

2025 EDITION HIGHLIGHTS

What's New in This Edition

This year's edition of the **Texas Rules of Evidence Handbook** has been updated to reflect 2024 rule amendments and new developments in case law. We have also revised parts of the commentary to improve clarity and add further explanation. Some of the changes we made this year include the following:

- Throughout the book, we updated the citations to the new 12th edition of *Black's Law Dictionary* (2024).
- We updated our discussion of presumptions in conflict-of-interest cases based on the 2024 amendments to Texas Disciplinary Rule of Professional Conduct 1.09 (conflict of interest with former client) and the adoption of Texas Disciplinary Rule of Professional Conduct 1.10 (imputation of conflicts of interest). The rules now allow for these presumptions to be rebutted in certain circumstances so that an attorney or firm is not disqualified from representing a client. *See* Tex. Sup. Ct. Order, Misc. Docket No. 24-9054 (eff. Oct. 1, 2024). A more in-depth discussion of Rules 1.09 and 1.10 will be included in the 2025 edition of **O'Connor's Texas Rules * Civil Trials**.
- We updated our discussion of the relation of Texas Rules of Evidence 401–403 to nontestimonial evidence to address the pending 2024 enactment of Federal Rule of Evidence 107. Federal Rule 107 would govern illustrative aids (e.g., photos, diagrams, video depictions); that is, information offered not as evidence but instead for the narrow purpose of helping the trier of fact understand what is being communicated by a witness or party.
- We updated our discussion of discovery in Texas criminal proceedings based on **State v. Heath**, — S.W.3d —, 2024 WL 2952387 (Tex. Crim. App. 2024) (No. PD-0156-22; 6-12-24). In that case, the Texas Court of Criminal Appeals held that Texas Code of Criminal Procedure article 39.14(a) extends to information that is in the possession of law enforcement; that is, possession, custody, or control of the “State” is not limited to the prosecutor.
- We updated our discussion of the patient-condition exception in Rules 509 and 510 (formerly called the patient-litigant exception) based on **In re Richardson Motorsports, Ltd.**, 690 S.W.3d 42 (Tex. 2024) (orig. proceeding). In that case, the Texas Supreme Court held that the exception in Rules 509(e)(4) and 510(d)(5) is more accurately called the “patient-condition exception” because “the patient need not be a litigant and, even if she is, the claim or defense to which the records are relevant need not be her own.” *Id.* at 49.
- We updated our discussion of the court's control of proceedings under Rule 611(a) to address the pending 2024 enactment of Federal Rule of Evidence 107 and the corresponding amendments to Federal Rule of Evidence 1006. The proposed amendments would, among other things, clearly make a distinction between summaries to be admitted as substantive evidence (governed by Federal Rule 1006) and a summary of information offered solely to help the trier of fact understand the evidence (formerly governed by the broad standards of Federal Rule of Evidence 611(a) and now governed by the more particularized requirements of Federal Rule 107).
- We updated our discussion of witnesses' prior inconsistent statements to address the pending 2024 amendments to Federal Rule of Evidence 613. Federal Rule 613(b) would be amended to provide that extrinsic evidence of a prior inconsistent statement is not admissible until after the witness is given an opportunity to explain or deny the statement.
- We updated our discussion of expert testimony to address the 2023 amendments to Federal Rule of Evidence 702. Before the amendments, Texas Rule 702 was identical to Federal Rule 702(a). Federal Rule 702 was amended to clarify and emphasize that expert testimony cannot be admitted unless the proponent demonstrates to the court that it is more likely

than not that the testimony meets the admissibility requirements set forth in the rule (the preponderance-of-the-evidence standard).

- We updated our discussion of the Confrontation Clause, as well as its effect on the application of Rule 703 in criminal cases based on **Smith v. Arizona**, — U.S. —, 144 S. Ct. 1785 (2024). In **Smith**, the Supreme Court held that “[w]hen an expert conveys an absent analyst’s statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth”; if these statements are testimonial, then the defendant’s right of confrontation has been violated. *Id.* at —, 144 S. Ct. at 1791.
- We updated our discussion of an opposing party’s statements to address the pending 2024 amendments to Federal Rule of Evidence 801. The amendments would add a new last paragraph to Federal Rule 801(d)(2) and provide that when a party “stands in the shoes” of a declarant or the declarant’s principal, hearsay statements made by the declarant or principal are admissible against the party.
- We updated our discussion of statements against interest to address the pending 2024 amendments to Federal Rule of Evidence 804. The amendments to Federal Rule 804(b)(3)(B) would require that, in assessing whether a statement is supported by “corroborating circumstances that clearly indicate its trustworthiness,” the court must consider not only the totality of the circumstances under which the statement was made but also any evidence supporting or undermining it.
- We updated our discussion of summaries to prove content to address the pending 2024 amendments to Federal Rule of Evidence 1006. The rule would be amended to clarify that a party may offer Federal Rule 1006 summaries as evidence, whether or not the underlying evidence has been admitted, and to distinguish between a summary of voluminous evidence to prove content (governed by Federal Rule 1006) and an illustrative aid, which is a summary to help the trier of fact understand admissible evidence (governed by new Federal Rule 107).