

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF EVIDENCE¹**

1 **Rule 801. Definitions That Apply to This Article;**
2 **Exclusions from Hearsay**

3 * * * * *

4 **(d) Statements That Are Not Hearsay.** A statement
5 that meets the following conditions is not hearsay:

6 * * * * *

7 **(2) *An Opposing Party's Statement.*** The
8 statement is offered against an opposing
9 party and:

10 **(A)** was made by the party in an
11 individual or representative capacity;

12 **(B)** is one the party manifested that it
13 adopted or believed to be true;

¹ New material is underlined in red; matter to be omitted is lined through.

14 **(C)** was made by a person whom the party
15 authorized to make a statement on the
16 subject;

17 **(D)** was made by the party's agent or
18 employee on a matter within the
19 scope of that relationship and while it
20 existed; or

21 **(E)** was made by the party's
22 coconspirator during and in
23 furtherance of the conspiracy.

24 The statement must be considered but does not by itself
25 establish the declarant's authority under (C); the existence or
26 scope of the relationship under (D); or the existence of the
27 conspiracy or participation in it under (E).

28 If a party's claim or potential liability is directly
29 derived from a declarant or the declarant's principal, a
30 statement that would be admissible against the declarant or

- 31 the principal under this rule is also admissible against the
32 party.

Committee Note

The rule has been amended to 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. For example, if an estate is bringing a claim for damages suffered by the decedent, any hearsay statement that would have been admitted against the decedent as a party-opponent under this rule is equally admissible against the estate. Other relationships that would support this attribution include assignor/assignee and debtor/trustee when the trustee is pursuing the debtor's claims. The rule is justified because if the party is standing in the shoes of the declarant or the principal, the party should not be placed in a better position as to the admissibility of hearsay than the declarant or the principal would have been. A party that derives its interest from a declarant or principal is ordinarily subject to all the substantive limitations applicable to them, so it follows that the party should be bound by the same evidence rules as well.

Reference to the declarant's principal is necessary because the statement may have been made by the agent of the person or entity whose rights or obligations have been succeeded to by the party against whom the statement is offered.

The rationale of attribution does not apply, and so the hearsay statement would not be admissible, if the declarant makes the statement after the rights or obligations have been transferred, by contract or operation of law, to the party against whom the statement is offered.