

OUTLINE

PREFACE TO THE ELEVENTH EDITION	V
TABLE OF CASES	XXXVII
Article I. General Provisions	1
Rule 101. Scope; Definitions	1
§ 101.1 Scope of Rules; Definitions.....	1
Rule 102. Purpose	2
§ 102.1 Purpose.....	3
Rule 103. Rulings on Evidence	3
§ 103.1 Rule 103(a): Reversible, Harmless and Structural Error; an Overview	5
§ 103.2 Rule 103(a)(1): Error in Admitting; Objection, Presentation and Forfeiture	11
§ 103.3 Rule 103(a)(1)(A): Error in Admitting; Time of Objecting; Motion to Strike; Curative Instructions	14
§ 103.4 Error in Admitting: Waiver of Right to Object by Other than Failure to Make; Invited Error, Door Opening	15
§ 103.5 Error in Admitting: Nonjury and Chancery Cases	17
§ 103.6 Rule 103(a)(2) and (c): Error in Excluding; Offer of Proof.....	18
§ 103.7 Rules 103(b) and (d): Hearing of Jury; Motions in Limine; “Definitive” Rulings.....	22
§ 103.8 Rule 103(e): Plain Error	24

Rule 104. Preliminary Questions	27
§ 104.1 Rule 104(a) and (e): Preliminary Questions of Admissibility; Weight and Credibility	28
§ 104.2 Rule 104(b): Relevancy Conditioned on Fact; Connecting up	31
§ 104.3 Rule 104(c): Hearing Outside Presence of Jury	33
§ 104.4 Rule 104(d): Testimony by Accused upon Preliminary Matter; Suppressed Evidence.....	34
Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes.....	34
§ 105.1 Limited Admissibility.....	35
Rule 106. Remainder of or Related Writings or Recorded Statements	37
§ 106.1 Remainder of or Related Writings or Recorded Statements Employed at Time of Introduction	37
§ 106.2 Remainder of Oral Statements, Writing or Recorded Statements Employed on Next Examination	39
Article II. Judicial Notice	41
Rule 201. Judicial Notice of Adjudicative Facts....	41
§ 201.1 Rule 201(a): Nature of Judicial Notice; an Overview	42
§ 201.2 Rule 201(b)(1): Adjudicative Facts; Matters Generally Known	45
§ 201.3 Rule 201(b)(2): Adjudicative Facts; Accurately and Readily Determined	46

§ 201.4 Judicial Notice: Ascertaining the Appropriate Law.....	50
§ 201.5 Judicial Notice of Legislative Facts: Factual Bases of Judicial Rules.....	51
§ 201.6 Judicial Notice of Legislative Facts: Factual Aspects of Legislation.....	52
§ 201.7 Rules 201(c)–(f): Procedural Aspects of Judicial Notice	54

Article III. [Burdens of Proof and]

Presumptions in Civil [and Criminal]

Actions and Proceedings 59

Rule 301. Presumptions in Civil Cases

Generally..... 59

§ 301.1 Burdens of Proof and Presumptions in Civil Cases: An Introduction 59

§ 301.2 Burden of Proof: Allocating the Elements; Burden of Pleading..... 61

§ 301.3 Burden of Proof: Description and Nature of Responsibility; State Law Supplying Rule of Decision 63

§ 301.4 Burden of Production: Measure and Effect; Prima Facie Case..... 64

§ 301.5 Burden of Persuasion: Incidence and Measure in Civil Cases 67

§ 301.6 Presumptions in Civil Cases Generally: Definition and Nature 68

§ 301.7 Presumptions: Inferences and Permissive Presumptions 72

§ 301.8 Presumptions: Prima Facie Evidence..... 73

§ 301.9 Presumptions: Conclusive and Irrebuttable Presumptions	74
§ 301.10 Presumptions as Evidence	75
§ 301.11 Conflicting Presumptions.....	75
§ 301.12 Presumptions: Attack by Rebutting Basic Facts or Presumed Fact; Effect on Jury Instructions.....	76
§ 301.13 Presumptions: Instructing the Jury	80
§ 301.14 Presumptions: Statutory and Common Law Illustrations	84
Rule 302. Applying State Law to Presumptions in Civil Cases	86
§ 302.1 Applying State Law to Presumptions in Civil Cases.....	86
Standard 303. Presumptions in Criminal Cases...	88
§ 303.1 Burden of Proof in Criminal Cases: Allocating the Elements; Procedure for Allocating.....	89
§ 303.2 Burden of Producing Evidence.....	91
§ 303.3 Burden of Persuasion: Incidence, Measure and Shifting.....	92
§ 303.4 Standard 303(a), (b) and (c): Presumptions in Criminal Cases; Definition, Nature and Instructions; Constitutionality....	94
§ 303.5 Presumption of Innocence.....	102
Article IV. Relevance and Its Limits.....	105
Rule 401. Test for Relevant Evidence	105
§ 401.1 Test for Relevant Evidence: Materiality and “Fact Is of Consequence”	105
§ 401.2 Demonstrative and Real Evidence: Definition	109

§ 401.3	Demonstrative and Real Evidence: Relevancy	111
§ 401.4	Real Evidence: Tangible Objects; Instrumentalities of Crime	112
§ 401.5	Real Evidence: Exhibiting Personal Injuries; Bodily Demonstrations	113
§ 401.6	Demonstrative Evidence: Maps, Models, Drawings, Charts and Tangible Items.....	114
§ 401.7	Demonstrative Evidence: Photographs, Videotapes, Animations	116
§ 401.8	Demonstrative Evidence: X-rays	121
§ 401.9	Demonstrative Evidence: Courtroom and out of Court Demonstrations.....	121
§ 401.10	Experiments.....	122
§ 401.11	View by Trier of Fact.....	123
Rule 402.	General Admissibility of Relevant Evidence.....	125
§ 402.1	General Admissibility of Relevant Evidence; Irrelevant Evidence Inadmissible.....	125
Rule 403.	Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons	127
§ 403.1	Excluding of Relevant Evidence: Factors to Be Considered; Standard Applied	127
Rule 404.	Character Evidence; Other Crimes, wrongs or Acts	133
§ 404.1	Character Evidence: An Overview....	135
§ 404.2	Rule 404(a)(1): Character Evidence; Circumstantial Use in Civil Cases	138

§ 404.3	Rule 404(a)(2)(A): Character Evidence of the Defendant.....	139
§ 404.4	Rule 404(a)(2)(B) and (C): Character Evidence of the Alleged Victim; Homicide Case	140
§ 404.5	Rule 404(b)(2): Other Crimes, Wrongs or Acts.....	142
Rule 405.	Methods of Proving Character.....	148
§ 405.1	Rule 405(a): Method of Proof of Character; by Reputation or Opinion; Specific Instances Permitted Only on Cross-Examination.....	149
§ 405.2	Rule 405(b): Character as an Element; by Specific Instances of Conduct...	151
Rule 406.	Habit; Routine Practice.....	153
§ 406.1	Habit and Routine Practice: An Overview	153
§ 406.2	Habit of an Individual	156
§ 406.3	Routine Practice of an Organization	157
§ 406.4	Method of Proof of Habit or Routine Practice	158
Rule 407.	Subsequent Remedial Measures	159
§ 407.1	Subsequent Remedial Measures.....	159
Rule 408.	Compromise Offers and Negotiations.....	161
§ 408.1	Compromised Offers and Negotiations.....	161
Rule 409.	Offers to Pay Medical and Similar Expenses	165
§ 409.1	Offer to Pay Medical and Similar Expenses	166

Rule 410. Pleas, Plea Discussions, and Related Statements.....	167
§ 410.1 Pleas, Plea Discussions, and Related Statements.....	168
Rule 411. Liability Insurance.....	177
§ 411.1 Liability Insurance.....	177
Rule 412. Sex-Offense Cases: The Victim’s Sexual Behavior or Predisposition.....	178
§ 412.1 Sex-Offense Cases: The Victim’s Sexual Behavior or Predisposition.....	180
Rule 413. Similar Crimes in Sexual-Assault Cases.....	193
§ 413.1 Similar Crimes in Sexual Assault Cases.....	194
Rule 414. Similar Crimes in Child-Molestation Cases.....	196
§ 414.1 Similar Crimes in Child-Molestation Cases.....	197
Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation.....	199
§ 415.1 Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation.....	199
Article V. Privileges.....	201
Rule 501. Privilege in General.....	201
§ 501.1 Rule 501: General Rule of Privilege; an Overview.....	201
Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver.....	206
§ 502.1 Attorney-Client Privilege and Work Product; Limitations on Waiver.....	209
§ 503.1 Lawyer-Client Privilege.....	210

§ 504.1 Husband-Wife Privileges.....	214
§ 505.1 Waiver of Privilege; Disclosure Without Opportunity to Claim	215
Article VI. Witnesses	217
Rule 601. Competency to Testify in General	217
§ 601.1 Competency to Testify in General	217
§ 601.2 Mental Capacity: Preliminary Hearings; Ordering of Psychiatric Examinations; Children.....	221
§ 601.3 Alcohol or Drug Use as Affecting Competency.....	227
§ 601.4 Dead Man's Statutes	227
Rule 602. Need for Personal Knowledge.....	229
§ 602.1 Need for Personal Knowledge	229
Rule 603. Oath or Affirmation to Testify Truthfully.....	231
§ 603.1 Oath or Affirmation to Testify Truthfully.....	231
Rule 604. Interpreter	233
§ 604.1 Interpreter.....	233
Rule 605. Judge's Competency as a Witness.....	234
§ 605.1 Judge's Competency as a Witness	234
Rule 606. Juror's Competency as a Witness.....	235
§ 606.1 Rule 606(a): Competency of Juror as Witness at Trial.....	236
§ 606.2 Rule 606(b): Competency of Juror to Attack Validity of Verdict or Indictment	237
§ 606.3 Competency and Propriety of Lawyer for a Party as Witness at Trial	239
Rule 607. Who May Impeach a Witness	240
§ 607.1 Impeachment: Components of Credibility	240

§ 607.2	Contradiction: Collateral and Non-Collateral Matters; Good Faith Basis	243
§ 607.3	Impeachment of a Party's Own Witness.....	248
§ 607.4	Personal Knowledge: Mental Capacity; Expert Testimony	254
§ 607.5	Alcohol or Drug Use as Affecting Credibility	255
§ 607.6	Name, Occupation and Residence of the Witness	257
§ 607.7	Untrustworthy Partiality: Interest, Bias, Corruption, or Coercion; Foundation.....	258
§ 607.8	Contradiction by Other Evidence	261
Rule 608.	A Witness's Character for Truthfulness or Untruthfulness.....	263
§ 608.1	A Witness's Character for Truthfulness or Untruthfulness: An Overview	264
§ 608.2	Rule 608(a): Opinion or Reputation Testimony Relating to Truthfulness; When Permitted	266
§ 608.3	Rule 608(a) and (b): Opinion or Reputation Testimony Relating to Truthfulness; Basis and Content	268
§ 608.4	Rule 608(b)(1): Cross-Examination as to Specific Acts of Conduct of the Witness; Extrinsic Evidence.....	269
§ 608.5	Rule 608(b)(2): Cross-Examination of Character Witness as to Specific Acts of Conduct of Principal Witness; Extrinsic Evidence.....	272

Rule 609. Impeachment by Evidence of a Criminal Conviction	275
§ 609.1 Impeachment by Evidence of a Criminal Conviction: The Dilemma	277
§ 609.2 Rule 609(a): Impeachment by Evidence of Conviction; The General Rule; an Overview	281
§ 609.3 Rule 609(a)(1): Crimes Punishable by Death or Imprisonment for More than One Year; Discretionary Balancing Test	283
§ 609.4 Rule 609(a)(2): Crimes of a Dishonest Act or False Statement.....	288
§ 609.5 Rule 609(b): Conviction as to Which More than Ten Years Has Elapsed	291
§ 609.6 Rules 609(a) and (b): Method of Establishing Convictions; Preserving Error for Appeal; Timing of Ruling; Limiting Instructions.....	292
§ 609.7 Rule 609(c): Effect of a Pardon, Annulment, or Certificate of Rehabilitation	296
§ 609.8 Rule 609(d): Juvenile Adjudications	297
§ 609.9 Rule 609(e): Pendency of Appeal	298
Rule 610. Religious Beliefs or Opinions.....	298
§ 610.1 Religious Beliefs or Opinions	299
Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence	299
§ 611.1 Mode and Order of Examining Witnesses and Presenting Evidence; an Overview	300

§ 611.2	Order of Presentation: Voir Dire, Opening Statements and Closing Arguments	301
§ 611.3	Order of Presentation: Evidence Introduced at Trial	303
§ 611.4	Rule 611(a): Control by Court of Mode and Order of Examining Witnesses and Presenting Evidence	306
§ 611.5	Introduction of Evidence After Parties Rest.....	308
§ 611.6	Direct Examination	309
§ 611.7	Attendance of Witnesses and Production of Documents at Trial: Witness Fees.....	310
§ 611.8	Rule 611(c): Form of Testimony on Direct; Leading Questions	310
§ 611.9	Lack of Foundation: “Voir Dire” as to Admissibility of Evidence	315
§ 611.10	Cross-Examination: An Overview; Rule 611(c), Leading Questions.....	317
§ 611.11	Rule 611(b): Scope of Cross- Examination	320
§ 611.12	Redirect and Recross Examination ..	322
§ 611.13	Rebuttal and Surrebuttal: Corroboration of Witness; Rebutting Attacks	324
§ 611.14	Trial Objections: An Overview; Form of the Question.....	325
§ 611.15	Question Is Too Broad or Calls for a Narrative Answer.....	327
§ 611.16	Compound Questions.....	329
§ 611.17	Question Is Repetitive: Asked and Answered	329

§ 611.18 Question Calls for Conjecture, Speculation or Judgment of Veracity	330
§ 611.19 Question Is Ambiguous, Imprecise, Unintelligible or Calls for a Vague Answer	331
§ 611.20 Question Is Argumentative or Contains an Improper Characterization.....	332
§ 611.21 Questions Assuming Facts Either Not in Evidence or in Dispute	333
§ 611.22 Misquoting a Witness in a Question	334
§ 611.23 Unresponsive Answer: No Question Pending	334
Rule 612. Writing Used to Refresh a Witness's Memory	335
§ 612.1 Refreshing Recollection: General Considerations; Use of Leading Questions	336
§ 612.2 Rule 612: Writing Used to Refresh a Witness's Memory	339
Rule 613. Witness's Prior Statement	343
§ 613.1 Rule 613(a) and (b): Witness's Prior Statement; an Overview	344
§ 613.2 Witness's Prior Statement: Requirement of Inconsistency	345
§ 613.3 Witness's Prior Statement: Foundation Requirement; Good Faith Basis; Extrinsic Proof; Limiting Instruction	347
§ 613.4 Requiring a Foundation on Cross- Examination	352
§ 613.5 Prior Conduct of a Witness	354
§ 613.6 Use of Suppressed Statements and Illegally Seized Evidence to Impeach.....	355

Rule 614. Court’s Calling or Examining a Witness.....	355
§ 614.1 Rule 614(a): Calling of Witnesses by the Court.....	356
§ 614.2 Rule 614(b): Examining by the Court.....	357
§ 614.3 Rule 614(c): Objection to Calling or Interrogation of Witness	358
Rule 615. Excluding Witnesses	358
§ 615.1 Exclusion and Separation of Witnesses	359
Article VII. Opinions and Expert Testimony	363
Rules 701–706. Opinions of Lay and Expert Witnesses	363
§ 701.0 Opinions of Lay and Expert Witnesses: Historical Perspective and Introduction	363
Rule 701. Opinion Testimony by Lay Witnesses	365
§ 701.1 Opinion Testimony of Lay Witnesses	366
Rule 702. Testimony by Expert Witnesses	369
§ 702.1 Testimony by Expert Witnesses: An Overview	370
§ 702.2 Qualification of Experts	373
§ 702.3 Compensation of Experts; Compelling Testimony at Trial, Contingent Fees	374
§ 702.4 Assist the Trier of Fact; Common Knowledge.....	375

§ 702.5 Reliability “Gatekeeping” Under <i>Daubert/Kumho</i> /Rule 702: Historical Development and Assessment	376
Rule 702. Testimony by Expert Witnesses	391
§ 702.6 Subjects of Expert Testimony	398
Rule 703. Bases of an Expert’s Opinion Testimony	403
§ 703.1 Bases of an Expert’s Opinion Testimony	404
Rule 704. Opinion on an Ultimate Issue	411
§ 704.1 Opinion on an Ultimate Issue: An Overview	412
§ 704.2 Opinion on an Ultimate Issue: Mental State or Condition	416
Rule 705. Disclosing the Facts or Data Underlying an Expert’s Opinion	417
§ 705.1 Disclosing the Facts or Data Underlying an Expert’s Opinion.....	417
§ 705.2 Discretionary Use of Hypothetical Question	419
§ 705.3 Cross-Examining Expert Witness	420
Rule 706. Court-Appointed Expert Witnesses.....	422
§ 706.1 Court-Appointed Expert Witnesses: Policy Considerations.....	424
§ 706.2 Court-Appointed Expert Witnesses: Procedure	427
Article VIII. Hearsay.....	431
Rules 801–807. The Hearsay Rule and Hearsay Exceptions.....	431
§ 801.0 The Hearsay Rule and Hearsay Exceptions.....	431

Rules 801(a), (b) and (c). Definitions That Apply to This Article; Exclusions from Hearsay	438
§ 801.1 Rules 801(a)(1) and (2), (b) and (c): Definition of Hearsay	439
§ 801.2 Rule 801(a): Nonverbal Conduct Intended as an Assertion	447
§ 801.3 Rule 801(a): Nonverbal Conduct Not Intended as an Assertion	447
§ 801.4 Rule 801(a): Oral or Written Conduct Not Intended as an Assertion	450
§ 801.5 Rule 801(c): Statements Offered Other than to Prove the Truth of the Matter Asserted; Verbal Act; Characterizing Act; Affect on Listener; Impeachment	451
§ 801.6 Rule 801(c): Statements Offered Other than to Prove the Truth of the Matter Asserted; Circumstantial Evidence	453
§ 801.7 Rule 801(c): Statements Offered Other than to Prove the Truth of the Matter Asserted; Basis for Nonasserted Inference or “Implied Assertion”	462
§ 801.8 Rules 801(a), (b) and (c): Statements Not Made in Presence of Opposite Party	464
§ 801.9 Rules 801(a), (b) and (c): Hearsay Admitted Without Objection	465
§ 801.10 Rules 801(a), (b) and (c): Interpreting the Definition of Hearsay	465
Rule 801(d)(1). Statements That Are Not Hearsay: A Declarant-Witness’s Prior Statement	467
§ 801.11 Rule 801(d)(1)(A): Prior Inconsistent Statements	468

§ 801.12 Rule 801(d)(1)(B): Prior Consistent Statements.....	470
§ 801.13 Rule 801(d)(1)(C): Prior Identification of a Person After Perceiving Him; Police Officer Testimony	473
Rule 801(d)(2). Statements That Are Not Hearsay: Admission by Party-Opponent	475
§ 801.14 Rule 801(d)(2): Admission by Party-Opponent; an Overview.....	476
§ 801.15 Rule 801(d)(2)(A): Admissions; Statements of Party Made in Individual Capacity	478
§ 801.16 Rule 801(d)(2)(A): Admissions; Plea of Guilty; Crimes Punishable in Excess of One Year, Minor Crimes Including Traffic Offenses.....	478
§ 801.17 Rule 801(d)(2)(A): Admissions; Statements of Party Made in a Representative Capacity	480
§ 801.18 Rule 801(d)(2): Admissions; Persons in Privity or Jointly Interested.....	481
§ 801.19 Rule 801(d)(2)(B): Manifestation of Adoption or Belief in Truth of Statement; Words or Conduct	481
§ 801.20 Rule 801(d)(2)(B): Admissions; Manifestation of Adoption or Belief in Truth of Statement; Silence.....	482
§ 801.21 Rule 801(d)(2)(C): Admissions; Statements by Persons Authorized to Speak.....	484

§ 801.22 Rule 801(d)(2)(D): Admissions; Statements by Agent or Employee Concerning Matter Within Scope of His Agency or Employment; Attorneys.....	485
§ 801.23 Rules 801(d)(2): The Requirement of Personal Knowledge	486
§ 801.24 Rule 801(d)(2)(E): Admissions; Statements by Coconspirator	487
§ 801.25 Judicial and Evidentiary Admissions: Superseded and Alternative Pleadings; Testimony of a Party.....	493
Rule 802. The Rule Against Hearsay.....	494
§ 802.1 Rule 802: Hearsay Is Not Admissible Unless	495
§ 802.2 Rule 802: Hearsay Rule; Confrontation and Due Process.....	496
Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant is Available as a Witness.....	529
§ 803.0 Rule 803: Hearsay Exceptions; Availability of Declarant Immaterial.....	529
Rules 803(1) and (2). Present Sense Impression and Excited Utterance	532
§ 803.1 Rule 803(1): Present Sense Impression	532
§ 803.2 Rule 803(2): Excited Utterance; Abandonment of “Res Gestae”	534

Rule 803(3). Then Existing Mental, Emotional, or Physical Condition; Intent as Proof of Doing Act Intended; Statement as Proof of Fact Remembered or Believed; Will Cases	537
§ 803.3 Rule 803(3): Then-Existing Mental, Emotional, or Physical Condition; Intent as Proof of Doing Act Intended; Statement as Proof of Fact Remembered or Believed; Will Cases	537
Rule 803(4). Statement Made for Medical Diagnosis or Treatment	543
§ 803.4 Rule 803(4): Statement Made for Medical Diagnosis or Treatment.	543
Rule 803(5). Recorded Recollection	547
§ 803.5 Rule 803(5): Recorded Recollection....	548
Rule 803(6). Records of a Regularly Conducted Activity.....	549
§ 803.6 Rule 803(6): Records of a Regularly Conducted Activity; Business Records.....	550
Rule 803(7). Absence of a Record of a Regularly Conducted Activity	563
§ 803.7 Rule 803(7): Absence of a Record of a Regularly Conducted Activity.....	564
Rule 803(8). Public Records	565
§ 803.8 Rule 803(8): Public Records	566
Rule 803(9). Public Records of Vital Statistics....	573
§ 803.9 Rule 803(9): Public Records of Vital Statistics	573
Rule 803(10). Absence of a Public Record.....	575
§ 803.10 Rule 803(10): Absence of a Public Record	576

Rule 803(11). Records of Religious Organizations Concerning Personal or Family History.....	577
§ 803.11 Rule 803(11): Records of Religious Organizations Concerning Personal or Family History.....	577
Rule 803(12). Certificates of Marriage, Baptism, and Similar Ceremonies	579
§ 803.12 Rule 803(12): Certificates of Marriage, Baptism, and Similar Ceremonies.	579
Rule 803(13). Family Records.....	580
§ 803.13 Rule 803(13): Family Records	581
Rule 803(14). Records of Documents That Affect an Interest in Property	582
§ 803.14 Rule 803(14): Records of Documents That Affect an Interest in Property	583
Rule 803(15). Statements in Documents That Affect an Interest in Property	584
§ 803.15 Rule 803(15): Statements in Documents That Affect an Interest in Property	584
Rule 803(16). Statements in Ancient Documents	585
§ 803.16 Rule 803(16): Statements in Ancient Documents	585
Rule 803(17). Market Reports and Similar Commercial Publications	587
§ 803.17 Rule 803(17): Market Reports and Similar Commercial Publications.....	587

Rule 803(18). Statements in Learned Treatises, Periodicals, or Pamphlets	589
§ 803.18 Rule 803(18): Statements in Learned Treatises, Periodicals, or Pamphlets.....	589
Rule 803(19). Reputation Concerning Personal or Family History	591
§ 803.19 Rule 803(19): Reputation Concerning Personal or Family History.....	592
Rule 803(20). Reputation Concerning Boundaries or General History	594
§ 803.20 Rule 803(20): Reputation Concerning Boundaries or General History	594
Rule 803(21). Reputation Concerning Character	595
§ 803.21 Rule 803(21): Reputation as to Character	595
Rule 803(22). Judgment of a Previous Conviction	596
§ 803.22 Rule 803(22): Judgment of a Previous Conviction; Other Adjudications	596
Rule 803(23). Judgments Involving Personal, Family, or General History or a Boundary.....	598
§ 803.23 Rule 803(23): Judgment Involving Personal, Family or General History, or a Boundary.....	598
Rule 803(24). Other Exceptions	599
§ 803.24 Rule 803(24): Other Exceptions.....	599
Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness	600
§ 804.0 Rule 804: Hearsay Exceptions; Declarant Must Be Unavailable.....	600

Rule 804(a). Criteria for Being Unavailable.....	603
§ 804.00 Rule 804(a): Criteria for Being Unavailable.....	605
Rule 804(b)(1). Former Testimony	608
§ 804.1 Rule 804(b)(1): Former Testimony.....	608
Rule 804(b)(2). Statement Under the Belief of Imminent Death	615
§ 804.2 Rule 804(b)(2): Statement Under the Belief of Imminent Death	615
Rule 804(b)(3). Statement Against Interest	617
§ 804.3 Rule 804(b)(3): Statement Against Interest.....	618
Rule 804(b)(4). Statement of Personal or Family History	628
§ 804.4 Rule 804(b)(4): Statement of Personal or Family History.....	629
Rule 804(b)(5). Other Exceptions	630
§ 804.5 Rule 804(b)(5): Other Exceptions	631
Rule 804(b)(6). Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.....	631
§ 804.6 Rule 804(b)(6): Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability	632
Rule 805. Hearsay Within Hearsay	633
§ 805.1 Rule 805: Hearsay Within Hearsay	634
Rule 806. Attacking and Supporting the Declarant's Credibility	634
§ 806.1 Rule 806: Attacking and Supporting the Declarant's Credibility.....	635
Rule 807. Residual Exception.....	637
§ 807.1 Residual Exception	638

Article IX. Authentication and Identification	649
Rule 901(a) and (b). Authenticating or Identifying Evidence	649
§ 901.0 Rules 901(a) and (b): Authenticating or Identifying Evidence; General Provision	649
Rule 901(b)(1). Testimony of a Witness with Knowledge.....	652
§ 901.1 Rule 901(b)(1): Testimony of a Witness with Knowledge; Chain of Custody	652
Rule 901(b)(2). Nonexpert Opinion About Handwriting	654
§ 901.2 Rule 901(b)(2): Nonexpert Opinion About Handwriting	655
Rule 901(b)(3). Comparison by an Expert Witness or the Trier of Fact.....	656
§ 901.3 Rule 901(b)(3): Comparison by an Expert Witness or the Trier of Fact	657
Rule 901(b)(4). Distinctive Characteristics and the Like	659
§ 901.4 Rule 901(b)(4): Distinctive Characteristics and the Like	659
Rule 901(b)(5). Opinion About a Voice.....	660
§ 901.5 Rule 901(b)(5): Opinion About a Voice; Sound Recordings; Transcripts of Recordings.....	661
Rule 901(b)(6). Evidence About a Telephone Conversation.....	663
§ 901.6 Rule 901(b)(6): Telephone Conversations	664

Rule 901(b)(7). Evidence About Public Records.....	665
§ 901.7 Rule 901(b)(7): Public Records.....	665
Rule 901(b)(8). Evidence About Ancient Documents or Data Compilations	667
§ 901.8 Rule 901(b)(8): Ancient Documents or Data Compilations	668
Rule 901(b)(9). Evidence About a Process or System.....	669
§ 901.9 Rule 901(b)(9): Process or System; Computer Records, Faxed Documents, E-Mail, Text Messages, Web Sites, Social Media.....	669
Rule 901(b)(10). Methods Provided by a Statute or Rule.....	672
§ 901.10 Rule 901(b)(10): Methods Provided by a Statute or Rule	673
Rule 902. Evidence That Is Self-Authenticating.....	673
§ 902.0 Rule 902: Evidence That Is Self-Authenticating.....	673
Rule 902(1). Domestic Public Documents That Are Under Seal and Signed	675
§ 902.1 Rule 902(1): Domestic Public Documents Are Sealed and Signed; Attestation	676
Rule 902(2). Domestic Public Documents That Are Not Sealed but Are Signed and Certified	676
§ 902.2 Rule 902(2): Domestic Public Documents Not Sealed but Are Signed and Certified	677

Rule 902(3). Foreign Public Documents	678
§ 902.3 Rule 902(3): Foreign Public Documents	679
Rule 902(4). Certified Copies of Public Records.....	680
§ 902.4 Rule 902(4): Certified Copies of Public Records	680
Rule 902(5). Official Publications.....	682
§ 902.5 Rule 902(5): Official Publications	683
Rule 902(6). Newspapers and Periodicals	683
§ 902.6 Rule 902(6): Newspapers and Periodicals.....	684
Rule 902(7). Trade Inscriptions and the Like	684
§ 902.7 Rule 902(7): Trade Inscriptions and the Like	685
Rule 902(8). Acknowledged Documents.....	685
§ 902.8 Rule 902(8): Acknowledged Documents	685
Rule 902(9). Commercial Paper and Related Documents	686
§ 902.9 Rule 902(9): Commercial Paper and Related Documents	687
Rule 902(10). Presumptions Under Federal Statute	687
§ 902.10 Rule 902(10): Presumptions Under a Federal Statute.....	688
Rule 902(11). Certified Domestic Records of Regularly Conducted Activity.....	688
§ 902.11 Rule 902(11): Certified Domestic Records of Regularly Conducted Activity	689

Rule 902(12). Certified Foreign Records of a Regularly Conducted Activity.....	689
§ 902.12 Rule 902(12): Certified Foreign Records of a Regularly Conducted Activity.....	690
Rule 902(13). Certified Records Generated by an Electronic Process or System	693
§ 902.13 Rule 902(13): Certified Records Generated by an Electronic Process or System.....	693
Rule 902(14). Certified Data Copied from an Electronic Device, Storage Medium, or File	694
§ 902.14 Rule 902(14): Certified Data Copied from an Electronic Device, Storage Medium, or File	695
Rule 903. Subscribing Witness’s Testimony.....	697
§ 903.1 Rule 903: Subscribing Witness’s Testimony	697
Article X. Contents of Writings, Recordings, and Photographs.....	699
Rules 1001–1008. The Original Writing (Best Evidence) Rule.....	699
§ 1001.0 The Original Writing (Best Evidence) Rule.....	699
Rule 1001. Definitions That Apply to This Article.....	701
§ 1001.1 Rules 1001(a)–(d): Nature of an Original; an Overview.....	702
§ 1001.2 Rule 1001(d): Nature of an Original; Business and Public Records; Telegrams; Faxed Documents, E-Mails, Social Media Postings.....	704

§ 1001.3 Rule 1001(e): Duplicates	705
Rule 1002. Requirement of the Original.....	706
§ 1002.1 Rule 1002: Requirement of the Original: An Overview	706
§ 1002.2 Rule 1002: Requirement of the Original; Former Testimony; Depositions	708
§ 1002.3 Rule 1002: Document Speaks for Itself; Cross-Examination on Writing	710
§ 1002.4 Rules 1002 and 1001(c): Photographs.....	711
§ 1002.5 Rule 1002: Chattels Bearing Inscription.....	712
Rule 1003. Admissibility of Duplicates.....	713
§ 1003.1 Rule 1003: Admissibility of Duplicates	713
Rule 1004. Admissibility of Other Evidence of Content.....	714
§ 1004.1 Rule 1004: Admissibility of Other Evidence of Content; No Degrees of Secondary Evidence.....	715
§ 1004.2 Rule 1004(a): Original Lost or Destroyed	716
§ 1004.3 Rule 1004(b): Original in Possession of Third Person Not Obtainable	717
§ 1004.4 Rule 1004(c): Original in Possession of Opponent; Notice to Produce	717
§ 1004.5 Rule 1004(d): Collateral Matters	718
Rule 1005. Copies of Public Records to Prove Content.....	719
§ 1005.1 Rule 1005: Copies of Public Records to Prove Content.....	719

Rule 1006. Summaries to Prove Content.....	721
§ 1006.1 Rule 1006: Summaries to Prove Content.....	721
Rule 1007. Testimony or Statement of a Party to Prove Content	723
§ 1007.1 Rule 1007: Testimony or Statement of a Party to Prove Content	723
Rule 1008. Functions of the Court and Jury	724
§ 1008.1 Rule 1008: Functions of Court and Jury	724
INDEX.....	727