

WYOMING RULES OF EVIDENCE

TABLE OF CONTENTS

I. GENERAL PROVISIONS

- Rule
101. Scope.
102. Purpose and construction.
103. Rulings on evidence.
104. Preliminary questions.
105. Limited admissibility.
106. Remainder of or related writings or recorded statements.

II. JUDICIAL NOTICE

201. Judicial notice of adjudicative facts.

III. PRESUMPTIONS

301. Presumptions in general in civil actions and proceedings.
302. Applicability of federal law in civil actions and proceedings.
303. Presumptions in criminal cases.

IV. RELEVANCY AND ITS LIMITS

401. Definition of "relevant evidence".
402. Relevant evidence generally admissible; irrelevant evidence inadmissible.
403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.
404. Character evidence not admissible to prove conduct; exceptions; other crimes.
405. Methods of proving character.
406. Habit; routine practice.
407. Subsequent remedial measures.
408. Compromise and offers to compromise.
409. Payment of medical and similar expenses.
410. Withdrawn pleas and offers.
411. Liability insurance.

V. PRIVILEGES

501. General rule.

VI. WITNESSES

601. General rule of competency.
602. Lack of personal knowledge.
603. Oath or affirmation.
604. Interpreters.
605. Competency of judge as witness.
606. Competency of juror as witness.
607. Who may impeach.
608. Evidence of character and conduct of witness.
609. Impeachment by evidence of conviction of crime.
610. Religious beliefs or opinions.
611. Mode and order of interrogation and presentation.

Rule

612. Writing or object used to refresh memory.
613. Prior statements of witnesses.
614. Calling and interrogation of witnesses by court.
615. Exclusion of witnesses.

VII. OPINIONS AND EXPERT TESTIMONY

701. Opinion testimony by lay witnesses.
702. Testimony by experts.
703. Bases of opinion testimony by experts.
704. Opinion on ultimate issue.
705. Disclosure of facts or data underlying expert opinion.
706. Court-appointed experts.

VIII. HEARSAY

801. Definitions.
802. Hearsay rule.
803. Hearsay exceptions; availability of declarant immaterial.
804. Hearsay exceptions; declarant unavailable.
805. Hearsay within hearsay.
806. Attacking and supporting credibility of declarant.

IX. AUTHENTICATION AND IDENTIFICATION

901. Requirement of authentication or identification.
902. Self-authentication.
903. Subscribing witness' testimony unnecessary.

X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

1001. Definitions.
1002. Requirement of original.
1003. Admissibility of duplicates.
1004. Admissibility of other evidence of contents.
1005. Public records.
1006. Summaries.
1007. Testimony or written admission of party.
1008. Functions of court and jury.

XI. MISCELLANEOUS RULES

1101. Applicability of rules.
1102. Statutes superseded.
1103. Title.
1104. Effective date.

(d) *Parties' experts of own selection.* — Nothing in this rule limits the parties in calling expert witnesses of their own selection.

VIII. HEARSAY

Rule 801. 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 him as an assertion.

(b) *Declarant.* — A “declarant” is a person who makes a statement.

(c) *Hearsay.* — “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(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 his testimony, and, if offered in a criminal proceeding, 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 his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving him; or

(2) *Admission by Party-Opponent.* — The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity, or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Rule 802. Hearsay rule.

Hearsay is not admissible except as provided by these rules or by other rules adopted by the Supreme Court of Wyoming or by statute.

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:

(1) *Present sense impression.* — A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter;

(2) *Excited utterance.* — A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

(3) *Then-existing mental, emotional, or physical condition.* — A statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will;

(4) *Statements for purposes of medical diagnosis or treatment.* — Statements made for purposes of medical diagnosis or treatment and describing medical

Rule 803

WYOMING COURT RULES

12

history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment;

(5) *Recorded recollection.* — A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his 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;

(6) *Records of regularly conducted activity.* — A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances or preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;

(7) *Absence of entry in records kept in accordance with the provisions of paragraph (6).* — Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness;

(8) *Public records and reports.* — Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the state in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness;

(9) *Records of vital statistics.* — Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law;

(10) *Absence of public record or entry.* — To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry;

(11) *Records of religious organizations.* — Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization;

(12) *Marriage, baptismal, and similar certificates.* — Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter;

(13) *Family records*. — Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like;

(14) *Records of documents affecting an interest in property*. — The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of public office and an applicable statute authorizes the recording of documents of that kind in that office;

(15) *Statements in documents affecting an interest in property*. — A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document;

(16) *Statements in ancient documents*. — Statements in a document in existence twenty (20) years or more the authenticity of which is established;

(17) *Market reports, commercial publications*. — Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations;

(18) *Learned treatises*. — To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony on 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 his family by blood, adoption, or marriage, or among his 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 his personal or family history;

(20) *Reputation concerning boundaries or general history*. — Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located;

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

(22) *Judgment of previous conviction*. — Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one (1) year, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility;

(23) *Judgment as to personal, family, or general history, or boundaries*. — Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation;

(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 on which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will

Rule 804

WYOMING COURT RULES

14

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, his 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 his statement; or
- (2) Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or
- (3) Testifies to a lack of memory of the subject matter of his 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 his statement has been unable to procure his attendance by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his 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:

- (1) *Former Testimony.* — Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination;
- (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 his death was imminent, concerning the cause or circumstances of what he believed to be his 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 him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed 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;
- (4) *Statement of Personal or Family History.* — (A) A statement concerning the declarant’s own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other’s family as to be likely to have accurate information concerning the matter declared;

- (5) *Statement of Recent Perception.* — In a civil action or proceeding, a statement, not in response to the instigation of a person engaged in investigating,

litigating, or settling a claim, which narrates, describes, or explains an event or condition recently perceived by the declarant, made in good faith, not in contemplation of pending or anticipated litigation in which he was interested, and while his recollection was clear;

(6) 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, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

(7) Forfeiture by wrongdoing. — A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness. The proponent shall give pretrial notice of intent to use such evidence, similar to notice required by W.R.E. 404(b). (Amended October 14, 2008, effective January 1, 2009.)

Rule 805. Hearsay within hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

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 his hearsay statement, is not subject to any requirement that he 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 him on the statement as if under cross-examination.

IX. AUTHENTICATION AND IDENTIFICATION

Rule 901. Requirement of authentication or identification.

(a) *General provision.* — The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) *Illustrations.* — By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of Witness with Knowledge. — Testimony that a matter is what it is claimed to be;

(2) Nonexpert Opinion on Handwriting. — Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation;

Rule 902

WYOMING COURT RULES

16

(3) Comparison by Trier or Expert Witness. — Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated;

(4) Distinctive Characteristics and the Like. — Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances;

(5) Voice Identification. — Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker;

(6) Telephone Conversations. — Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone;

(7) Public Records or Reports. — Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept;

(8) Ancient Documents or Data Compilation. — Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered;

(9) Process or System. — Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result;

(10) Methods Provided by Statute or Rule. — Any method of authentication or identification provided by statute or by other rules prescribed by the Supreme Court of Wyoming.

Rule 902. Self-authentication.

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

(1) *Domestic public documents under seal.* — A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, or an Indian tribe recognized by the United States, and a signature purporting to be an attestation or execution;

(2) *Domestic Public Documents Not Under Seal.* — A document purporting to bear the signature in his 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 his 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. A final certification may be made by a

secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification. (See § 1-12-301 et seq.);

(4) **Certified Copies of Public Records.** — A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any act of congress or rule prescribed by the Supreme Court pursuant to statutory authority;

(5) **Official Publications.** — Books, pamphlets, or other publications purporting to be issued by public authority;

(6) **Newspapers and Periodicals.** — Printed materials purporting to be newspapers or periodicals;

(7) **Trade Inscriptions and the Like.** — Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin;

(8) **Acknowledged Documents.** — Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments;

(9) **Commercial Paper and Related Documents.** — Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law;

(10) **Presumptions Under Acts of Congress or Statutes of Wyoming.** — Any signature, document, or other matter declared by act of congress or statutes of Wyoming to be presumptively or prima facie genuine or authentic. (For public service commission, see § 1-12-201. For other than public service commission, see cross references to § 1-12-201.)

(b) *Lack of record.* — A written statement that after diligent search no recorder entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivisions (a)(1) and (a)(2) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(3) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) *Other proof.* — This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

(d) *Seal dispensed with.* — In the event any office or officer, authenticating any documents under the provisions of this rule, has no official seal, and so certifies, then authentication by seal is dispensed with.

(Amended December 6, 1994, effective February 28, 1995.)

Rule 903. Subscribing witness' testimony unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.