuries, or abuse inflicted by others, or lack thereof
  - § 402.12 Similar contracts, breaches of contract, transactions, misrepresentations, or fraud
  - § 402.13 Similar property values
  - § 402.14 Similar claims, lawsuits, events, or situations— Miscellaneous
  - § 402.15 Violation of law or safety standards as evidence of unsafe product
  - § 402.16 Violation of law as evidence of negligence—Generally

```
§ 402.17 —Method of proof
   § 402.18 Violation of private, nongovernmental standard show
              negligence
   § 402.19 Evidence suggesting a different person committed the
              crime charged
   § 402.20 Evidence on the issue of damages—Generally
   § 402.21 —Tax consequences
   § 402.22 Demonstrative evidence—Generally—Terminology
   § 402.23 —Photographs generally
   § 402.24 —Photographs that are gruesome or otherwise prejudicial
   § 402.25 —Video recordings, DVDs, motion pictures
   § 402.26 —Audio (sound only) recordings
   § 402.27 —X-rays and similar evidence
   § 402.28 —Computer-generated animations
   § 402.29 —Sketches, maps, diagrams, charts, and similar evidence
   § 402.30 —Models replicas, and similar devices
   § 402.31 —Exhibition of the body
   § 402.32 —Demonstrations and experiments during trial
   § 402.33 —Experiments or tests before trial
   § 402.34 "Real evidence"—Generally
   § 402.35 —Weapons
   § 402.36 —Authentication and identification, chain of custody
   § 402.37 —Tags and similar markings
   § 402.38 Procedure for offering exhibits
   § 402.39 Procedures for handling exhibits that are valuable, bulky,
              hazardous, or illegal
   § 402.40 Status of exhibits and other demonstrative evidence—
              Generally
   § 402.41 —Evidence offered only for illustrative purposes
   § 402.42 —Whether exhibits go to jury room
   § 402.43 Scientific evidence (DNA, polygraph, breath tests, medical
              issues, and the like)
   § 402.44 Views of the scene—Generally
   § 402.45 —View not considered evidence
   § 402.46 Miscellaneous holdings on relevance—Civil cases
   § 402.47 —Criminal cases
   § 402.48 Law review articles and other commentary on Rule 402
Rule 403 Exclusion of Relevant Evidence on Grounds of Prejudice,
            Confusion, or Waste of Time
   § 403.1
            Purpose and history of Rule 403
            The balancing process—Generally
   § 403.2
   § 403.3
           —Unfair prejudice
           —Confusion
   § 403.4
   § 403.5
           —Waste of time
   § 403.6 —Documents that "speak for themselves"
```

```
—Surprise, evidence not disclosed during discovery
   § 403.7
   § 403.8
            —Evidence lacking credibility or reliability
   § 403.9 —Evidence crucial to a valid defense
   § 403.10 —Offer to stipulate to fact, effect—Old Chief rule
   § 403.11 —Other considerations under Rule 403
   § 403.12 Law review articles and other commentary on Rule 403
Rule 404 Character Evidence Not Admissible to Prove Conduct;
            Exceptions; Other Crimes
   § 404.1
            Purpose and history of Rule 404
   § 404.2
            Definition of character evidence
   § 404.3
            Character evidence in civil cases
            Character evidence in criminal or quasi-criminal cases—
   § 404.4
              Generally
            —Character of accused
   § 404.5
            —Character of victim
   § 404.6
   § 404.7
            Character of witnesses
   § 404.8
            Jury instructions under Rule 404(a)
            Other crimes, wrongs, or acts—Overview of Rule 404(b)
   § 404.9
   § 404.10 —Policy and purpose of rule
   § 404.11 —Definition of crimes, wrongs, or acts
   § 404.12 —Inadvertent remark by witness
   § 404.13 —Acts by persons other than parties
   § 404.14 —Civil cases, application of Rule 404(b)
   § 404.15 —Relationship between rule 404(b) and other rules
   § 404.16 Crimes, wrongs, or acts inadmissible to prove character or
              general propensities
   § 404.17 Admissibility on issues other than character—Generally
   § 404.18 —Inseparable part of crime charged (res gestae)
   § 404.19 —Preparation, opportunity, and other circumstantial
              evidence of crime charged
   § 404.20 —Common scheme or plan
   § 404.21 —Knowledge, or rebutting claim of accident or mistake
   § 404.22 —Identity
   § 404.23 —Distinctive modus operandi
   § 404.24 —Motive
   § 404.25 —Intent
   § 404.26 —Other sexual contacts with victim
   § 404.27 —Sexual contacts with third persons
   § 404.28 —To prove element of crime charged, or element of civil
              claim or defense
   § 404.29 —Admissibility for other miscellaneous purposes
   § 404.30 —Domestic violence, prior incidents, admissibility under
              Rule 404(b)
   § 404.31 —Opening the door to rebuttal
   § 404.32 Balancing probative value against prejudice
```

- § 404.33 Burden of proof under Rule 404(b)
- § 404.34 Procedure—Evidentiary hearing, pretrial order
- § 404.35 Effect of prior acquittal or dismissal of charges
- § 404.36 Jury instructions under Rule 404(b)
- § 404.37 Appellate review under Rule 404(b)
- § 404.38 Law review articles and other commentary on Rule 404

## Volume 5A

- Rule 405 Methods of Proving Character
  - § 405.1 Purpose and of Rule 405
  - § 405.2 Proof by reputation
  - § 405.3 Proof by opinion
  - § 405.4 Specific instances of conduct—Criminal cases
  - § 405.5 —Civil cases
  - § 405.6 Cross-examination of character witnesses
  - § 405.7 Rebuttal of character witnesses
  - § 405.8 Law review articles and other commentary on Rule 405
- Rule 406 Habit; Routine Practice
  - § 406.1 Purpose and history of Rule 406
  - § 406.2 Habit of a person—Definitions
  - § 406.3 —Illustrative cases
  - § 406.4 Routine practice of an organization—Definitions
  - § 406.5 —Illustrative cases
  - § 406.6 Methods of proof, admissibility vs. sufficiency of evidence
  - § 406.7 Proof of mailing as element of claim or defense
  - § 406.8 Admissibility for other purposes
  - § 406.9 Law review articles and other commentary on Rule 406
- Rule 407 Subsequent Remedial Measures
  - § 407.1 Purpose and history of Rule 407
  - § 407.2 Remedial measures inadmissible to prove negligence or culpable conduct—Generally
  - § 407.3 —Measures taken before accident occurred
  - § 407.4 —Measures required by law
  - § 407.5 Admissibility for other purposes—Generally
  - § 407.6 —If issue is controverted
  - § 407.7 —For impeachment
  - § 407.8 Law review articles and other commentary on Rule 407
- Rule 408 Compromise and Offers to Compromise
  - § 408.1 Purpose and history of Rule 408
  - § 408.2 Similar provisions in other rules and statutes
  - § 408.3 Rules applies only in civil cases
  - § 408.4 What evidence is barred by Rule 408—Negotiations and actual settlements
  - § 408.5 —What statements are barred

—Third parties, other proceedings § 408.6 § 408.7 —Obstruction of justice § 408.8 Admissibility for other purposes—Generally § 408.9 —Impeachment and rebuttal § 408.10 Relationship between Rule 408 and discovery § 408.11 Special considerations in medical malpractice cases § 408.12 Law review articles and other commentary on Rule 408 Rule 409 Payment of Medical and Similar Expenses § 409.1 Purpose and history of Rule 409 § 409.2 Payment of another's medical expenses inadmissible to prove liability § 409.3 Admissibility on issue of damages, collateral source rule, § 409.4 Special considerations in medical malpractice cases Rule 410 Inadmissibility of Pleas, Offers of Pleas, and Related Statements § 410.1 Purpose and history of Rule 410 § 410.2 What is and is not excluded as evidence—Generally § 410.3 —Pleas of guilty —Pleas of nolo contendere and *Alford* pleas § 410.4 § 410.5 —Statements made during plea negotiations —Derivative evidence § 410.6 § 410.7 —Obstruction of justice § 410.8 Exceptions to rule, waiver § 410.9 Statements by government agents and other unsettled questions § 410.10 Law review articles and other commentary on Rule 410 Rule 411 Liability Insurance § 411.1 Purpose and history of Rule 411 § 411.2 Existence or absence of insurance inadmissible on issue of fault § 411.3 Admissibility on other issues § 411.4 Waiver § 411.5 Voir Dire of prospective jurors § 411.6 Law review articles and other commentary on Rule 411 Rule 412 Sexual Offenses—Victim's Past Behavior § 412.1 Purpose and history of Rule 412 § 412.2 Criminal cases—Scope of statute § 412.3 —What evidence is barred § 412.4 —Procedure, pretrial motions

§ 412.5 —Due process and the right to confrontation

§ 412.8 Law review articles and other commentary on Rule 412

§ 412.6 Protection order proceedings

§ 412.7 Other civil cases

## **CHAPTER 5 PRIVILEGES**

Rule	501 Pri	ivileges—General Rule
	501.1	Purpose and history of Rule 501
	501.2	Privileges in general—Introduction—When privileges
		apply
§	501.3	—Privileges strictly construed
	501.4	—Few general rules applicable to all privileges
§	501.5	Privileges in General—Comment on claim of privilege—
		Jury instructions
§	501.6	Privileges in general—Disclosure of privileged
		information to confidential source, effect
§	501.7	—Discovery rules distinguished
	501.8	—Choice of law
§	501.9	Law review articles and other commentary on privileges in general
§	501.10	Source and purpose of attorney-client privilege
	501.11	Communications to which privilege applies—Generally
	501.12	—Must be in context of attorney-client relationship
	501.13	—Communications with persons employed by, or aligned with, attorney or client
8	501.14	—Corporate clients—Generally
	501.14	— — Medical malpractice cases
	501.16	—Government clients
	501.17	—Must concern legal advice
	501.17	—Must be intended as confidential
	501.19	—Presence of third persons, joint representation
	501.20	—Presence of language interpreter, effect
	501.21	Who may assert privilege
	501.22	Communications in furtherance of crime of fraud—
2	001.22	Generally
8	501.23	—Actions alleging bad faith by insurer
	501.24	Weapons and other physical evidence
	501.25	Other restrictions and exceptions
	501.26	Waiver of privilege—Generally
	501.27	—Method of analysis on waiver issues
	501.28	—Extent of waiver
	501.29	Termination of privilege, effect of client's death
	501.30	Comment on claim of privilege
	501.31	Work product rule distinguished
	501.32	Law review articles and other commentary on attorney-
Ü		client privilege
Ş	501.33	Source and purpose of privilege
	501.34	Rule of incompetency to testify (testimonial privilege) distinguished
§	501.35	Communications to which privilege applies—Generally

-	501.36	—Must be during marriage or registered partnership
§	501.37	—Must be intended as confidential
	501.38	Who may assert privilege
	501.39	Restrictions and exceptions
	501.40	Waiver of privilege
_	501.41	Termination of the privilege
	501.42	Comment on claim of privilege, jury instructions
	501.43	Source and purpose of rule
	501.44	Privilege for confidential communications distinguished
	501.45	When and to what the rule of incompetency applies
_	501.46	Restrictions and exceptions
§	501.47	Objection and waiver
§	501.48	Termination of rule of incompetency
§	501.49	Comment on assertion of rule of incompetency, jury instructions
§	501.50	Relationship to other procedural rules
§	501.51	Law review articles and other commentary on privilege
		for spouses and registered domestic partners
§	501.52	Source and purpose of physician-patient privilege
§	501.53	Physician-patient relationship required
§	501.54	Information protected by the privilege—Communications and records generally
§	501.55	—Must be intended as confidential
§	501.56	—Forensic examinations
§	501.57	Contacts with physicians during discovery
§	501.58	Who may assert privilege
§	501.59	Restrictions and exceptions—Generally
§	501.60	—Privilege may have to yield to other public policies
	501.61	Waiver of privilege—Generally
§	501.62	—Personal injury cases and other cases in which medical
		condition is at issue
§	501.63	—Will Contests
§	501.64	—Extent of Waiver
§	501.65	Ex parte contacts, before or after waiver
§	501.66	Termination of privilege
§	501.67	Comment on claim of privilege
§	501.68	Law review articles and other commentary on physician- patient privilege
§	501.69	Introduction
	501.70	Legislative history
	501.71	Definitions and scope of statute
	501.72	Notice requirements
	501.73	Overcoming confidentiality for purposes of litigation
	501.74	Federal HIPAA rules

## TABLE OF CONTENTS

§	501.75	Law review articles and other commentary on medical confidentiality rules
8	501.76	Psychologist-client privilege generally
-	501.77	Waiver, other limitations in forensic settings
	501.78	Comment on claim of privilege
	501.79	Law review articles and other commentary on
•		psychologist-client privilege
§	501.80	Governmental communications generally
	501.81	Judge and judge's staff
§	501.82	Identify of informer
§	501.83	Government records or reports labeled confidential by statute
§	501.84	Public Records Act, effect
§	501.85	Other governmental privileges, privileges unique to federal litigation
§	501.86	Law review articles and other commentary on confidential governmental information
§	501.87	Federal tax returns—Generally
	501.88	—Federal statutes
§	501.89	—Discovery on basis of need
	501.90	—Waiver of protection
	501.91	—Admissibility as evidence
	501.92	State tax returns
	501.93	Law review articles and other commentary on tax returns
§	501.94	Privilege for members of the clergy, generally
	501.95	Restrictions and exceptions
§	501.96	Comment on claim of privilege
§	501.97	Law review articles and other commentary on privilege for clergy members
§	501.98	Social workers, therapists, other counselors, special advocates
§	501.99	Drug and alcohol treatment
§	501.100	Medical review boards
§	501.101	Nurses
§	501.102	Optometrists
§	501.103	Mediation, dispute resolution centers
		Language interpreters
		Privilege for journalists
		Privilege for journalists, criminal cases
		Communications covertly recorded or intercepted (eavesdropping and wiretapping under the privacy statutes)
S	501 100	
		Other miscellaneous privileges Other communications not privileged
•		A NOTE COMMISSION STORED TO THE STORE OF THE

- § 501.110 Law review articles and other commentary on other privileges and nonprivileges
- § 501.111 Records, reports, and proceedings labeled confidential by statute—Generally
- § 501.112 —Examples
- § 501.113 —Federal statutes and regulations, effect
- § 501.114 —Effect of Public Records Act
- Rule 502 Attorney-Client Privilege and Work Product; Limitations on Waiver
  - § 502.1 Purpose and history of Rule 502
  - § 502.2 Waiver by disclosure
  - § 502.3 Law review articles and other commentary on inadvertent disclosures

#### **CHAPTER 6 WITNESSES**

- Rule 601 General Rule of Competency
  - § 601.1 Purpose and history of Rule 601
  - § 601.2 Time and procedure for determining competency
  - § 601.3 Competency to stand trial distinguished
  - § 601.4 Children as witnesses—Generally
  - § 601.5 —Guidelines, illustrative cases
  - § 601.6 —Procedure, burden of proof, waiver
  - § 601.7 —Relationship to hearsay rule
  - § 601.8 —Psychological concerns
  - § 601.9 Instructions to jury
  - § 601.10 Mental capacity—Generally
  - § 601.11 —Mental or physical disorders, limited comprehension
  - § 601.12 —Use of alcohol or drugs
  - § 601.13 Procedure for determining competency of person with mental impairment
  - § 601.14 Dead man statute generally
  - § 601.15 When and to what the statute applies—Overview
  - § 601.16 —Avoiding the restrictions imposed by the statute
  - § 601.17 Parties in interest
  - § 601.18 Adverse parties
  - § 601.19 What testimony is barred by statute—Testimony concerning statement by decedent
  - § 601.20 —Testimony concerning transaction with decedent
  - § 601.21 —Feelings and impressions
  - § 601.22 —Testimony in favor of estate
  - § 601.23 Applicability of dead man statute in specific kinds of cases—Generally
  - § 601.24 —Torts, wrongful death, worker's compensation
  - § 601.25 —Probate, will contests
  - § 601.26 —Federal court

§ 601.27 —Other § 601.28 Waiver of dead man statute § 601.29 Spouse of party § 601.30 Attorneys, judges, jurors, and other miscellaneous persons § 601.31 Conviction of crime § 601.32 Law review articles and other commentary on Rule 601 Rule 602 Lack of Personal Knowledge § 602.1 Purpose and history of Rule 602 Requirement of personal knowledge—Generally § 602.2 § 602.3 —Relationship to hearsay rule § 602.4 Specific applications—State of mind of witness or another § 602.5 —Testimony based partly upon personal knowledge —Testimony phrased as "I think," "I believe," or the like § 602.6 —Testimony that an event did not occur § 602.7 Assisting the witness in recalling events or § 602.8 communicating with others—Generally § 602.9 -Hypnosis, narcoanalysis, and facilitated testimony § 602.10 Procedure—Roles of judge and jury § 602.11 Law review articles and other commentary on Rule 602 Rule 603 Oath or Affirmation § 603.1 Purpose and history of Rule 603 § 603.2 Witness must take oath or affirmation § 603.3 Law review articles and other commentary on Rule 603 Rule 604 Interpreters § 604.1 Purpose and history of Rule 604 § 604.2 Appointment of interpreter § 604.3 Qualifications, oath, compensation § 604.4 Privilege issues § 604.5 Law review articles and other commentary on Rule 604 Rule 605 Competency of Judge as Witness § 605.1 Purpose and history of Rule 605 § 605.2 Judge may not testify, gather evidence, or summarize evidence § 605.3 Testimony in other proceedings § 605.4 Other persons in quasi-judicial positions § 605.5 Objections, procedure § 605.6 Law review articles and other commentary on Rule 605 Rule 606 Competency of Juror as Witness § 606.1 Purpose and history of Rule 606 § 606.2 Juror may not testify § 606.3 Law review articles and other commentary on Rule 606 Rule 607 Who May Impeach § 607.1 Purpose and history of Rule 607 § 607.2 Impeaching one's own witness—Generally

§	607.3	—Use of rule as vehicle for introducing inadmissible
e	COT 4	evidence
	607.4	
8	607.5	Constitutional issues surrounding cross-examination and impeachment
_	607.6	*
		Bias, prejudice, or motive to fabricate—Generally
§	607.8	—What is relevant to show bias
§	607.9	—Methods of proof
§	607.10	—Relationship to other rules
§	607.11	Sensory or mental limitations
§	607.12	Use of alcohol or drugs
§	607.13	Eyewitness identification, reliability
§	607.14	Name, address, occupation, race, age, cultural influences
		Demeanor
_		Prior misconduct, criminal convictions, prior inconsistent
Ü		statements
§	607.17	Contradiction of witness's testimony—Generally
		—Other rules distinguished
§	607.19	—Whether a matter is material or collateral
§	607.20	—Applying the general rule
		—Contradicting one's own witness
§	607.22	Contradictory evidence is subject to other rules
§	607.23	Constitutional considerations
§	607.24	Law review articles and other commentary on impeachment generally
Rule	608 E	vidence of Character and Conduct of Witness
	608.1	Purpose and history of Rule 608
_	608.2	Relationship to other rules
_	608.3	Reputation for truthfulness—General rule
		—Applying the rule
	608.5	Cross-examination regarding specific instances of
·		conduct—Generally
§	608.6	—What subjects may be explored on cross-examination
	608.7	—Conduct unrelated to present case
§	608.8	—Whether criminal defendant has a right to broader cross-examination
§	608.9	—Cross-examination concerning acts of another person
		Cross-Examination regarding specific instances of conduct—Effect of prior dismissal or acquittal
8	608.11	Extrinsic evidence of conduct inadmissible—Generally
		—Concerns about perjury
		Opinion on credibility inadmissible—Generally—Vouching
		—Opinion vs. contradiction
3	300.11	- I

§ 608.15 —Opinion vs. facts casting doubt on credibility of another witness § 608.16 —Obvious opinions and implied opinions—Illustrative § 608.17 Rehabilitation by evidence of good character—Generally § 608.18 —Methods of proof § 608.19 Constitutional considerations under Rule 608 § 608.20 Appellate review of rulings under Rule 608 § 608.21 Law review articles and other commentary on Rule 608 Rule 609 Impeachment by Evidence of Conviction of Crime § 609.1 Purpose and history of Rule 609 § 609.2 Relationship to other rules § 609.3 Definition of conviction § 609.4 Crimes of dishonesty or false statement—Generally § 609.5 —Making the necessary determination § 609.6 Crimes not involving dishonesty or false statement— Generally —Balancing probative value against prejudice § 609.7 § 609.8 —Sanitizing the conviction by referring only to a "prior —Opening the door on direct examination § 609.9 § 609.10 Time limitations, the ten-year rule § 609.11 Methods of proof under Rule 609 § 609.12 Details surrounding conviction, explanation by witness § 609.13 Effect of pardon, annulment, or rehabilitation § 609.14 Juvenile adjudications § 609.15 Pendency of appeal or dismissal; other challenges to conviction § 609.16 Procedural issues and jury instructions under Rule 609 § 609.17 Constitutional considerations under Rule 609 § 609.18 Appellate review of rulings under Rule 609 § 609.19 Law review articles and other commentary on Rule 609 Rule 610 Religious Beliefs or Opinions § 610.1 Purpose and History of Rule 610 § 610.2 Religious Beliefs Inadmissible § 610.3 Law Review Articles and Other Commentary on Rule 610 Rule 611 Mode and Order of Interrogation and Presentation Purpose and history of Rule 611 § 611.1 § 611.2 Overview of matters addressed by Rule 611 § 611.3 Relationship to other rules, constitutional considerations Mode and order of presentation § 611.4 Lack of foundation § 611.5 § 611.6 Assuming facts not in evidence § 611.7 Cross-examination, right to § 611.8 Scope of cross-examination—Generally

§ 611.9 —Subject matter of the direct examination § 611.10 —Other matters affecting the credibility of the witness § 611.11 —Collateral or irrelevant matters § 611.12 Criminal cases, right to confrontation § 611.13 Whether witness may explain responses elicited on cross-examination § 611.14 Repetition, asked and answered § 611.15 Redirect and recross § 611.16 Rebuttal and surrebuttal (rejoinder) § 611.17 Objection to form of question—Leading questions § 611.18 —Questions that are too general, or too complex, or call for a narrative § 611.19 —Argumentative or misleading questions; harassment of witness § 611.20 Questions posed by jurors; witnesses repeating testimony; jurors reviewing transcript or recording of testimony § 611.21 Law review articles and other commentary on Rule 611 Rule 612 Writing Used to Refresh Memory § 612.1 Purpose and History of Rule 612 Overview of matters addressed by Rule 612, civil vs. § 612.2 criminal cases § 612.3 When witness's memory may be refreshed § 612.4 Nature of the writing used to refresh witness' memory Opponent's right to inspect writing § 612.5 § 612.6 Opponent's right to introduce writing as evidence § 612.7 Applicability of Rule 612 to depositions § 612.8 Work product or material protected by privilege Sanctions for noncompliance with Rule 612 § 612.9 § 612.10 Other means of refreshing memory, leading questions § 612.11 Law review articles and other commentary on Rule 612 Rule 613 Prior Statements of Witnesses § 613.1 Purpose and history of Rule 613 § 613.2 Overview of matters addressed by Rule 613 Impeachment by prior inconsistent statement— § 613.3 Introduction § 613.4 Statement must be inconsistent with witness's testimony—Generally —Degree of inconsistency required § 613.5 § 613.6 —Material omissions, failure to remember § 613.7 —Prior inconsistent opinions § 613.8 —Situations involving statements by third persons § 613.9 Cross-examination regarding prior inconsistent statement § 613.10 Extrinsic evidence of prior inconsistent statement— Generally § 613.11 —Collateral vs. material matters

- § 613.12 —Methods of proof
- § 613.13 —Foundation questions optional
- § 613.14 —May the court require foundation questions?
- § 613.15 —When extrinsic evidence must be introduced
- § 613.16 Witness may explain or deny statement
- § 613.17 Jury instructions regarding inconsistent statements
- § 613.18 Rehabilitation of witness—Prior consistent statements and other methods
- § 613.19 Constitutional considerations under Rule 613
- § 613.20 Law review articles and other commentary on Rule 613
- Rule 614 Calling and Interrogation of Witnesses by Court
  - § 614.1 Purpose and history of Rule 614
  - § 614.2 Calling and interrogation of witnesses by court—Generally
  - § 614.3 When judge may call witnesses
  - § 614.4 When judge may interrogate witnesses—Comment on the evidence
  - § 614.5 Nonjury cases
  - § 614.6 Objections
  - § 614.7 Law review articles and other commentary on Rule 614
- Rule 615 Exclusion of Witnesses
  - § 615.1 Purpose and history of Rule 615
  - § 615.2 Excluding witnesses from the courtroom
  - § 615.3 Who may not be excluded
  - § 615.4 Excluding the general public
  - § 615.5 Sanctions for noncompliance
  - § 615.6 Law review articles and other commentary on Rule 615

# Volume 5B

#### CHAPTER 7 OPINIONS AND EXPERT TESTIMONY

- Rule 701 Opinion Testimony by Lay Witnesses
  - § 701.1 Purpose and history of Rule 701
  - § 701.2 Distinguishing between fact and opinion
  - § 701.3 Lay opinion must be based upon personal knowledge
  - § 701.4 Lay opinion may be allowed if helpful—Generally
  - § 701.5 —Potential objections under Rule 701
  - § 701.6 Witness may be required to explain opinion
  - § 701.7 Specific applications—Generally
  - § 701.8 —Speed
  - § 701.9 —Mental capacity, sanity
  - § 701.10 —Diminished capacity to form intent
  - § 701.11 —State of mind of self or others, demeanor
  - § 701.12 —Intoxication or drug influence

§ 701.13 —Appearance or condition of another person § 701.14 —Identity of person, handwriting § 701.15 —Description or identification of an object, substance, physical location, or the like § 701.16 —Relative care or guilt § 701.17 —Damages § 701.18 —Value or ownership of property, boundaries § 701.19 —Opinion on hypothetical situation 701.20 —Character or credibility of another person § 701.21 —Other § 701.22 Law review articles and other commentary on Rule 701 Rule 702 Testimony by Experts § 702.1 Purpose and history of Rule 702 § 702.2 Discovery rules distinguished § 702.3 Summary judgment distinguished Types of experts—Expert witnesses, fact experts, § 702.4 consultants, experts employed by opposing party, and the like § 702.5 Qualifying the witness as an expert—General rules 702.6 —Procedure, related considerations 702.7—Precedents of limited value 702.8Illustrative cases—Generally —Medical issues, mental health issues § 702.9 702.10 —Other licensed witnesses 702.11 —Appraisal of real property § 702.12 —Appraisal of personal property or services § 702.13 —Other § 702.14 Disqualification of expert by court § 702.15 Expert testimony must be helpful and relevant § 702.16 Subject matter should be beyond common understanding and knowledge—Generally § 702.17 —Applying the rule, illustrative cases § 702.18 General acceptance in scientific community (Frye)— Generally § 702.19 General acceptance in scientific community—Nature of *Frye* objection, other rules distinguished § 702.20 —Overcoming Frye objections § 702.21 General acceptance in scientific community (Frve)— Criminal cases vs. civil cases § 702.22 —Applying the rule, illustrative cases § 702.23 —Procedure, laying the foundation, review on appeal, § 702.24 Avoiding conjecture and speculation—General rules § 702.25 —Applying the rule, illustrative cases § 702.26 —Admissibility vs. weight of evidence

```
§ 702.27 —Relationship to Rule 705
   § 702.28 Value of property or services
   § 702.29 Motor vehicle accidents
   § 702.30 Physical characteristics, dangerousness, feasibility, and
              the like
   § 702.31 Medical opinions—Generally
   § 702.32 —Reasonable medical certainty
   § 702.33 —Diminished capacity, insanity, and the like
   § 702.34 Evewitness identification
   § 702.35 Identity of person depicted in photograph or videotape
   § 702.36 Syndromes caused by stress or trauma
   § 702.37 Scientific evidence—Generally
   § 702.38 —Handwriting analysis
   § 702.39 —Tests for intoxication or drug use
   § 702.40 —Genetic (DNA) testing for identification, paternity, or
              the like
   § 702.41 —Radar and similar devices
   § 702.42 —Polygraph
   § 702.43 —Other scientific evidence
   § 702.44 Mathematical probabilities, statistics
   § 702.45 Profile or pattern evidence
   § 702.46 Credibility of other witnesses
   § 702.47 Miscellaneous subjects of expert testimony
   § 702.48 Ultimate issues, pure questions of law
   § 702.49 Pretrial disclosure of expert opinion—Relationship to
              admissibility
   § 702.50 When expert testimony is required
   § 702.51 Form of expert testimony
   § 702.52 Effect of expert testimony—Generally
   § 702.53 —Sufficiency of the evidence
   § 702.54 Cross-examination and impeachment of experts
   § 702.55 Expert's duty to testify, expert witness fees, ethical
              considerations
   § 702.56 Witness immunity
   § 702.57 Law review articles and other commentary on Rule 702
Rule 703 Bases of Opinion Testimony by Experts
   § 703.1 Purpose and history of Rule 703
   § 703.2
            Basis for expert's opinion—Generally
   § 703.3
            —Opinion based on firsthand knowledge or testimony by
              others
   § 703.4
            —Opinion based upon hypothetical questions
   § 703.5
            —Opinion based on other reasonable sources of
              information
   § 703.6 —Opinion based on other opinions
   § 703.7 —Opinion based on confidential information
```

Adequacy of basis to support opinion § 703.8 § 703.9 Basis of opinion as independent evidence § 703.10 Constitutional considerations under Rule 703 § 703.11 Law review articles and other commentary on Rule 703 Rule 704 Opinion on Ultimate Issue § 704.1 Purpose and history of Rule 704 § 704.2 General rule § 704.3 Illustrative cases § 704.4 Objections under other rules 704.5Conclusions of law—Generally § 704.6 —Criminal cases § 704.7 —Civil cases —Pure issues of law § 704.8 —Overcoming the legal-conclusion objection § 704.9 § 704.10 Opinions on credibility § 704.11 Summary judgment proceedings § 704.12 Law review articles and other commentary on Rule 704 Rule 705 Disclosure of Facts or Data Underlying Expert Opinion § 705.1 Purpose and history of Rule 705 § 705.2 Three methods for presenting expert testimony § 705.3 When *must* underlying data be disclosed? § 705.4 When may underlying data be disclosed? § 705.5 Underlying data is not substantive evidence unless otherwise admissible § 705.6 Cross-examination and impeachment of experts— Generally —Scope of cross-examination § 705.7 § 705.8 —Other methods of impeachment § 705.9 Importance of pretrial preparation § 705.10 Law review articles and other commentary on Rule 705 Rule 706 Court-Appointed Experts § 706.1 Purpose and history of Rule 706 § 706.2 Experts appointed by court § 706.3 Special masters

#### **CHAPTER 8 HEARSAY**

§ 706.4 Comment on the evidence

Rule 801 Hearsay Definitions

§ 801.1 Purpose and history of Rule 801

§ 801.2 Overview and reasons for hearsay rule

§ 801.3 Definition of statement and assertion

§ 801.4 Conduct constituting a statement

§ 801.5 Prior out-of-court statement by person present in courtroom

§ 706.5 Law review articles and other commentary on Rule 706

```
Definition of declarant—Persons, organizations, language
§ 801.6
           translators, machines, animals, inanimate objects
§ 801.7
         Definition of hearsay—Generally
§ 801.8
        —To prove the matter asserted
§ 801.9
         Statements in issue and verbal acts
§ 801.10 Statements to show effect on hearer or reader
§ 801.11 Statements offered only for impeachment
§ 801.12 Self-serving statements, statements lacking credibility,
           presence or absence of opposing party
§ 801.13 Borderline situations—Carefully worded testimony that
           avoids direct quotation
§ 801.14 —Statements to show background, purpose, or context
§ 801.15 —Implied assertions
§ 801.16 —Circumstantial evidence of declarant's state of mind
§ 801.17 Law review articles and other commentary on hearsay
           generally
§ 801.18 Prior statements by witnesses, generally
§ 801.19 Prior inconsistent statements—Generally
§ 801.20 —Relationship to other rules
§ 801.21 —What constitutes another proceeding?
§ 801.22 —Degree of inconsistency required
§ 801.23 Prior consistent statements—Generally
§ 801.24 —Relationship to other rules
§ 801.25 —Statement must rebut charge of recent fabrication.
           improper influence, or improper motive
§ 801.26 —Statement must predate any motive to fabricate
§ 801.27 —Degree of consistency required
§ 801.28 —Procedure, methods of proof
§ 801.29 Statements of identification—Generally
§ 801.30 —Police sketches
§ 801.31 —Statements identifying things other than persons
§ 801.32 —Constitutional considerations (impermissibly suggestive
           circumstances)
§ 801.33 Law review articles and other commentary on prior
           statements by witnesses
§ 801.34 Admissions by party-opponent, general considerations
§ 801.35 What constitutes an admission?—Generally
§ 801.36 What constitutes an admission?—Admissions required by
           law
§ 801.37 Who or what constitutes a party-opponent?
§ 801.38 Personal knowledge, opinion, and legal conclusions;
           mental competency
§ 801.39 Personal statement by party-opponent
§ 801.40 Adopted statements—Generally
§ 801.41 —Illustrative cases
```

§ 801.42 —Related considerations § 801.43 Admissions by silence in civil cases—Generally § 801.44 —Effect of privilege against self-incrimination in civil § 801.45 Admissions by silence in criminal cases—Generally § 801.46 —Effect of privilege against self-incrimination and other constitutional restrictions in criminal cases § 801.47 Admissions by agents and employees—Generally § 801.48 —Who qualifies as a speaking agent § 801.49 Admissions by partners § 801.50 Admissions by coparties § 801.51 Admissions by persons in privity with party § 801.52 Effect of admissions—Generally § 801.53 —Factual admissions in pleadings and briefs § 801.54 —Judicial admissions § 801.55 —Admissions at trial or in a deposition § 801.56 Constitutional restrictions on the use of admissions and confessions; related restrictions § 801.57 Law review articles and other commentary on admissions by party-opponent § 801.58 Statements in furtherance of conspiracy—Introduction and relationship to other rules § 801.59 General considerations § 801.60 Existence of conspiracy involving declarant and party § 801.61 Furthering the objectives of the conspiracy § 801.62 Notice, procedure, who decides what § 801.63 Burden of proof, requirement of independent evidence § 801.64 Order of proof § 801.65 Constitutional considerations § 801.66 Law review articles and other commentary on statements in furtherance of a conspiracy Rule 802 Hearsay Rule § 802.1 Purpose and history of Rule 802 § 802.2 Rule requiring firsthand knowledge distinguished § 802.3 Hearsay generally inadmissible, with exceptions § 802.4 Admissibility for nonhearsay purpose

## Volume 5C

§ 802.6 Law review articles and other commentary on Rule 802

§ 802.5 Waiver of hearsay objection

Rule 803 Hearsay Exceptions; Availability of Declarant Immaterial § 803.1 Purpose and history of Rule 803 § 803.2 Federal catch-all exception deleted § 803.3 Present sense impressions—Generally

## TABLE OF CONTENTS

§	803.4	—Applying the rule
§	803.5	Excited utterances—Generally
§	803.6	—Applying the rule, illustrative cases
	803.7	—Complaint of sexual assault or abuse
	803.8	—Appellate review
	803.9	Law review articles and other commentary on present
		sense impressions and excited utterances
§	803.10	State of mind and the hearsay rule—An overview
§	803.11	Statements describing then-existing emotions or feelings
§	803.12	Statements of intent or plan
§	803.13	Statements describing pain, sensation, or bodily condition
§	803.14	Statement concerning declarant's will
§	803.15	Statements to show effect on hearer or reader
§	803.16	Statements as circumstantial evidence of declarant's state of mind
§	803.17	Statements as circumstantial evidence of third person's state of mind, or of past facts
§	803.18	Law review articles and other commentary on state of mind
§	803.19	Statements for purposes of medical diagnosis or treatment, generally
§	803.20	Statements to and by physicians
§	803.21	Statements to persons other than physicians
§	803.22	Forensic examinations
§	803.23	Statements concerning fault, causation, or other background facts
§	803.24	Special problems involving children
§	803.25	Law review articles and other commentary on statements for medical diagnosis or treatment
§	803.26	Recorded recollection generally, relationship to other rules
		Foundation requirements—Generally
		—Case law interpretations
		—Satisfying the foundation requirements by the testimony of others, or by circumstantial evidence
§	803.30	Joint authorship
		Procedure, method of proof
		Business records, generally
		Relationship to other rules
		Overview of statutory requirements
		What constitutes a business record?
-		Record must be of an act, condition, or event
		Records compiled for purposes of litigation; accident reports; laboratory reports
8	803 38	Records based upon reports from third parties; hearsay
8	000.00	within hearsay; partial admissibility

§ 803.39 Overall reliability as a factor in admissibility § 803.40 Business records "going to the heart" § 803.41 Procedure; establishing foundation requirements; identification and authentication § 803.42 Method of proof § 803.43 Absence of business record § 803.44 Law review articles and other commentary on business § 803.45 Public records generally § 803.46 Relationship to other rules § 803.47 Requirements for admissibility § 803.48 Illustrative cases § 803.49 Vital statistics § 803.50 Identification and authentication of public records § 803.51 Absence of public record § 803.52 Law review articles and other commentary on public records § 803.53 Records of religious organizations § 803.54 Marriage, baptismal, and similar certificates § 803.55 Family records § 803.56 Law review articles and other commentary on religious and family history § 803.57 Record of a document § 803.58 Statements within a document § 803.59 Law review articles and other commentary on documents affecting an interest in property § 803.60 Statements in ancient documents § 803.61 Law review articles and other commentary on ancient documents § 803.62 Market reports, commercial publications § 803.63 Polls and surveys § 803.64 Law review articles and other commentary on commercial publications § 803.65 Learned treatises, generally § 803.66 Using learned treatises on direct examination § 803.67 Using learned treatises on cross-examination, redirect § 803.68 Law review articles and other commentary on learned treatises § 803.69 Reputation generally § 803.70 Reputation concerning personal or family history § 803.71 Reputation concerning boundaries or general history § 803.72 Reputation as to character § 803.73 Law review articles and other commentary on reputation § 803.74 Judgments as evidence, generally § 803.75 Judgment of previous conviction—Generally

§ 803.76 —Validity of prior conviction § 803.77 —Other rules distinguished § 803.78 Judgment as to personal, family, or general history, or boundaries § 803.79 Res judicata, collateral estoppel § 803.80 Law review articles and other commentary on judgments as evidence Rule 804 Hearsay Exceptions; Declarant Unavailable § 804.1 Purpose and history of Rule 804 § 804.2 Federal catch-all exceptions deleted Definition of unavailable—Generally § 804.3 § 804.4 Privilege Refusal to testify § 804.5 § 804.6 Lack of memory § 804.7 Death or infirmity, incompetency to testify § 804.8 Absence—Generally § 804.9 —Additional requirements for dying declarations, statements against interest, and statements of history § 804.10 Trauma, psychological unavailability § 804.11 Unavailability procured by proponent § 804.12 Relationship between Rule 804 and the Sixth Amendment right to confrontation § 804.13 Law review articles and other commentary on requirement of unavailability § 804.14 Former testimony generally, relationship to other rules and right to confrontation § 804.15 Admissibility under Rule 804—Generally § 804.16 Nature of former proceedings—Depositions, administrative hearings, arbitration hearings, affidavits § 804.17 Identity of parties not required § 804.18 Opportunity and motive to develop former testimony— Generally—Right to confrontation § 804.19 —Illustrative cases § 804.20 Objections to statements within former testimony § 804.21 Methods of proof § 804.22 Law review articles and other commentary on former testimony § 804.23 Dying declarations—Generally—Right to confrontation § 804.24 Belief that death was imminent § 804.25 Scope of admissible statements § 804.26 Personal knowledge and opinion § 804.27 Procedure, methods of proof, jury instructions § 804.28 Law review articles and other commentary on dying declarations § 804.29 Statements against interest—In General—Right to confrontation

- § 804.30 Admissions by party-opponent distinguished
- § 804.31 Declarant must have known statement was against interest
- § 804.32 Motives of declarant
- § 804.33 Statements against pecuniary or proprietary interest
- § 804.34 Statements against penal interest—Generally
- § 804.35 —Trustworthiness
- § 804.36 Statements that are partly disserving and partly selfserving; related statements
- § 804.37 Constitutional and procedural considerations, right to confrontation
- § 804.38 Forfeiture by wrongdoing
- § 804.39 Law review articles and other commentary on statements against interest
- § 804.40 Statement of personal or family history
- § 804.41 Law review articles and other commentary on statements of personal or family history
- Rule 805 Hearsay Within Hearsay
  - § 805.1 Purpose and history of Rule 805
  - § 805.2 Hearsay within hearsay admissible if each statement is within an exception
  - § 805.3 Application of Rule 403
  - § 805.4 Law review articles and other commentary on Rule 805
- Rule 806 Attacking and Supporting Credibility of Declarant
  - § 806.1 Purpose and history of Rule 806
  - § 806.2 Hearsay declarant subject to impeachment
  - § 806.3 Law review articles and other commentary on Rule 806
- Rule 807 Child Victims or Witnesses
  - § 807.1 Purpose and history of Rule 807
  - § 807.2 Statements by abused children, generally
  - § 807.3 Constitutional background, right to confrontation
  - § 807.4 Purpose of statute and relationship to other rules
  - § 807.5 Scope of statute
  - § 807.6 Requirement that child testify or be declared unavailable
  - § 807.7 Requirement of reliability
  - § 807.8 Requirement of corroboration
  - § 807.9 Notice, other procedural matters
  - § 807.10 Appeal, waiver
  - § 807.11 Use of closed-circuit television and similar devices
  - § 807.12 Law review articles and other commentary on Rule 807 and related matters

# CHAPTER 9 AUTHENTICATION, IDENTIFICATION, AND ADMISSION OF EXHIBITS

§ 900.1 General principles of authentication and identification—Introduction

## TABLE OF CONTENTS

§	900.2	Prima facie showing
	900.3	Evidence to which rules in Article 9 apply
§	900.4	Relationship to other rules of exclusion
§	900.5	Evidence that is relevant regardless of authenticity
8	900.6	Avoiding authentication requirements by
3	000.0	procedures prior to trial
Rule	901	Requirement of Authentication or Identification
§	901.1	Purpose and history of Rule 901
§	901.2	General rule
	901.3	Authentication vs. relevance of demonstrative evidence
§	901.4	Procedure, objections, waiver
	901.5	Methods listed in Rule 901 are only illustrative
	901.6	Testimony of witness with knowledge
	901.7	Nonexpert opinion on handwriting
	901.8	Comparison by court or expert witness
		Distinctive characteristics and the like
		Voice identification—Generally
		—Telephone conversations
		—Audio recordings
		Public records or reports—Generally
		—Rules of court
		—Statutes
		—Common law methods
		Ancient document or data compilation
		Process or system—Generally
		<ul><li>—Police radar and similar speed-measuring devices</li><li>—X-Rays</li></ul>
		—Photographs, video recordings, motion pictures
		—Computer-generated documents
		Electronic communications—E-mail, text messages,
		postings on social media, and the like
		Information found on the Internet
		Process or system—Other
§	901.26	—Whether expert testimony is required for authentication of process or system
§	901.27	Methods provided by statute or rule
		Law review articles and other commentary on Rule 901
Rule	902 S	elf-Authentication
§	902.1	Purpose and history of Rule 902
	902.2	Domestic public documents under seal
_	902.3	Domestic public documents not under seal
_	902.4	Foreign public documents
_	902.5	Certified copies of public records
§	902.6	Official publications

§ 902.7 Newspapers and periodicals § 902.8 Trade inscriptions and the like § 902.9 Acknowledged documents § 902.10 Commercial paper and related documents § 902.11 Presumptions created by law § 902.12 Document produced by opposing party, other miscellaneous holdings § 902.13 Law review articles and other commentary on Rule 902 Rule 903 Subscribing Witness' Testimony Unnecessary § 903.1 Purpose and history of Rule 903 § 903.2 Testimony of subscribing witness unnecessary Rule 904 Admissibility of Documents § 904.1 Purpose and history of Rule 904 § 904.2 Documents covered by the rule § 904.3 Notice requirements; objections § 904.4 Sanctions

# CHAPTER 10 CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

§ 904.5 Effect of rule, objection to relevance not waived

§ 904.6 Summary judgment proceedings

§	1000.1	Generally
§	1000.2	Evidence still subject to challenge
§	1000.3	Relationship to other evidence rules
§	1000.4	"Best evidence" in other contexts
Rule	1001	Definitions
§	1001.1	Purpose and history of Rule 1001
§	1001.2	Terminology—Writings, recordings, photographs, drawings, images on electronic monitors
§	1001.3	—Original
§	1001.4	—Duplicate
§	1001.5	Law review articles and other commentary on Rule 1001
Rule	1002	Requirement of Original
§	1002.1	Purpose and history of Rule 1002
§	1002.2	Distinguishing between an event and a record of the event
§	1002.3	General rule and exceptions to rule, waiver
§	1002.4	Specific applications—Corporate existence or corporate acts
§	1002.5	<ul> <li>—Photographs, video recordings, images originally displayed on computer monitors</li> </ul>
§	1002.6	—Inscribed objects
§	1002.7	—Condition or appearance
§	1002.8	—Transcript as listening aid

```
§ 1002.9 —Evidence to prove creation or noncreation of record
   § 1002.10 —Other illustrative cases
   § 1002.11 —Relationship to Rule 703
   § 1002.12 Law review articles and other commentary on Rule 1002
Rule 1003 Admissibility of Duplicates
   § 1003.1 Purpose and history of Rule 1003
   § 1003.2 Duplicates generally admissible
   § 1003.3 Original of questionable authenticity
   § 1003.4 When unfair to admit duplicate
   § 1003.5 Law review articles and other commentary on Rule 1003
Rule 1004 Admissibility of Other Evidence of Contents
   § 1004.1 Purpose and history of Rule 1004
   § 1004.2 Original lost or destroyed—Generally
   § 1004.3 —Destruction of original
   § 1004.4 Original Lost or destroyed—Proof of wills
   § 1004.5 Original not obtainable through judicial process
   § 1004.6 Original in possession of opponent—Generally
   § 1004.7 —Sufficiency of notice
   § 1004.8 —Exceptions to notice requirement
   § 1004.9 Collateral matters
   § 1004.10 "Next best" evidence not required
   § 1004.11 Relationship to hearsay rule
   § 1004.12 Relationship to burden of proof
   § 1004.13 Law review articles and other commentary on Rule 1004
Rule 1005 Public Records
   § 1005.1 Purpose and history of Rule 1005
   § 1005.2 Public records generally
   § 1005.3 Original in owner's possession
   § 1005.4 Criminal convictions
   § 1005.5 Law review articles and other commentary on Rule 1005
Rule 1006 Summaries
   § 1006.1 Purpose and history of Rule 1006
   § 1006.2 Other rules distinguished
   § 1006.3 Requirements for admissibility—Generally
   § 1006.4 —Notice, procedure
   § 1006.5 Oral summaries
   § 1006.6 Relationship to hearsay rule
   § 1006.7 Status of summary as evidence
   § 1006.8 Law review articles and other commentary on Rule 1006
Rule 1007 Testimony or Written Admission of Party
   § 1007.1 Purpose and history of Rule 1007
   § 1007.2 Proof of contents by admission of party
   § 1007.3 Law review articles and other commentary on Rule 1008
```

Rule 1008 Functions of Court and Jury

- § 1008.1 Purpose and history of Rule 1008
- § 1008.2 Roles of judge and jury in applying the best evidence rule
- § 1008.3 Law review articles and other commentary on the best evidence rule

#### CHAPTER 11 MISCELLANEOUS RULES

- Rule 1101 Applicability of Rules
  - § 1101.1 Purpose and history of Rule 1101
  - § 1101.2 Proceedings in which the rules apply generally, waiver of rules
  - § 1101.3 The law with respect to privileges
  - § 1101.4 Proceedings in which the rules are inapplicable—Generally
  - § 1101.5 —Preliminary questions of fact
  - § 1101.6 —Grand Jury and inquiry judge proceedings
  - § 1101.7 —Preliminary determinations in criminal cases
  - § 1101.8 —Sentencing and probation hearings
  - § 1101.9 —Habeas corpus proceedings
  - § 1101.10 —Other
  - § 1101.11 Hearings on infractions
  - § 1101.12 Juvenile court proceedings
  - § 1101.13 Mandatory arbitration hearings
  - § 1101.14 Evidence in the appellate courts
  - § 1101.15 Law review articles and other commentary on Rule 1101
- Rule 1102 Amendments
- Rule 1103 Title

#### CHAPTER 12 THE PAROL EVIDENCE RULE

- § 1200.1 Introduction
- § 1200.2 A rule of substantive law, statute of limitations
- § 1200.3 Rule applies only to contracts and promissory notes
- § 1200.4 Rule applies only to contractual provisions, not recitals of fact
- § 1200.5 Rule applies only to parties to contract, not third parties
- § 1200.6 Rule applies only to evidence offered to change terms of written agreement
- § 1200.7 Rule applies only to integrated contract—Generally
- § 1200.8 rule applies only to integrated contract—Determining whether contract is integrated, historical background
- § 1200.9 Rule applies only to integrated contract—Determining whether contract is integrated, current law
- § 1200.10 —Disclaimers and merger clauses
- § 1200.11 —Contracts partly in writing and partly oral (partial integration)

- § 1200.12 Clarifying the meaning of a contract—The traditional rule
- § 1200.13 —Berg v. Hudesman and beyond
- § 1200.14 Other applications of parol evidence rule—Generally
- § 1200.15 —Subsequent agreements
- § 1200.16 —Consideration
- § 1200.17 —Lack of contract due to fraud, mistake, or illegality
- § 1200.18 —Conditions, generally
- § 1200.19 —Conditions precedent
- § 1200.20 —Conditions subsequent
- § 1200.21 —Collateral agreements
- § 1200.22 Parol evidence under the Uniform Commercial Code
- § 1200.23 Administering the rule, role of judge and jury
- § 1200.24 Law review articles and other commentary on the parol evidence rule

#### CHAPTER 13 THE RIGHT TO CONFRONTATION

- § 1300.1 Constitutional provisions and statutes
- § 1300.2 Federal law vs. state law
- § 1300.3 Historical trends, retroactivity
- § 1300.4 Relationship to hearsay rule
- § 1300.5 Procedural implications, consideration on appeal
- § 1300.6 When, and to what, does the confrontation clause apply?
- § 1300.7 Comment on assertion of right to confrontation
- § 1300.8 Introduction and overview, method of analysis
- § 1300.9 Right to confrontation applies only to *hearsay* (statement to prove truth of matter asserted)
- § 1300.10 Right to confrontation applies only to *testimonial* hearsay—Definition of *testimonial*
- § 1300.11 Cases deciding whether a statement was or was not testimonial—Overview
- § 1300.12 Statements to police, calls to 911, reports prepared for police or prosecuting attorney
- § 1300.13 Excited utterances other than calls to 911
- § 1300.14 Statements that are and are not testimonial— Statements to medical personal, psychologists, therapists, and the like
- § 1300.15 —Statements by abused children
- § 1300.16 —Public records, business records
- § 1300.17 —Laboratory reports and similar evidence prepared for litigation
- § 1300.18 What statements are and are not testimonial—Other
- § 1300.19 State's duty to produce declarant for cross-examination— Generally
- § 1300.20 —What constitutes sufficient cross-examination

§	1300.21	Expert opinion based on report of person not present at
		trial
§	1300.22	Waiver, forfeiture by wrongdoing
§	1300.23	Harmless error
§	1300.24	Impediment to cross-examination or impeachment of
		witness—Generally
§	1300.25	—Refusal to testify; loss of memory
§	1300.26	—The borderland
§	1300.27	Waiver
§	1300.28	Harmless error
§	1300.29	Statements by nontestifying codefendants (Bruton)
§	1300.30	Courtroom arrangements—Closed-circuit television, one- way screens, videotaped testimony, and the like
§	1300.31	Miscellaneous applications of right to confrontation
		Law reviews and other commentary on the right to confrontation

## **Table of Laws and Rules**

**Table of Cases**