# FEDERAL RULES
# OF
# EVIDENCE

DECEMBER 1, 2016



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of
THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

# 联邦证据规则

2016年12月1日



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司法委员会
众议院

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114TH CONGRESS
*2nd Session*

COMMITTEE PRINT

No. 10

# FEDERAL RULES
# OF
# EVIDENCE

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第114届国会
第*2*届会议

委员会印刷版

!No.10

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# 的
# 证据

2016年12月1日

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的

司法委员会
众议院

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## FOREWORD

This document contains the Federal Rules of Evidence, as amended to December 1, 2016. The rules were enacted by Public Law 93–595 (approved January 2, 1975) and have been amended by Acts of Congress, and further amended by the United States Supreme Court. This document has been prepared by the Committee in response to the need for an official up-to-date document containing the latest amendments to the rules.

For the convenience of the user, where a rule has been amended a reference to the date the amendment was promulgated and the date the amendment became effective follows the text of the rule.

The Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Evidence, Judicial Conference of the United States, prepared notes explaining the purpose and intent of the amendments to the rules. The Committee Notes may be found in the Appendix to Title 28, United States Code, following the particular rule to which they relate.

Bob Goodlatte

*Chairman, Committee on the Judiciary.*

DECEMBER 1, 2016.



## FOREWORD

本文件包含截至2016年12月1日修正的联邦证据规则。这些规则由公法93-595(1975年1月2日批准)颁布,并已由国会法案修正,且进一步由美国最高法院修正。本文件由委员会编制,以满足对包含规则最新修正的官方最新文件的需求。

为方便用户,凡规则经修正的,规则文本之后附有该修正公布日期和该修正生效日期的引用。

美国司法会议实践与程序规则委员会及联邦证据规则咨询委员会编写了说明,解释规则修正的目的和意图。委员会说明可见于《美国法典》第28编附录中,紧随其相关的特定规则之后。

Bob Goodlatte

主席,委员会关于司法。

2016年12月1日。

## AUTHORITY FOR PROMULGATION OF RULES

### TITLE 28, UNITED STATES CODE

**§ 2072. Rules of procedure and evidence; power to prescribe**

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648, eff. Dec. 1, 1988; amended Pub. L. 101–650, title III, §§ 315, 321, Dec. 1, 1990, 104 Stat. 5115, 5117.)

**§ 2073. Rules of procedure and evidence; method of prescribing**

(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.



## 制定规则的授权

### 第28编,美国法典

**2072.程序与证据规则;制定权力**

(a) 最高法院有权为美国地区法院(包括其治安法官面前的程序)和上诉法院的案件制定一般实践与程序规则及证据规则。

(b) 此类规则不得削减、扩大或修改任何实体权利。与此类规则冲突的所有法律在此类规则生效后不再具有效力或作用。

(c) 此类规则可界定地区法院的裁决何时为本编第1291条下上诉目的的终局裁决。(公法100-702第IV编第401(a)条增补,1988年11月19日,102 Stat.4648,1988年12月1日生效;公法101-650第III编第315、321条修正,1990年12月1日,104 Stat.5115、5117。)

**2073.程序与证据规则;制定方法**

(a)(1) 司法会议应制定并公布本条下审议拟议规则的程序。

(2) 司法会议可授权任命委员会,通过推荐根据本编第2072条和第2075条制定的规则来协助会议。每个此类委员会应由法官席成员和职业律师界成员,以及初审和上诉法官组成。

(b) 司法会议应授权根据本条(a)款任命一个关于实践、程序和证据规则的常设委员会。该常设委员会应审查如此任命的其他委员会提出的每项建议,并向司法会议推荐实践、程序和证据规则,以及根据本条(a)(2)款任命的委员会所提议的规则变更,以保持一致性并促进司法公正。

(c)(1) 根据本节任命的任何委员会根据本章处理事务的每次会议均应向公众开放,除非该委员会在公开会议上且有过半数成员出席的情况下,认定将当日剩余会议的全部或部分对公众关闭符合公共利益,并说明关闭会议的理由。委员会应保存根据本章处理事务的每次会议记录并向公众提供,但此类记录中与闭门会议有关并向公众提供的任何部分,可包含为避免妨碍闭门会议目的所必需的删减。

(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

(d) In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.

(Added Pub. L. 100–702, title IV, §401(a), Nov. 19, 1988, 102 Stat. 4649, eff. Dec. 1, 1988; amended Pub. L. 103–394, title I, §104(e), Oct. 22, 1994, 108 Stat. 4110.)

**§2074. Rules of procedure and evidence; submission to Congress; effective date**

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

(Added Pub. L. 100–702, title IV, §401(a), Nov. 19, 1988, 102 Stat. 4649, eff. Dec. 1, 1988.)

**§2075. Bankruptcy rules**

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.

(Added Pub. L. 88–623, §1, Oct. 3, 1964, 78 Stat. 1001; amended Pub. L. 95–598, title II, §247, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 103–394, title I, §104(f), Oct. 22, 1994, 108 Stat. 4110; Pub. L. 109–8, title XII, §1232, Apr. 20, 2005, 119 Stat. 202.)



(2) 根据本条任命的委员会为处理本章下事务而举行的任何会议,应事先给予充分通知,使所有利害关系人能够出席。

(d) 在根据本条或第2072条或第2075条提出建议时,提出该建议的机构应提供拟议规则、关于该规则的解释性说明,以及解释该机构行动的书面报告,包括任何少数意见或其他单独意见。

(e) 未遵守本条不影响根据本编第2072条或第2075条制定的规则。

(公法100-702第IV编第401(a)条增补,1988年11月19日,102 Stat.4649,1988年12月1日生效;公法103-394第I编第104(e)条修正,1994年10月22日,108 Stat.4110。)

**2074.程序与证据规则;提交国会;生效日期**

(a) 最高法院应在根据第2072条规定的规则生效当年的5月1日之前,向国会转交拟议规则的副本。该规则不得早于其被转交当年的12月1日生效,除非法律另有规定。最高法院可确定该规则对当时待决程序适用的范围,但最高法院不得要求将该规则适用于当时待决的进一步程序,前提是待决该程序的法院认为在该程序中适用该规则不可行或将造成不公正,在此情况下适用原规则。

(b) 任何此类设立、废除或修改证据特权的规则,除非经国会法案批准,否则不具有效力或作用。

(公法100-702第IV编第401(a)条增补,1988年11月19日,102 Stat.4649,1988年12月1日生效。)2075. 破产规则

最高法院有权通过一般规则规定第11编案件中传票、令状、诉答文书和动议的形式以及实践和程序。此类规则不得缩减、扩大或修改任何实体权利。最高法院应在根据本节规定的规则生效当年的5月1日之前,向国会转交拟议规则的副本。该规则不得早于其被转交国会当年的12月1日生效,除非法律另有规定。根据本节颁布的破产规则应规定第11编第707(b)(2)(C)条所要求声明的格式,并可就该声明的内容提供一般规则。(Pub.L.88-623, 247, Nov.6, 1978, 92 Stat.2672;Pub.L.103-394, title I, 1232, Apr.20, 2005, 119 Stat.202修正。)

## HISTORICAL NOTE

The Supreme Court prescribes Federal Rules of Evidence pursuant to section 2072 of Title 28, United States Code, as enacted by Title IV ''Rules Enabling Act'' of Pub. L. 100–702 (approved November 19, 1988, 102 Stat. 4648), effective December 1, 1988, and section 2075 of Title 28. Pursuant to section 2074 of Title 28, the Supreme Court transmits to Congress (not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective) a copy of the proposed rule. The rule takes effect no earlier than December 1 of the year in which the rule is transmitted unless otherwise provided by law.

Pursuant to sections 3402, 3771, and 3772 of Title 18, United States Code, and sections 2072 and 2075 of Title 28, United States Code, as then in effect, the Supreme Court through the Chief Justice submitted Federal Rules of Evidence to Congress on February 5, 1973 (409 U.S. 1132; Cong. Rec., vol. 119, pt. 3, p. 3247, Exec. Comm. 359, H. Doc. 93–46). To allow additional time for Congress to review the proposed rules, Public Law 93–12 (approved March 30, 1973, 87 Stat. 9) provided that the proposed rules ''shall have no force or effect except to the extent, and with such amendments, as they may be expressly approved by Act of Congress''.

Public Law 93–595[1] (approved January 2, 1975, 88 Stat. 1926) enacted the Federal Rules of Evidence proposed by the Supreme Court, with amendments made by Congress, to be effective July 1, 1975.

Section 1 of Public Law 94–113 (approved October 16, 1975, 89 Stat. 576) added clause (C) to Rule 801(d)(1), effective October 31, 1975.

Section 1 of Public Law 94–149 (approved December 12, 1975, 89 Stat. 805) enacted technical amendments which affected the Table of Contents and Rules 410, 606(b), 803(23), 804(b)(3), and 1101(e).

Section 2 of Public Law 95–540 (approved October 28, 1978, 92 Stat. 2046) added Rule 412 and inserted item 412 in the Table of Contents. The amendments apply to trials that begin more than thirty days after October 28, 1978.

Section 251 of Public Law 95–598 (approved November 6, 1978, 92 Stat. 2673) amended Rule 1101(a) and (b) by striking out '', referees in bankruptcy,'' and by substituting ''title 11, United States

[1] LEGISLATIVE HISTORY:
HOUSE REPORTS: No. 93–650 (Comm. on the Judiciary) and No. 93–1597 (Comm. of Conference).
SENATE REPORT No. 93–1277 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 120 (1974):
Jan. 30, Feb. 6, considered and passed House.
Nov. 21, 22, considered and passed Senate, amended.
Dec. 16, Senate agreed to conference report.
Dec. 17, 18, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 1:
Jan. 3, 1975, Presidential statement.



## 历史注释

最高法院依据《美国法典》第28编第2072条(由Pub.L.100-702第IV编"规则授权法"颁布,1988年11月19日批准,102 Stat.4648)及第28编第2075条制定联邦证据规则,自1988年12月1日起生效。依据第28编第2074条,最高法院向国会转交(不迟于根据第2072条规定的规则生效当年的5月1日)拟议规则的副本。该规则不得早于其被转交当年的12月1日生效,除非法律另有规定。

依据当时有效的《美国法典》第18编第3402条、第3771条和第3772条以及第28编第2072条和第2075条,最高法院通过首席大法官于1973年2月5日向国会提交了《联邦证据规则》(409 U.S.1132; Cong.Rec., vol.119, pt.3, p.3247, Exec.Comm.359, H.Doc.93-46)。为让国会有更多时间审议拟议规则,Public Law 93-12(1973年3月30日批准,87 Stat.9)规定,拟议规则"不具有任何效力,除非且仅限于国会法案明确批准的范围并连同该等修正案"。

公法93-595 [1](1975年1月2日批准,88 Stat.1926)颁布了最高法院提出、经国会修正的联邦证据规则,于1975年7月1日生效。

公法94-113第1条(1975年10月16日批准,89 Stat.576)在规则801(d)(1)中增加了(C)项,1975年10月31日生效。

公法94-149第1条(1975年12月12日批准,89 Stat.805)颁布了技术性修正,影响目录及规则410、606(b)、803(23)、804(b)(3)和1101(e)。

公法95-540第2条(1978年10月28日批准,92 Stat.2046)增加了规则412,并在目录中插入第412项。该修正适用于1978年10月28日之后三十日以上开始的审判。

公法95-598第251条(1978年11月6日批准,92 Stat.2673)修正了规则1101(a)和(b),删去"、破产裁判官、"并代之以"第11编,美国

1 立法沿革:
众议院报告:第93-650号(司法委员会)和第93-1597号(会议委员会)。
参议院报告第93-1277号(司法委员会)。国会记录,第120卷(1974年):
1月30日、2月6日,众议院审议并通过。
11月21日、22日,参议院审议并通过修正案。12月16日,参议院同意会议报告。12月17日、18日,众议院同意会议报告。
总统文件每周汇编,第11卷,第1号:
1975年1月3日,总统声明。

Code'' for ''the Bankruptcy Act'', effective October 1, 1979, pursuant to section 402(c) of Public Law 95–598.

Section 252 of Public Law 95–598 would have amended Rule 1101(a) by inserting ''the United States Bankruptcy Courts,'' immediately after ''the United States district courts,'', effective April 1, 1984, pursuant to section 402(b) of Public Law 95–598. However, following a series of amendments (extending the April 1, 1984, effective date) by Public Laws 98–249, §1(a), 98–271, §1(a), 98–299, §1(a), 98–325, §1(a), and 98–353, §121(a), section 402(b) of Public Law 95–598 was amended by section 113 of Public Law 98–353 to provide that the amendment ''shall not be effective''.

An amendment to Rule 410 was proposed by the Supreme Court by order dated April 30, 1979, transmitted to Congress by the Chief Justice on the same day (441 U.S. 970, 1007; Cong. Rec., vol. 125, pt. 8, p. 9366, Exec. Comm. 1456; H. Doc. 96–112), and was to be effective August 1, 1979. Public Law 96–42 (approved July 31, 1979, 93 Stat. 326) delayed the effective date of the amendment to Rule 410 until December 1, 1980, or until and to the extent approved by Act of Congress, whichever is earlier. In the absence of further action by Congress, the amendment to Rule 410 became effective December 1, 1980.

Sections 142 and 402 of Public Law 97–164 (approved April 2, 1982, 96 Stat. 45, 57) amended Rule 1101(a), effective October 1, 1982.

Section 406 of Public Law 98–473 (approved October 12, 1984, 98 Stat. 2067) amended Rule 704.

Additional amendments were adopted by the Court by order dated March 2, 1987, transmitted to Congress by the Chief Justice on the same day (480 U.S. 1023; Cong. Rec., vol. 133, pt. 4, p. 4484, Exec. Comm. 713; H. Doc. 100–41), and became effective October 1, 1987. The amendments affected Rules 101, 104(c), (d), 106, 404(a)(1), (b), 405(b), 411, 602 to 604, 606, 607, 608(b), 609(a), 610, 611(c), 612, 613, 615, 701, 703, 705, 706(a), 801(a), (d), 803(5), (18), (19), (21), (24), 804(a), (b)(2), (3), (5), 806, 902(2), (3), 1004(3), 1007, and 1101(a).

Additional amendments were adopted by the Court by order dated April 25, 1988, transmitted to Congress by the Chief Justice on the same day (485 U.S. 1049; Cong. Rec., vol. 134, pt. 7, p. 9154, Exec. Comm. 3517; H. Doc. 100–187), and became effective November 1, 1988. The amendments affected Rules 101, 602, 608(b), 613(b), 615, 902(3), and 1101(a), (e).

Sections 7046 and 7075 of Public Law 100–690 (approved November 18, 1988, 102 Stat. 4400, 4405) amended the Tables of Contents and Rules 412, 615, 804(a)(5), and 1101(a). Section 7075(a) of Public Law 100–690, which directed the amendment of Rule 615 by inserting ''a'' before ''party which is not a natural person.'', could not be executed because ''party which is not a natural person.'' did not appear. However, the word ''a'' was inserted by the intervening amendment adopted by the Court by order dated April 25, 1988, effective November 1, 1988. Section 7075(c)(1) of Public Law 100–690, which directed the amendment of Rule 1101(a) by striking ''Rules'' and inserting ''rules'', could not be executed because of the intervening amendment adopted by the Court by order dated April 25, 1988, effective November 1, 1988.

An additional amendment was adopted by the Court by order dated January 26, 1990, transmitted to Congress by the Chief Justice on the same day (493 U.S. 1175; Cong. Rec., vol. 136, pt. 1, p.



将“《破产法》”改为“《法典》”,依据 Public Law 95-598 第 402(c) 条,自 1979 年 10 月 1 日起生效。

Public Law 95-598第252条本应修订规则1101(a),在"the United States district courts,"之后立即插入"the United States Bankruptcy Courts,",依据Public Law 95-598第402(b)条自1984年4月1日起生效。然而,在Public Laws 98-249第1(a)条、98-271第1(a)条、98-299第1(a)条、98-325第1(a)条和98-353第121(a)条作出的一系列修正案(延长1984年4月1日的生效日期)之后,Public Law 95-598第402(b)条经Public Law 98-353第113条修正,规定该修正案"不生效"。

最高法院于1979年4月30日以命令提出对规则410的修正案,首席大法官于同日转交国会(441 U.S.970, 1007; Cong.Rec., vol.125, pt.8, p.9366, Exec.Comm.1456; H.Doc.96-112),原定于1979年8月1日生效。Public Law 96-42(1979年7月31日批准,93 Stat.326)将规则410修正案的生效日期推迟至1980年12月1日,或推迟至国会法案批准之日并在其批准范围内生效,以较早者为准。在国会未采取进一步行动的情况下,规则410的修正案于1980年12月1日生效。

Public Law 97-164(1982 年 4 月 2 日批准,96 Stat.45, 57)第 142 条和第 402 条修订了规则 1101(a),自 1982 年 10 月 1 日起生效。

Public Law 98-473(1984 年 10 月 12 日批准,98 Stat.2067)第 406 条修订了规则 704。

法院于1987年3月2日以命令通过了附加修正案,首席大法官于同日转交国会(480 U.S.1023; Cong.Rec., vol.133, pt.4, p.4484, Exec.Comm.713; H.Doc.100-41),并于1987年10月1日生效。该等修正案涉及规则101、104(c)、(d)、106、404(a)(1)、(b)、405(b)、411、602至604、606、607、608(b)、609(a)、610、611(c)、612、613、615、701、703、705、706(a)、801(a)、(d)、803(5)、(18)、(19)、(21)、(24)、804(a)、(b)(2)、(3)、(5)、806、902(2)、(3)、1004(3)、1007和1101(a)。

法院于 1988 年 4 月 25 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(485 U.S.1049; Cong.Rec., vol.134, pt.7, p.9154, Exec.Comm.3517; H.Doc.100-187),并于 1988 年 11 月 1 日生效。该修正案影响了规则 101、602、608(b)、613(b)、615、902(3) 和 1101(a)、(e)。

Public Law 100-690第7046条和第7075条(1988年11月18日批准,102 Stat.4400, 4405)修订了目录以及规则412、615、804(a)(5)和1101(a)。Public Law 100-690第7075(a)条指示修订规则615,在"party which is not a natural person."之前插入"a",但因"party which is not a natural person."未出现而无法执行。然而,"a"一词已由法院于1988年4月25日以命令通过、1988年11月1日生效的介入修正案插入。Public Law 100-690第7075(c)(1)条指示修订规则1101(a),删除"Rules"并插入"rules",但因法院于1988年4月25日以命令通过、1988年11月1日生效的介入修正案而无法执行。

法院于 1990 年 1 月 26 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(493 U.S.1175; Cong.Rec., vol.136, pt.1, p.

662, Exec. Comm. 2370; H. Doc. 101–142), and became effective December 1, 1990. The amendment affected Rule 609(a).

Additional amendments were adopted by the Court by order dated April 30, 1991, transmitted to Congress by the Chief Justice on the same day (500 U.S. 1001; Cong. Rec., vol. 137, pt. 7, p. 9721, Ex. Comm. 1189; H. Doc. 102–76), and became effective December 1, 1991. The amendments affected Rules 404(b) and 1102.

Additional amendments were adopted by the Court by order dated April 22, 1993, transmitted to Congress by the Chief Justice on the same day (507 U.S. 1187; Cong. Rec., vol. 139, pt. 6, p. 8127, Ex. Comm. 1104; H. Doc. 103–76), and became effective December 1, 1993. The amendments affected Rules 101, 705, and 1101(a), (e).

An additional amendment was adopted by the Court by order dated April 29, 1994, and transmitted to Congress by the Chief Justice on the same day (511 U.S. 1187; Cong. Rec., vol. 140, pt. 7, p. 8903, Ex. Comm. 3085; H. Doc. 103–250). The amendment affected Rule 412 and was to become effective December 1, 1994. Section 40141(a) of Public Law 103–322 (approved September 13, 1994, 108 Stat. 1918) provided that such amendment would take effect on December 1, 1994, but with the general amendment of Rule 412 made by section 40141(b) of Public Law 103–322.

Section 320935(a) of Public Law 103–322 (approved September 13, 1994, 108 Stat. 2135) amended the Federal Rules of Evidence by adding Rules 413 to 415, with provisions in section 320935(b)–(e) of Public Law 103–322 relating to the effective date and application of such rules. Pursuant to Pub. L. 103–322, § 320935(c), the Judicial Conference transmitted a report to Congress on February 9, 1995, containing recommendations different from the amendments made by Pub. L. 103–322, § 320935(a). Congress did not adopt the recommendations submitted or provide otherwise by law. Accordingly, Rules 413 to 415, as so added, became effective on July 9, 1995.

Additional amendments were adopted by the Court by order dated April 11, 1997, transmitted to Congress by the Chief Justice on the same day (520 U.S. 1323; Cong. Rec., vol. 143, pt. 4, p. 5550, Ex. Comm. 2798; H. Doc. 105–69), and became effective December 1, 1997. The amendments affected Rules 407, 801, 803, 804, and 806 and added Rule 807.

Additional amendments were adopted by the Court by order dated April 24, 1998, transmitted to Congress by the Chief Justice on the same day (523 U.S. 1235; Cong. Rec., vol. 144, pt. 6, p. 8151, Ex. Comm. 8996 to Ex. Comm. 8998; H. Doc. 105–268), and became effective December 1, 1998. The amendments affected Rule 615.

Additional amendments were adopted by the Court by order dated April 17, 2000, transmitted to Congress by the Chief Justice on the same day (529 U.S. 1189; Cong. Rec., vol. 146, pt. 5, p. 6328, Ex. Comm. 7333; H. Doc. 106–225), and became effective December 1, 2000. The amendments affected Rules 103, 404, 701, 702, 703, 803, and 902.

An additional amendment was adopted by the Court by order dated March 27, 2003, transmitted to Congress by the Chief Justice on the same day (538 U.S. 1097; Cong. Rec., vol. 149, pt. 6, p. 7689, Ex. Comm. 1494; H. Doc. 108–57), and became effective December 1, 2003. The amendment affected Rule 608.



662, Exec.Comm.2370; H.Doc.101-142),并于 1990 年 12 月 1 日生效。该修正案影响了规则 609(a)。

法院于 1991 年 4 月 30 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(500 U.S.1001; Cong.Rec., vol.137, pt.7, p.9721, Ex.Comm.1189; H.Doc.102-76),并于 1991 年 12 月 1 日生效。该修正案影响了规则 404(b) 和 1102。

法院于 1993 年 4 月 22 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(507 U.S.1187; Cong.Rec., vol.139, pt.6, p.8127, Ex.Comm.1104; H.Doc.103-76),并于 1993 年 12 月 1 日生效。该修正案影响了规则 101、705 和 1101(a)、(e)。

法院于1994年4月29日以命令方式通过了另一项修正案,并于同日由首席大法官转交国会(511 U.S.1187; Cong.Rec., vol.140, pt.7, p.8903, Ex.Comm.3085; H.Doc.103-250)。该修正案涉及规则 412,原定于1994年12月1日生效。Public Law 103-322(1994年9月13日批准,108 Stat.1918)第40141(a)条规定,该修正案于1994年12月1日生效,但须与Public Law 103-322第40141(b)条对规则 412 所作的一般性修正一并生效。

Public Law 103-322(1994年9月13日批准,108 Stat.2135)第320935(a)条通过增加规则 413 至 415 修正了联邦证据规则,Public Law 103-322第320935(b)至(e)条载有关于此类规则生效日期与适用的规定。依据Pub.L.103-322, 320935(a)所作修正不同。国会未采纳所提交的建议,亦未以法律另行规定。因此,如此增加的规则 413 至 415 于1995年7月9日生效。

法院于 1997 年 4 月 11 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(520 U.S.1323; Cong.Rec., vol.143, pt.4, p.5550, Ex.Comm.2798; H.Doc.105-69),并于 1997 年 12 月 1 日生效。该修正案影响了规则 407、801、803、804 和 806,并增加了规则 807。

法院于 1998 年 4 月 24 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(523 U.S.1235; Cong.Rec., vol.144, pt.6, p.8151, Ex.Comm.8996 to Ex.8998; H.Doc.105-268),并于 1998 年 12 月 1 日生效。该修正案影响了规则 615。

法院于 2000 年 4 月 17 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(529 U.S.1189; Cong.Rec., vol.146, pt.5, p.6328, Ex.Comm.7333; H.Doc.106-225),并于 2000 年 12 月 1 日生效。该修正案影响了规则 103、404、701、702、703、803 和 902。

法院于 2003 年 3 月 27 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(538 U.S.1097; Cong.Rec., vol.149, pt.6, p.7689, Ex.Comm.1494; H.Doc.108-57),并于 2003 年 12 月 1 日生效。该修正案影响了规则 608。

Additional amendments were adopted by the Court by order dated April 12, 2006, transmitted to Congress by the Chief Justice on the same day (547 U.S. 1281; Cong. Rec., vol. 152, pt. 6, p. 7213, Ex. Comm. 7320; H. Doc. 109–108), and became effective December 1, 2006. The amendments affected Rules 404, 408, 606, and 609.

Section 1 of Public Law 110–322 (approved September 19, 2008, 122 Stat. 3537) added Rule 502 and inserted item 502 in the Table of Contents. The amendments apply in all proceedings commenced after September 19, 2008, and, insofar as is just and practicable, in all proceedings pending on that date.

An additional amendment was adopted by the Court by order dated April 28, 2010, transmitted to Congress by the Chief Justice on the same day (559 U.S. 1157; Cong. Rec., vol. 156, pt. 6, p. 8139, Ex. Comm. 7475; H. Doc. 111–113), and became effective December 1, 2010. The amendment affected Rule 804.

Additional amendments were adopted by the Court by order dated April 26, 2011, transmitted to Congress by the Chief Justice on the same day (563 U.S. 1075; Cong. Rec., vol. 157, pt. 6, p. 7770, Ex. Comm. 1662; H. Doc. 112–28), and became effective December 1, 2011. The amendments affected Rules 101 to 1103.

An additional amendment was adopted by the Court by order dated April 13, 2013, transmitted to Congress by the Chief Justice on April 16, 2013 (569 U.S.——; Cong. Rec., vol. 159, p. H2652, Daily Issue, Ex. Comm. 1492; H. Doc. 113–26), and became effective December 1, 2013. The amendment affected Rule 803.

Additional amendments were adopted by the Court by order dated April 25, 2014, transmitted to Congress by the Chief Justice on the same day (572 U.S.——; Cong. Rec., vol. 160, p. H7933, Daily Issue, Ex. Comm. 7580; H. Doc. 113–164), and became effective December 1, 2014. The amendments affected Rules 801 and 803.

**Committee Notes**

Committee Notes prepared by the Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Evidence, Judicial Conference of the United States, explaining the purpose and intent of the amendments are set out in the Appendix to Title 28, United States Code, following the particular rule to which they relate. In addition, the notes are set out in the House documents listed above.



法院于 2006 年 4 月 12 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(547 U.S.1281; Cong.Rec., vol.152, pt.6, p.7213, Ex.Comm.7320; H.Doc.109-108),并于 2006 年 12 月 1 日生效。该修正案影响了规则 404、408、606 和 609。

Public Law 110-322(2008 年 9 月 19 日批准,122 Stat.3537)第 1 条增加了规则 502,并在目录中插入了第 502 项。该修正案适用于 2008 年 9 月 19 日之后开始的所有程序,并在公正和可行的范围内,适用于该日待决的所有程序。

法院于 2010 年 4 月 28 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(559 U.S.1157; Cong.Rec., vol.156, pt.6, p.8139, Ex.Comm.7475; H.Doc.111-113),并于 2010 年 12 月 1 日生效。该修正案影响了规则 804。

法院于 2011 年 4 月 26 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(563 U.S.1075; Cong.Rec., vol.157, pt.6, p.7770, Ex.Comm.1662; H.Doc.112-28),并于 2011 年 12 月 1 日生效。该修正案影响了规则 101 至 1103。

法院于 2013 年 4 月 13 日以命令方式通过了附加修正案,首席大法官于 2013 年 4 月 16 日将其转交国会(569 U.S.--; Cong.Rec., vol.159, p.H2652, Daily Issue, Ex.Comm.1492; H.Doc.113-26),并于 2013 年 12 月 1 日生效。该修正案影响了规则 803。

法院于 2014 年 4 月 25 日以命令方式通过了附加修正案,首席大法官于同日将其转交国会(572 U.S.--; Cong.Rec., vol.160, p.H7933, Daily Issue, Ex.Comm.7580; H.Doc.113-164),并于 2014 年 12 月 1 日生效。该修正案影响了规则 801 和 803。

**委员会注释**

由美国司法会议实践与程序规则委员会及联邦证据规则咨询委员会编写的委员会注释,解释了修正案的目的和意图,载于《美国法典》第 28 编附录中,紧随其相关特定规则之后。此外,这些注释也载于上述众议院文件中。

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# FEDERAL RULES OF EVIDENCE

**Effective July 1, 1975, as amended to December 1, 2016**

## ARTICLE I. GENERAL PROVISIONS

### Rule 101. Scope; Definitions

(a) SCOPE. These rules apply to proceedings in United States courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.

(b) DEFINITIONS. In these rules:

(1) ''civil case'' means a civil action or proceeding;

(2) ''criminal case'' includes a criminal proceeding;

(3) ''public office'' includes a public agency;

(4) ''record'' includes a memorandum, report, or data compilation;

(5) a ''rule prescribed by the Supreme Court'' means a rule adopted by the Supreme Court under statutory authority; and

(6) a reference to any kind of written material or any other medium includes electronically stored information.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 102. Purpose

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 103. Rulings on Evidence

(a) PRESERVING A CLAIM OF ERROR. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) NOT NEEDING TO RENEW AN OBJECTION OR OFFER OF PROOF. Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) COURT'S STATEMENT ABOUT THE RULING; DIRECTING AN OFFER OF PROOF. The court may make any statement about the character or form of the evidence, the objection made, and the ruling.



# 联邦证据规则

**1975年7月1日生效,经修订至2016年12月1日**

## 第一条一般规定

### 规则 101.适用范围;定义

(a) 适用范围。本规则适用于美国法院的诉讼程序。本规则适用的具体法院和程序以及例外情形,规定于规则 1101。

(b定义。在本规则中:(1) “民事案件”指民事诉讼或程序;(2) “刑事案件”包括刑事程序;(3) “公职”包括公共机构;(4) “记录”包括备忘录、报告或数据汇编;

(5) “最高法院规定的规则”指最高法院依据法定授权通过的规则;以及

(6) 对任何类型的书面材料或任何其他介质的引用包括电子存储信息。

(经 1987 年 3 月 2 日修订,1987 年 10 月 1 日生效;1988 年 4 月 25 日修订,1988 年 11 月 1 日生效;1993 年 4 月 22 日修订,1993 年 12 月 1 日生效;2011 年 4 月 26 日修订,2011 年 12 月 1 日生效。)

### 规则 102.目的

本规则应当被解释为公平地管理每一项程序、消除不合理的费用和拖延,并促进证据法的发展,以达到查明真相和确保公正裁决的目的。(经 2011 年 4 月 26 日修订,2011 年 12 月 1 日生效。)

### 规则 103. 关于证据的裁定

(a) 保留错误主张。当事人只有在错误影响其实质性权利且符合下列情形时,才可以对采纳或排除证据的裁定主张错误:

(1) 若裁定采纳证据,一方当事人可在记录上:

(A) 及时的对象或提出罢工动议;以及

( B) 说明具体理由,除非从上下文已显而易见;或

(2) 如果裁定排除证据,当事人通过提出证明使法院知悉其内容,除非该内容从上下文显而易见。

(b) 无需重新提出异议或提供证据。

一旦法院在记录上作出确定性裁定--无论是在审判前还是在审判时--当事人无需重新提出异议或证明以保留上诉的错误主张。

(c) 法院关于裁定的声明;指示提出要约

关于证明。法院可以就证据的性质或形式、提出的异议以及裁定作出任何陈述。

The court may direct that an offer of proof be made in question-and-answer form.

(d) PREVENTING THE JURY FROM HEARING INADMISSIBLE EVIDENCE. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) TAKING NOTICE OF PLAIN ERROR. A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

(As amended Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 104. Preliminary Questions**

(a) IN GENERAL. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

(b) RELEVANCE THAT DEPENDS ON A FACT. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) CONDUCTING A HEARING SO THAT THE JURY CANNOT HEAR IT. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves the admissibility of a confession;

(2) a defendant in a criminal case is a witness and so requests; or

(3) justice so requires.

(d) CROSS-EXAMINING A DEFENDANT IN A CRIMINAL CASE. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) EVIDENCE RELEVANT TO WEIGHT AND CREDIBILITY. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes**

If the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 106. Remainder of or Related Writings or Recorded Statements**

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.



法院可以指示以问答形式提出证明。

(d) 防止陪审团听取不可采证据。

在切实可行的范围内,法院必须进行陪审团审判,使不可采纳的证据不以任何方式向陪审团暗示。

(e) 注意明显错误。法院可以注意影响实质性权利的明显错误,即使该错误主张未被适当保留。

(经 2000 年 4 月 17 日修订,2000 年 12 月 1 日生效;2011 年 4 月 26 日修订,2011 年 12 月 1 日生效。)

**规则 104.初步问题**

(a) 一般规定。法院必须裁决关于证人是否合格、特权是否存在或证据是否可采纳的任何初步问题。在作出该裁决时,法院不受证据规则的约束,但关于特权的规则除外。

(b) 取决于事实的相关性。当证据的相关性取决于某一事实是否存在时,必须提出足以支持认定该事实确实存在的证明。法院可以以稍后提出证明为条件采纳拟议的证据。

(c) 举行听证会,使陪审团无法听见。

在下列情形下,法院必须进行关于初步问题的任何听证,使陪审团无法听到:

(1) 听证涉及供述的可采性;

(2) 刑事案件中的被告人是证人,因此请求;或

(3) 正义如此要求。

(d) 在刑事案件中对被告进行交叉询问。通过作证--

在初步问题上作证时,刑事案件中的被告不因此在该案件的其他问题上接受交叉询问。 与权重和可信度相关的证据。本规则

(e) 与权重和可信度相关的证据。本规则

不限制当事人向陪审团提出与其他证据的证明力或可信性相关的证据的权利。(经 1987 年 3 月 2 日修订,1987 年 10 月 1 日生效;2011 年 4 月 26 日修订,2011 年 12 月 1 日生效。) 规则 105。限制不可对其他

**当事人或为其他目的**

如果法院采纳对一方当事人可采纳或为某一目的可采纳--但不可对另一方当事人或为另一目的可采纳--的证据,法院在及时请求时,必须将该证据限制在其适当范围内并相应指示陪审团。(经 2011 年 4 月 26 日修订,2011 年 12 月 1 日生效。)

**ments**

如果一方当事人提出书面材料或记录陈述的全部或部分,对方当事人可以要求在当时提出为公平起见应当同时考虑的任何其他部分--或任何其他书面材料或记录陈述。

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

## ARTICLE II. JUDICIAL NOTICE

### Rule 201. Judicial Notice of Adjudicative Facts

(a) SCOPE. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) KINDS OF FACTS THAT MAY BE JUDICIALLY NOTICED. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) TAKING NOTICE. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) TIMING. The court may take judicial notice at any stage of the proceeding.

(e) OPPORTUNITY TO BE HEARD. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) INSTRUCTING THE JURY. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

## ARTICLE III. PRESUMPTIONS IN CIVIL CASES

### Rule 301. Presumptions in Civil Cases Generally

In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 302. Applying State Law to Presumptions in Civil Cases

In a civil case, state law governs the effect of a presumption regarding a claim or defense for which state law supplies the rule of decision.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

## ARTICLE IV. RELEVANCE AND ITS LIMITS

### Rule 401. Test for Relevant Evidence

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and



(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

第二条司法认知

**规则 201。对裁决性事实的司法认知**

(a) 适用范围。本规则仅管辖对裁决性事实的司法认知,而非立法性事实。

(b) 可进行司法认知的事实种类。法院可以司法认知不受合理争议的事实,因为其:

(1)在审判法院的属地管辖范围内通常已知;或

(2) 可以从其准确性不能被合理质疑的来源准确且容易地确定。

(c)作出认知。法院:(1) 可以自行作出司法认知;或(2) 如果当事人请求且法院获得必要信息,必须作出司法认知。

(d) 时机。法院可在诉讼的任何阶段采取司法认知。

(e) 获得听证的机会。在及时请求时,当事人有权就作出司法认知的适当性和拟认知事实的性质获得听证。如果法院在通知当事人之前作出司法认知,当事人经请求仍有权获得听证。

指示陪审团。在民事案件中,法院必须指示陪审团将认知的事实作为结论性事实接受。在刑事案件中,法院必须指示陪审团可以或可以不将认知的事实作为结论性事实接受。(经 2011 年 4 月 26 日修订,2011 年 12 月 1 日生效。) 第三条。民事案件中的推定

(f)

**规则 301。民事案件中的推定一般规定**

在民事案件中,除联邦法规或本规则另有规定外,受推定不利的一方负有提出证据以反驳该推定的责任。但本规则不转移说服责任,该责任仍由原本负有该责任的一方承担。

(2011年4月26日修订,2011年12月1日生效。)

**规则 302。在民事案件中将州法适用于推定**

在民事案件中,对于由州法律提供裁判规则的请求或抗辩,关于推定效力的认定由州法律管辖。

(2011年4月26日修订,2011年12月1日生效。)

第四条相关性及其限制

**规则 401.相关证据的检验**

证据符合下列条件时具有相关性:

(a) 该证据具有使某一事实比没有该证据时更可能或更不可能的任何倾向;以及

(b) the fact is of consequence in determining the action.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 402. General Admissibility of Relevant Evidence**

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Irrelevant evidence is not admissible.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons**

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 404. Character Evidence; Crimes or Other Acts**

(a) CHARACTER EVIDENCE.

(1) *Prohibited Uses*. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) *Exceptions for a Defendant or Victim in a Criminal Case*. The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

(i) offer evidence to rebut it; and

(ii) offer evidence of the defendant's same trait; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) *Exceptions for a Witness*. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) CRIMES, WRONGS, OR OTHER ACTS.

(1) *Prohibited Uses*. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses; Notice in a Criminal Case*. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:



(b) 该事实对决定诉讼具有实质影响。

(2011年4月26日修订,2011年12月1日生效。)

**规则 402.相关的证据的一般可采性**

相关的证据可采纳,除非下列任何规定另有规定:

- 美国宪法;
- 一部联邦法规;
- 本规则;或
- 最高法院规定的其他规则。不相关的证据不可采纳。(2011年4月26日修正,2011年12月1日生效。)

**规则 403.因不公平偏见、混淆而排除相关的证据**

**浪费时间,或其他原因**

如果相关的证据的证明价值被下列一项或多项危险实质性地超过,法院可以排除该证据:不公平偏见、混淆争点、误导陪审团、不当拖延、浪费时间或不必需要地提出累积证据。

(2011年4月26日修订,2011年12月1日生效。)

**规则 404.品格证据;犯罪或其他行为**

(a) 品格证据。

(1) 禁止的用途。一个人的品格或品格特征的证据不可采纳用以证明该人在特定场合按照该品格或特征行事。

(2) 刑事案件中被告或被害人的例外。以下例外适用于刑事案件:

(A) 被告可以提供关于被告相关特征的证据,如果该证据被采纳,检察官可以提供证据予以反驳;

受规则 412 的限制,被告可以提供关于所称被害人相关特征的证据,如果该证据被采纳,检察官可以:

(B) 提供证据予以反驳;以及(ii) 提供关于被告同一特征的证据;以及

(i)

(C) 在杀人案件中,检察官可以提供关于所称被害人平和特征的证据,以反驳被害人系首先攻击者的证据。

(b)(3) 证人的例外。证人的品格证据可依据规则 607、608 和 609 予以采纳。

犯罪、错误或其他行为。

(1) 禁止的用途。犯罪、过错或其他行为的证据不可采纳用以证明一个人的品格,以表明该人在特定场合按照该品格行事。

(2) 允许的用途;刑事案件中的通知。该证据可以因另一目的而被采纳,例如证明动机、机会、意图、准备、计划、知识、身份、无错误或无意外。经刑事案件被告请求,检察官必须:

(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial—or during trial if the court, for good cause, excuses lack of pretrial notice.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 405. Methods of Proving Character**

(a) BY REPUTATION OR OPINION. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) BY SPECIFIC INSTANCES OF CONDUCT. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 406. Habit; Routine Practice**

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 407. Subsequent Remedial Measures**

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures.

(As amended Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 408. Compromise Offers and Negotiations**

(a) PROHIBITED USES. Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and



(A) 就检察官打算在审判中提供的任何此类证据的一般性质提供合理的通知;以及

(B) 在审判前这样做--或者如果在审判期间,法院基于正当理由免除审判前通知的。

(1987年3月2日修正,1987年10月1日生效;1991年4月30日修正,1991年12月1日生效;2000年4月17日修正,2000年12月1日生效;2006年4月12日修正,2006年12月1日生效;2011年4月26日修正,2011年12月1日生效。)

**规则 405.证明品格的方法**

(a) 通过名声或意见。当一个人的品格或品格特征的证据可采纳时,可以通过关于该人名声的证言或以意见形式的证言予以证明。在对品格证人进行交叉询问时,法院可以允许询问该人行为的相关具体实例。

(b) 通过行为的具体实例。当一个人的品格或品格特征是指控、请求或抗辩的基本要素时,该品格或特征也可以通过对该人行为的相关具体实例予以证明。

(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

**规则 406。习惯;例行做法惯例**

一个人的习惯或组织的常规做法的证据可以被采纳,用以证明该人或组织在特定场合按照该习惯或常规做法行事。无论该证据是否得到佐证或是否有目击证人,法院均可采纳该证据。(2011年4月26日修正,2011年12月1日生效。)

**规则 407。事后补救措施**

当采取了本会使先前的伤害或损害更不可能发生的措施时,后续措施的证据不可采纳用以证明:

- 疏忽;
- 可归责行为;
- 产品或其设计中的缺陷;或
- 需要警告或说明。

但法院可以因另一目的而采纳该证据,例如弹劾,或者--如果有争议--证明所有权、控制权或预防措施的可行性。

(1997年4月11日修正,1997年12月1日生效;2011年4月26日修正,2011年12月1日生效。)

**规则 408.和解提议与谈判**

禁止的用途。下列证据不可采纳--代表任何一方--用以证明或反驳有争议请求的有效性或金额,或通过先前的矛盾陈述或矛盾予以弹劾:

(a)

(1) 在和解或试图和解该请求中提供、承诺或提议--或接受、承诺接受或提议接受--有价对价;以及

(2) conduct or a statement made during compromise negotiations about the claim—except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) EXCEPTIONS. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(As amended Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 409. Offers to Pay Medical and Similar Expenses

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 410. Pleas, Plea Discussions, and Related Statements

(a) PROHIBITED USES. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

(1) a guilty plea that was later withdrawn;

(2) a nolo contendere plea;

(3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or

(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) EXCEPTIONS. The court may admit a statement described in Rule 410(a)(3) or (4):

(1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

(As amended Pub. L. 94–149, §1(9), Dec. 12, 1975, 89 Stat. 805; Apr. 30, 1979, eff. Dec. 1, 1980; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)



(2) 在关于该请求的和解谈判期间作出的行为或陈述--除非在刑事案件中提供,且该谈判涉及公共机关行使其监管、调查或执法权限的请求。

(b) 例外。法院可以因另一目的而采纳该证据,例如证明证人的偏见或成见、否定不当拖延的主张,或证明妨碍刑事调查或起诉的努力。

(2006年4月12日修正,2006年12月1日生效;2011年4月26日修正,2011年12月1日生效。)

**规则 409.支付医疗及类似费用的提议**

提供、承诺支付或提议支付因伤害而产生的医疗、医院或类似费用的证据,不可采纳用于证明对该伤害的责任。(2011年4月26日修订,2011年12月1日生效。)

**规则 410。答辩、答辩讨论及相关陈述**

(a) 禁止用途。在民事或刑事案件中,以下证据不可采纳用于对抗作出答辩或参与答辩讨论的被告:

(1) 一项后来被撤回的有罪答辩;

(2) 不抗辩答辩;

(3) 在依据《联邦刑事诉讼规则》第 11 条或类似的州程序就上述任一答辩所进行的程序中作出的陈述;或

(4) 在与检察机关律师进行认罪协商期间所作的陈述,如果该协商未达成有罪答辩,或达成的有罪答辩后来被撤回。

(b) 例外。法院可以采纳规则 410(a)(3)或(4)所述的陈述:

(1) 在任何程序中,如果同一认罪或认罪讨论期间作出的另一陈述已被引入,且出于公平考虑这些陈述应当一并审议;或

(2) 在就伪证或虚假陈述提起的刑事程序中,如果被告是在宣誓下、在记录在案的情况下并在律师在场时作出该陈述。

(1975年12月12日Pub.L.94-149,1(9), 89 Stat.805修订;1979年4月30日修订,1980年12月1日生效;2011年4月26日修订,2011年12月1日生效。)

**规则 411.责任保险**

某人是否投保责任险的证据,不可采纳用于证明该人是否以过失或其他方式不法行为。但法院可以为其他目的采纳该证据,例如证明证人的偏见或成见,或证明代理关系、所有权或控制权。

(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

**Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition**

(a) PROHIBITED USES. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

(1) evidence offered to prove that a victim engaged in other sexual behavior; or

(2) evidence offered to prove a victim's sexual predisposition.

(b) EXCEPTIONS.

(1) *Criminal Cases*. The court may admit the following evidence in a criminal case:

(A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C) evidence whose exclusion would violate the defendant's constitutional rights.

(2) *Civil Cases*. In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

(c) PROCEDURE TO DETERMINE ADMISSIBILITY.

(1) *Motion*. If a party intends to offer evidence under Rule 412(b), the party must:

(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) do so at least 14 days before trial unless the court, for good cause, sets a different time;

(C) serve the motion on all parties; and

(D) notify the victim or, when appropriate, the victim's guardian or representative.

(2) *Hearing*. Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.

(d) DEFINITION OF ''VICTIM.'' In this rule, ''victim'' includes an alleged victim.

(As added Pub. L. 95–540, §2(a), Oct. 28, 1978, 92 Stat. 2046, eff. Nov. 28, 1978; amended Pub. L. 100–690, title VII, §7046(a), Nov. 18, 1988, 102 Stat. 4400; Apr. 29, 1994, eff. Dec. 1, 1994; Sept. 13, 1994, eff. Dec. 1, 1994; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 413. Similar Crimes in Sexual-Assault Cases**

(a) PERMITTED USES. In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.



**规则 412。性犯罪案件:被害人的性行为或事前处置**

禁止用途。在涉及被指控性行为不当的民事或刑事程序中,以下证据不可采纳:

(a)

(1)用于证明被害人曾从事其他性行为的证据;或

(2) 用于证明被害人性倾向的证据。

(b) 例外。

(1) 刑事案件。在刑事案件中,法院可以采纳以下证据:

(A) 被害人具体性行为实例的证据,如果提供该证据是为了证明被告以外的人是精液、伤害或其他物证的来源;

(B) 被害人与被指控性行为不当者之间具体性行为实例的证据,如果由被告提供以证明同意,或由检察官提供;以及

(C) 排除将侵犯被告宪法权利的证据。

(2) 民事案件。在民事案件中,如果证据的证明价值实质上大于对任何被害人造成伤害以及对任何一方造成不公平偏见的危险,法院可以采纳用于证明被害人性行为或性倾向的证据。只有在被害人已将其名誉置于争议之中的情况下,法院才可以采纳关于被害人名誉的证据。

(c) 确定受理性的程序。

(1) 动议。如果一方打算根据规则 412(b) 提出证据,该方必须:

(A) 提交动议,具体描述该证据并说明提供该证据的目的;

(B) 在审判前至少14天这样做,除非法院基于正当理由设定不同的时间;

(C) 向所有当事人送达该动议;以及

(D) 通知被害人,或在适当情况下通知被害人的监护人或代表。

(2) 听证。在根据本规则采纳证据之前,法院必须进行不公开听证,并给予被害人和各方出席和陈述意见的权利。除非法院另有命令,动议、相关材料以及听证记录必须密封并保持密封。

(d) "被害人"的定义。在本规则中,"被害人"包括被指控的被害人。

(1978年10月28日Pub.L.95-540, 7046(a), 102 Stat.4400修订;1994年4月29日修订,1994年12月1日生效;1994年9月13日修订,1994年12月1日生效;2011年4月26日修订,2011年12月1日生效。)

**规则 413.性侵案件中的类似犯罪**

(a) 允许用途。在被告被指控性侵犯的刑事案件中,法院可以采纳被告实施任何其他性侵犯的证据。该证据可以就任何与其相关的事项予以考虑。

(b) DISCLOSURE TO THE DEFENDANT. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) EFFECT ON OTHER RULES. This rule does not limit the admission or consideration of evidence under any other rule.

(d) DEFINITION OF ''SEXUAL ASSAULT.'' In this rule and Rule 415, ''sexual assault'' means a crime under federal law or under state law (as ''state'' is defined in 18 U.S.C. §513) involving:

(1) any conduct prohibited by 18 U.S.C. chapter 109A;

(2) contact, without consent, between any part of the defendant's body—or an object—and another person's genitals or anus;

(3) contact, without consent, between the defendant's genitals or anus and any part of another person's body;

(4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or

(5) an attempt or conspiracy to engage in conduct described in subparagraphs (1)–(4).

(As added Pub. L. 103–322, title XXXII, §320935(a), Sept. 13, 1994, 108 Stat. 2136, eff. July 9, 1995; amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 414. Similar Crimes in Child-Molestation Cases**

(a) PERMITTED USES. In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.

(b) DISCLOSURE TO THE DEFENDANT. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) EFFECT ON OTHER RULES. This rule does not limit the admission or consideration of evidence under any other rule.

(d) DEFINITION OF ''CHILD'' AND ''CHILD MOLESTATION.'' In this rule and Rule 415:

(1) ''child'' means a person below the age of 14; and

(2) ''child molestation'' means a crime under federal law or under state law (as ''state'' is defined in 18 U.S.C. §513) involving:

(A) any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child;

(B) any conduct prohibited by 18 U.S.C. chapter 110;

(C) contact between any part of the defendant's body—or an object—and a child's genitals or anus;

(D) contact between the defendant's genitals or anus and any part of a child's body;

(E) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or

(F) an attempt or conspiracy to engage in conduct described in subparagraphs (A)–(E).

(As added Pub. L. 103–322, title XXXII, §320935(a), Sept. 13, 1994, 108 Stat. 2136, eff. July 9, 1995; amended Apr. 26, 2011, eff. Dec. 1, 2011.)



(b) 向被告披露。如果检察官打算提供该证据,检察官必须向被告披露,包括证人陈述或预期证言的摘要。检察官必须在审判前至少15天或在法院基于正当理由允许的较后时间这样做。

(c) 对其他规则的影响。本规则不限制根据任何其他规则采纳或考虑证据。

(d) "性侵犯"的定义。在本规则和规则 415 中,"性侵犯"指根据联邦法律或州法律("州"的定义见 18 U.S.C.513)构成犯罪的行为,涉及:

(1) 18 U.S.C.第 109A 章所禁止的任何行为;(2) 未经同意,被告身体的任何部位--或某一物体--与另一人的生殖器或肛门之间的接触;

(3) 未经同意,被告的生殖器或肛门与另一人身体的任何部位之间的接触;

(4) 从对他人施加死亡、身体伤害或身体疼痛中获取性愉悦或性满足;或

(5) 企图或共谋实施第(1)至(4)项所述行为。

(由 Pub.L.103-322 第 XXXII 编320935(a) 于 1994 年 9 月 13 日添加,108 Stat.2136,1995 年 7 月 9 日生效;2011 年 4 月 26 日修正,2011 年 12 月 1 日生效。)

**规则 414。儿童性骚扰案件中的类似犯罪**

(a) 允许的用途。在被告被指控儿童性骚扰的刑事案件中,法院可以采纳被告实施任何其他儿童性骚扰的证据。该证据可用于其具有相关性的任何事项。

(b) 向被告披露。如果检察官打算提供该证据,检察官必须向被告披露,包括证人陈述或预期证言的摘要。检察官必须在审判前至少15天或在法院基于正当理由允许的较后时间这样做。

(c) 对其他规则的影响。本规则不限制根据任何其他规则采纳或考虑证据。

(d) "儿童"和"儿童性骚扰"的定义。在本规则和规则 415 中:

(1) "儿童"指未满 14 岁的人;以及(2) "儿童性骚扰"指根据联邦法律或州法律("州"的定义见 18 U.S.C.513)构成犯罪的行为,涉及:

(A) 18 U.S.C.第 109A 章所禁止并与儿童共同实施的任何行为;

(B) 任何18 U.S.C.第110章禁止的行为;

(C) 被告身体的任何部位--或某一物体--与儿童的生殖器或肛门之间的接触;

(D) 被告的生殖器或肛门与儿童身体的任何部位之间的接触;

(E) 从对儿童施加死亡、身体伤害或身体疼痛中获取性愉悦或性满足;或

(F) 企图或共谋实施第(A)至(E)项所述行为。

(由 Pub.L.103-322 第 XXXII 编320935(a) 于 1994 年 9 月 13 日添加,108 Stat.2136,1995 年 7 月 9 日生效;2011 年 4 月 26 日修正,2011 年 12 月 1 日生效。)

**Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation**

(a) PERMITTED USES. In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation. The evidence may be considered as provided in Rules 413 and 414.

(b) DISCLOSURE TO THE OPPONENT. If a party intends to offer this evidence, the party must disclose it to the party against whom it will be offered, including witnesses' statements or a summary of the expected testimony. The party must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) EFFECT ON OTHER RULES. This rule does not limit the admission or consideration of evidence under any other rule.

(As added Pub. L. 103–322, title XXXII, § 320935(a), Sept. 13, 1994, 108 Stat. 2137, eff. July 9, 1995; amended Apr. 26, 2011, eff. Dec. 1, 2011.)

## ARTICLE V. PRIVILEGES

**Rule 501. Privilege in General**

The common law—as interpreted by United States courts in the light of reason and experience—governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver**

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) DISCLOSURE MADE IN A FEDERAL PROCEEDING OR TO A FEDERAL OFFICE OR AGENCY; SCOPE OF A WAIVER. When the disclosure is made in a federal proceeding or to a federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a federal or state proceeding only if:

(1) the waiver is intentional;

(2) the disclosed and undisclosed communications or information concern the same subject matter; and

(3) they ought in fairness to be considered together.

(b) INADVERTENT DISCLOSURE. When made in a federal proceeding or to a federal office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if:

(1) the disclosure is inadvertent;

(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).



**规则 415。涉及性侵犯或儿童性骚扰的民事案件中的类似行为**

**儿童猥亵**

(a) 允许的用途。在涉及基于一方当事人被指控的性侵犯或儿童性骚扰而请求救济的民事案件中,法院可以采纳该当事人实施任何其他性侵犯或儿童性骚扰的证据。该证据可按照规则 413 和 414 的规定予以考虑。

(b) 向对方当事人的披露。如果一方当事人打算提供该证据,该当事人必须向该证据将针对的对方当事人披露该证据,包括证人的陈述或预期证言的摘要。该当事人必须在审判前至少 15 天或在法院因正当理由允许的更晚时间进行披露。

(c) 对其他规则的影响。本规则不限制根据任何其他规则采纳或考虑证据。

(由 Pub.L.103-322 第 XXXII 编320935(a) 于 1994 年 9 月 13 日添加,108 Stat.2137,1995 年 7 月 9 日生效;2011 年 4 月 26 日修正,2011 年 12 月 1 日生效。)

第五条特权

**规则 501。一般情形下的特权**

普通法--经美国法院依据理性和经验解释--管辖特权主张,除非下列任何规定另有规定:

- 美国宪法;
- 联邦法规;或
- 最高法院规定的规则。

但在民事案件中,对于州法律提供裁判规则的主张或抗辩,州法律管辖特权。(2011 年 4 月 26 日修正,2011 年 12 月 1 日生效。)

**规则 502。律师-委托人特权与工作成果;限制**

**关于豁免**

在所述情形下,下列规定适用于披露受律师-委托人特权或工作成果保护涵盖的通信或信息。

(a) 在联邦程序中或向联邦机构作出的披露

办公室或机构;放弃的范围。当披露是在联邦程序中或向联邦办公室或机构作出,并放弃律师-委托人特权或工作成果保护时,该放弃仅在以下情况下延伸至未披露的通信或信息在联邦或州程序中:

(1) 该弃权是有意为之;

(2) 已披露和未披露的通信或信息涉及同一主题事项;以及

(3) 为公平起见,它们应当一并考虑。

(b) 无意披露。当在联邦程序中或向联邦办公室或机构作出时,该披露在联邦或州程序中不构成放弃,如果:

(1) 该披露是无意的;

(2) 特权或保护持有人采取了合理步骤防止披露;以及

(3) 持有人及时采取了合理步骤纠正错误,包括(如适用)遵循《联邦民事诉讼规则》26(b)(5)(B)。

(c) DISCLOSURE MADE IN A STATE PROCEEDING. When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning waiver, the disclosure does not operate as a waiver in a federal proceeding if the disclosure:

(1) would not be a waiver under this rule if it had been made in a federal proceeding; or

(2) is not a waiver under the law of the state where the disclosure occurred.

(d) CONTROLLING EFFECT OF A COURT ORDER. A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other federal or state proceeding.

(e) CONTROLLING EFFECT OF A PARTY AGREEMENT. An agreement on the effect of disclosure in a federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) CONTROLLING EFFECT OF THIS RULE. Notwithstanding Rules 101 and 1101, this rule applies to state proceedings and to federal court-annexed and federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if state law provides the rule of decision.

(g) DEFINITIONS. In this rule:

(1) ''attorney-client privilege'' means the protection that applicable law provides for confidential attorney-client communications; and

(2) ''work-product protection'' means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

(As added Pub. L. 110–322, §1(a), Sept. 19, 2008, 122 Stat. 3537; amended Apr. 26, 2011, eff. Dec. 1, 2011.)

## ARTICLE VI. WITNESSES

### Rule 601. Competency to Testify in General

Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness's competency regarding a claim or defense for which state law supplies the rule of decision.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 603. Oath or Affirmation to Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.



(c) 在州诉讼程序中所作的披露。当披露--

披露是在州程序中作出,且不受关于放弃的州法院命令约束,该披露在联邦程序中不构成放弃,如果该披露:

(1) 如果是在联邦程序中作出,根据本规则不会构成放弃;或

(2)不构成披露发生地州法律下的放弃。

(d) 法院命令的支配效力。联邦法院可以命令,与法院正在审理的诉讼相关的披露不导致特权或保护被放弃--在此情形下,该披露在任何其他联邦或州程序中亦不构成放弃。

(e) C ONTROLLING E FFECT OF A P ARTY A GREEMENT.当事人协议的 C ONTROLLING E FFECT。一项协议关于联邦程序中披露效力的协议仅对协议各方具有约束力,除非其被纳入法院命令。

(f) 本规则的支配效力。尽管有规则 101 和 1101,本规则在本规则规定的情形下适用于州程序以及联邦法院附设和联邦法院强制仲裁程序。并且尽管有规则 501,即使州法律提供了裁判规则,本规则仍然适用。

(g) 定义。在本规则中:

(1)“律师-委托人特权”指适用法律对律师与委托人之间的保密通信所提供的保护;以及

(2)“工作成果保护”指适用法律对为预期诉讼或审判而准备的有形材料(或其无形等价物)所提供的保护。(由 Pub.L.110-322,1(a), Sept.19, 2008, 122 Stat.3537 增补;Apr.26, 2011 修正,Dec.1, 2011 生效。)

第六条证人

**规则 601。作证能力一般规定**

每个人都有资格作为证人,除非本规则另有规定。但在民事案件中,对于由州法律提供裁判规则的请求或抗辩,证人的资格由州法律管辖。(Apr.26, 2011 修正,Dec.1, 2011 生效。)规则 602。需要个人知识

证人仅在有证据被提出且足以支持认定该证人对该事项具有个人知识时,方可就该事项作证。证明个人知识的证据可以由证人自己的证言构成。本规则不适用于规则 703 下的证人专家证言。(Mar.2, 1987 修正,Oct.1, 1987 生效;Apr.25, 1988 修正,Nov.1, 1988 生效;Apr.26, 2011 修正,Dec.1, 2011 生效。)规则 603。如实作证的宣誓或郑重声明

在作证之前,证人必须宣誓或作出郑重声明以如实作证。其形式必须旨在使该义务对证人的良心产生深刻印象。

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 604. Interpreter**

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 605. Judge's Competency as a Witness**

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 606. Juror's Competency as a Witness**

(a) AT THE TRIAL. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) DURING AN INQUIRY INTO THE VALIDITY OF A VERDICT OR INDICTMENT.

(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) *Exceptions.* A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention;

(B) an outside influence was improperly brought to bear on any juror; or

(C) a mistake was made in entering the verdict on the verdict form.

(As amended Pub. L. 94–149, §1(10), Dec. 12, 1975, 89 Stat. 805; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 607. Who May Impeach a Witness**

Any party, including the party that called the witness, may attack the witness's credibility.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 608. A Witness's Character for Truthfulness or Untruthfulness**

(a) REPUTATION OR OPINION EVIDENCE. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.



(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

**规则 604。翻译人员**

翻译人员必须具备资格,并且必须宣誓或作出郑重声明以进行真实翻译。

(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

**规则 605。法官作为证人的资格**

主持法官不得在审判中作为证人作证。当事人无需提出异议以保留该问题。

(Apr.26, 2011 修正,Dec.1, 2011 生效。)

**规则 606。陪审员作为证人的资格**

(a) 在审判中。陪审员不得在审判中在其他陪审员面前作为证人作证。如果陪审员被传唤作证,法院必须给予当事人机会在陪审团不在场的情况下提出异议。

在调查裁决或起诉书有效性的过程中。

(b)

(1) 禁止的证言或其他证据。在对裁决或起诉书有效性进行调查期间,陪审员不得就陪审团评议期间所作的任何陈述或发生的任何事件、任何事物对该陪审员或另一陪审员投票的影响、或任何陪审员关于裁决或起诉书的心理过程作证。法院不得接受陪审员关于这些事项的宣誓书或陪审员陈述的证据。

(2) 例外。陪审员可就以下事项作证:

(A) 外部偏见性信息被不当提请陪审团注意;

(B)外部影响被不当施加于任何陪审员;或

(C) 在将裁决录入裁决书表格时发生了错误。

(Pub.L.94-149,1(10), Dec.12, 1975, 89 Stat.805 修正;Mar.2, 1987 修正,Oct.1, 1987 生效;Apr.12, 2006 修正,Dec.1, 2006 生效;Apr.26, 2011 修正,Dec.1, 2011 生效。)

**规则 607。谁可以弹劾证人**

任何当事人,包括传唤该证人的当事人,均可攻击证人的可信性。

(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

**规则 608。证人关于诚实或不诚实的品格**

(a) 名誉或意见证据。证人的可信性可以通过关于证人具有诚实或不诚实品格名誉的证言,或通过关于该品格的意见形式的证言来攻击或支持。但诚实品格的证据只有在证人的诚实品格受到攻击后才可采纳。

(b) SPECIFIC INSTANCES OF CONDUCT. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 609. Impeachment by Evidence of a Criminal Conviction**

(a) IN GENERAL. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement.

(b) LIMIT ON USING THE EVIDENCE AFTER 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) EFFECT OF A PARDON, ANNULMENT, OR CERTIFICATE OF REHABILITATION. Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) JUVENILE ADJUDICATIONS. Evidence of a juvenile adjudication is admissible under this rule only if:



具体行为实例。除规则 609 下的刑事定罪外,外部证据不可采纳用以证明证人行为的具体实例,以攻击或支持证人的诚实品格。但法院可以在交叉询问中允许对其进行询问,如果它们对诚实或不诚实品格具有证明力

(b)

的:

该证人;或(2) 被交叉询问的证人已就其品格作证的另一证人。

(1)

证人就另一事项作证,并不放弃其仅与证人诚实品格相关的证言方面的任何反对自证其罪特权。(Mar.2, 1987 修正,Oct.1, 1987 生效;Apr.25, 1988 修正,Nov.1, 1988 生效;Mar.27, 2003 修正,Dec.1, 2003 生效;Apr.26, 2011 修正,Dec.1, 2011 生效。)规则 609。以刑事定罪证据进行弹劾

一般规定。以下规则适用于通过刑事定罪证据攻击证人的诚实品格:(1) 对于在定罪管辖区可判处死刑或超过一年监禁的犯罪,该证据:

(a)

(A) 在民事案件或证人非被告的刑事案件中,必须予以采纳,但受规则 403 约束;以及

(B) 在证人系被告的刑事案件中,如果该证据的证明价值超过其对被告的偏见影响,则必须予以采纳;以及

(2)对于任何犯罪,无论刑罚如何,如果法院能够容易地确定,确立犯罪要素需要证明--或证人承认--不诚实行为或虚假陈述,则该证据必须予以采纳。

10 年后使用证据的限制。如果自证人定罪或因此从监禁中释放之日起已超过 10 年,以较晚者为准,则本款(b)适用。定罪证据只有在以下情况下才可采纳:

(b)

(1) 其证明价值经具体事实和情节支持,实质上超过其不公平的偏见效果;且

(2) 提出方就使用意图向对方当事人发出合理的书面通知,使该当事人有公平的机会对其使用提出异议。

赦免、撤销或复权证书的效力。有下列情形之一的,定罪证据不可采纳:

(c)

(1) 该定罪已被赦免、撤销、复权证书或其他基于该人已改过自新的认定的同等程序所涵盖,且该人此后未因可判处死刑或一年以上监禁的犯罪而被定罪;或

(2) 该定罪已被赦免、撤销或其他基于无罪认定的同等程序所涵盖。

(d) 少年裁决。少年裁决的证据依本规则仅在下列情形下可采纳:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) PENDENCY OF AN APPEAL. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Jan. 26, 1990, eff. Dec. 1, 1990; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(a) CONTROL BY THE COURT; PURPOSES. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) SCOPE OF CROSS-EXAMINATION. Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

(c) LEADING QUESTIONS. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

(1) on cross-examination; and

(2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 612. Writing Used to Refresh a Witness's Memory

(a) SCOPE. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

(1) while testifying; or

(2) before testifying, if the court decides that justice requires the party to have those options.



(1) 在刑事案件中提供;

(2) 该裁决涉及的是被告以外的证人--

蚂蚁;

(3) 成年人因该罪行被定罪将可采纳以攻击该成年人的可信性;且

(4) 采纳该证据对于公平认定有罪或无罪是必要的。

(e) 上诉待决。符合本规则的定罪即使在上诉待决期间也可采纳。上诉待决的证据亦可采纳。

(1987年3月2日修正,1987年10月1日生效;1990年1月26日修正,1990年12月1日生效;2006年4月12日修正,2006年12月1日生效;2011年4月26日修正,2011年12月1日生效。)

### 规则 610。宗教信仰或意见

证人的宗教信仰或意见的证据不可采纳以攻击或支持证人的可信性。

(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

### 规则 611。询问证人和出示证据的方式与顺序
### 证据

(a) 法庭的控制;目的。法庭应对询问证人和出示证据的方式与顺序行使合理控制,以便:

(1) 使这些程序有效用于查明真相;

(2) 避免浪费时间;并且

(3) 保护证人免受骚扰或不当困扰。

(b) 交叉询问的范围。交叉询问不应超出直接询问的主题事项及影响证人可信性的事项。法庭可允许如同直接询问一样询问额外事项。

(c) 诱导性问题。直接询问中不应使用诱导性问题,除非为展开证人证言所必需。通常情况下,法庭应允许诱导性问题:

(1) 在交叉询问中;以及

(2) 当一方传唤敌意证人、对方当事人或与对方当事人认同的证人时。

(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

### 规则 612。用于刷新证人记忆

(a) 范围。本规则在证人使用书面材料唤醒记忆时赋予对方当事人某些选择权:

(1) 在作证时;或

(2) 在作证之前,如果法院认定司法要求该方享有这些选择权。

(b) ADVERSE PARTY'S OPTIONS; DELETING UNRELATED MATTER. Unless 18 U.S.C. §3500 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) FAILURE TO PRODUCE OR DELIVER THE WRITING. If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or—if justice so requires—declare a mistrial.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 613. Witness's Prior Statement**

(a) SHOWING OR DISCLOSING THE STATEMENT DURING EXAMINATION. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) EXTRINSIC EVIDENCE OF A PRIOR INCONSISTENT STATEMENT. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 614. Court's Calling or Examining a Witness**

(a) CALLING. The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) EXAMINING. The court may examine a witness regardless of who calls the witness.

(c) OBJECTIONS. A party may object to the court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 615. Excluding Witnesses**

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

(a) a party who is a natural person;

(b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;

(c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or



(b) 对方当事人的选择;删除无关事项。

除刑事案件中 18 U.S.C.3500 另有规定外,对方当事人有权要求在听证时出示该书面材料、查阅该材料、就该材料对证人进行交叉询问,并提交与证人证言相关的任何部分作为证据。如果出示方声称该书面材料包含无关内容,法院必须对该书面材料进行不公开审查,删除任何无关部分,并命令将剩余部分送交对方当事人。任何因异议而被删除的部分必须留存于记录中。

(c) 未出示或未交付书面文件。如果书面文件

未出示或未按命令交付的,法院可发出任何适当的命令。但在刑事案件中,如果控方不遵守,法院必须排除该证人的证言,或者--如果司法公正如此要求--宣布审判无效。(1987年3月2日修正,1987年10月1日生效;2011年4月26日修正,2011年12月1日生效。)

**规则 613。证人的先前陈述**

(a) 出示或披露审查期间的陈述

询问证人关于其先前陈述时,一方无需向证人出示该陈述或披露其内容。但该方必须应请求向对方当事人的律师出示该陈述或披露其内容。

(b) 先前不一致陈述的外部证据。

证人先前不一致陈述的外部证据只有在以下情况下才可采纳:证人获得机会解释或否认该陈述,且对方当事人获得机会就此询问证人,或者司法公正如此要求。本(b)款不适用于规则 801(d)(2) 下的对方当事人陈述。(1987年3月2日修正,1987年10月1日生效;1988年4月25日修正,1988年11月1日生效;2011年4月26日修正,2011年12月1日生效。)

**规则 614。法院传唤或询问证人**

(a) 传唤。法院可自行或应一方请求传唤证人。每一方均有权交叉询问该证人。

(b) 询问。无论由谁传唤证人,法院均可询问该证人。

(c) 异议。一方可在当时或在陪审团不在场的下一次机会对法院传唤或询问证人提出异议。

(2011年4月26日修订,2011年12月1日生效。)

**规则 615.排除证人**

应一方请求,法院必须命令排除证人,使其无法听到其他证人的证言。法院也可自行这样做。但本规则不授权排除:

(a) 一方为自然人的当事人;

(b) 非自然人的当事人的高级职员或雇员,在其律师指定其为该当事人代表之后;

(c) 一方证明其在场对提出该方的主张或抗辩必不可少的人;或

(d) a person authorized by statute to be present.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Pub. L. 100–690, title VII, §7075(a), Nov. 18, 1988, 102 Stat. 4405; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2011, eff. Dec. 1, 2011.)

## ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

### Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

(As amended Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 703. Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 704. Opinion on an Ultimate Issue

(a) IN GENERAL—NOT AUTOMATICALLY OBJECTIONABLE. An opinion is not objectionable just because it embraces an ultimate issue.

(b) EXCEPTION. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the



(d) 依制定法获授权到场之人。

(1987年3月2日修正,1987年10月1日生效;1988年4月25日修正,1988年11月1日生效;Pub.L.100-690,第七编,7075(a),1988年11月18日,102 Stat.4405;1998年4月24日修正,1998年12月1日生效;2011年4月26日修正,2011年12月1日生效。)

第七条意见与专家证言

**规则 701。意见证言由非专家证人**

如果证人不是作为专家作证,以意见形式作出的证言仅限于:

(a) 基于证人的感知具有合理基础;

(b) 有助于清楚理解证人的证言或确定争议事实;且

(c) 并非基于规则 702 范围内的科学、技术或其他专门知识。

(1987年3月2日修正,1987年10月1日生效;2000年4月17日修正,2000年12月1日生效;2011年4月26日修正,2011年12月1日生效。)

**规则 702.专家证人作证**

以知识、技能、经验、培训或教育被认定为专家的证人,可以以意见或其他形式作证,如果:

(a) 该专家的科学、技术或其他专门知识将有助于事实认定者理解证据或确定争议事实;

(b) 证言基于充分的事实或数据;

(c) 证言是可靠原理和方法的产物;以及

(d) 该专家已将原理和方法可靠地适用于案件事实。

(经 2000 年 4 月 17 日修订,2000 年 12 月 1 日生效;2011 年 4 月 26 日修订,2011 年 12 月 1 日生效。)

**规则 703。专家意见证言的基础**

专家可以基于该专家已获知或亲自观察到的事实或数据提出意见。如果特定领域的专家在就该主题形成意见时会合理依赖此类事实或数据,则这些事实或数据不必可采纳,该意见即可被采纳。但如果该事实或数据原本不可采纳,则意见提出者只有在这些事实或数据在帮助陪审团评估该意见方面的证明价值大大超过其不利影响时,才可向陪审团披露这些事实或数据。

(1987年3月2日修正,1987年10月1日生效;2000年4月17日修正,2000年12月1日生效;2011年4月26日修正,2011年12月1日生效。)

**规则 704.对终极问题的意见**

(a) 一般性说明 -- 并非当然令人反对 。一项意见 --

该意见并不因涉及最终争点而应被反对。

(b) 例外。在刑事案件中,专家证人不得就被告是否具有构成犯罪要素的心理状态或状况发表意见

crime charged or of a defense. Those matters are for the trier of fact alone.

(As amended Pub. L. 98–473, title II, §406, Oct. 12, 1984, 98 Stat. 2067; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion**

Unless the court orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 706. Court-Appointed Expert Witnesses**

(a) APPOINTMENT PROCESS. On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

(b) EXPERT'S ROLE. The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

(1) must advise the parties of any findings the expert makes;
(2) may be deposed by any party;
(3) may be called to testify by the court or any party; and
(4) may be cross-examined by any party, including the party that called the expert.

(c) COMPENSATION. The expert is entitled to a reasonable compensation, as set by the court. The compensation is payable as follows:

(1) in a criminal case or in a civil case involving just compensation under the Fifth Amendment, from any funds that are provided by law; and

(2) in any other civil case, by the parties in the proportion and at the time that the court directs—and the compensation is then charged like other costs.

(d) DISCLOSING THE APPOINTMENT TO THE JURY. The court may authorize disclosure to the jury that the court appointed the expert.

(e) PARTIES' CHOICE OF THEIR OWN EXPERTS. This rule does not limit a party in calling its own experts.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

ARTICLE VIII. HEARSAY

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

(a) STATEMENT. ''Statement'' means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.



被指控的犯罪或抗辩事由。这些事项仅由事实认定者裁决。

(1984年10月12日 Pub.L.98-473,第二编,406 修正,98 Stat.2067;2011年4月26日修正,2011年12月1日生效。)

**规则 705。披露专家意见所依据的事实或意见**

除非法院另有命令,专家可以发表意见并说明理由,而无需首先就 underlying 事实或数据作证。但专家可能被要求在交叉询问中披露这些事实或数据。

(1987年3月2日修正,1987年10月1日生效;1993年4月22日修正,1993年12月1日生效;2011年4月26日修正,2011年12月1日生效。)

**规则 706。法院指定的专家证人**

(a) 指定程序。经一方当事人动议或法院自行决定,法院可命令各方当事人说明理由,解释为何不应指定专家证人,并可要求各方当事人提交提名。法院可指定各方当事人一致同意的任何专家,也可指定其自行选择的任何专家。但法院只能指定同意履职的人。

专家的角色。法院必须告知专家其职责。法院可以书面方式告知,并将副本提交书记官存档;也可以在各方当事人有机会参加的会议上口头告知。专家:

(b)

必须将其作出的任何认定告知各方当事人;(2) 可被任何一方当事人庭外取证;(3) 可被法院或任何一方当事人传唤作证;以及(4) 可被任何一方当事人交叉询问,包括传唤该专家的一方当事人。

(1)

报酬。专家有权获得由法院确定的合理报酬。报酬按以下方式支付:

(c)

(1) 在刑事案件或涉及第五修正案公正补偿的民事案件中,从法律规定的任何资金中支付;以及

(2) 在任何其他民事案件中,由各方当事人按法院指定的比例和时间支付--该报酬随后像其他费用一样计收。

(d)

披露向陪审团作出的任命。法院可以

授权向陪审团披露法院已指定该专家。

(e) 当事人自行选择专家。本规则不限制当事人传唤自己的专家。

(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

第八条传闻证据

**规则 801。适用于本条的定义;传闻的排除**

(a) 陈述。"陈述"是指一个人的口头主张、书面主张或非言语行为,前提是该人意图将其作为主张。

(b) DECLARANT. ''Declarant'' means the person who made the statement.

(c) HEARSAY. ''Hearsay'' means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) STATEMENTS THAT ARE NOT HEARSAY. A statement that meets the following conditions is not hearsay:

(1) *A Declarant-Witness's Prior Statement*. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

(C) identifies a person as someone the declarant perceived earlier.

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

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

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

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

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

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

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

(As amended Pub. L. 94–113, §1, Oct. 16, 1975, 89 Stat. 576, eff. Oct. 31, 1975; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 25, 2014, eff. Dec. 1, 2014.)

**Rule 802. The Rule Against Hearsay**

Hearsay is not admissible unless any of the following provides otherwise:

- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)



(b) 声明人。“声明人”指作出陈述的人。

(c) 传闻证据。“传闻证据”是指符合以下情形的陈述:

(1) 陈述人未在当前审判或听证中作证时作出;以及

(2) 一方当事人将其作为证据提出,以证明陈述中所主张事项的真实性。

不属于传闻的陈述。符合以下条件的陈述不属于传闻:

(d)

(1) 陈述人兼证人的先前陈述。陈述人作证并接受关于先前陈述的交叉询问,且该陈述:

(A) 与陈述人的证言不一致,且是在审判、听证或其他程序或庭外取证中在伪证罪处罚下作出的;

与陈述人的证言一致,且提出该陈述是为了:(i) 反驳关于陈述人近期捏造该陈述或作证时出于近期不当影响或动机的明示或默示指控;或(ii) 当陈述人作为证人的可信度因另一理由受到攻击时,恢复其可信度;或

(B)

( C) 将某人识别为陈述人先前感知到的某人。

(2) 对方当事人的陈述。该陈述是针对对方当事人提出的,且:

( A) 由该方以个人或代表身份作出;

( B) 是一方当事人表明其采纳或相信为真实的意思表示;

(C) 由该当事人授权就该主题作出陈述的人作出;

(D) 由该当事人的代理人或雇员在该关系范围内且在该关系存续期间就相关事项作出;或

(E) 由该当事人的共谋者在共谋期间并为促进共谋而作出。

该陈述必须予以考虑,但其本身不能确立(C)项下陈述人的授权;(D)项下关系的存在或范围;或(E)项下共谋的存在或参与。

(经 Pub.L.94-113,1, Oct.16, 1975, 89 Stat.576 修订,1975年10月31日生效;1987年3月2日修订,1987年10月1日生效;1997年4月11日修订,1997年12月1日生效;2011年4月26日修订,2011年12月1日生效;2014年4月25日修订,2014年12月1日生效。)

**规则 802. 传闻证据规则**

传闻证据不可采纳,除非下列任何规定另有规定:

- 一部联邦法规;
- 本规则;或
- 最高法院规定的其他规则。

(2011年4月26日修订,2011年12月1日生效。)

**Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness**

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) *Present Sense Impression*. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) *Excited Utterance*. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) *Then-Existing Mental, Emotional, or Physical Condition*. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) *Statement Made for Medical Diagnosis or Treatment*. A statement that:

(A) is made for—and is reasonably pertinent to—medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) *Recorded Recollection*. A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) *Records of a Regularly Conducted Activity*. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

(7) *Absence of a Record of a Regularly Conducted Activity*. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and



**规则 803。传闻规则例外--无论陈述人是否可作为证人出庭均适用**

以下内容不受传闻规则排除,无论陈述人是否可作为证人出庭:

(1) 当场感受印象。描述或解释某一事件或状况的陈述,在陈述人感知该事件或状况时或紧随其后作出。

(2) 激动言辞。与某一令人震惊的事件或状况有关的陈述,在陈述人处于该事件或状况所引起的激动压力之下时作出。

(3) 当时存在的精神、情绪或身体状况。关于陈述人当时存在的心理状态(如动机、意图或计划)或情绪、感官或身体状况(如心理感受、疼痛或身体健康)的陈述,但不包括为证明所记忆或相信的事实而作出的记忆或信念陈述,除非该陈述与陈述人遗嘱的有效性或条款有关。

(4) 为医疗诊断或治疗而作出的陈述。符合以下条件的陈述:

(A) 是为医疗诊断或治疗而作出,且与该诊断或治疗合理相关;以及

(B) 描述病史;过去或现在的症状或感觉;其起始时间;或其一般原因。

(5) 记录回忆。一项记录,其:

(A) 涉及证人曾经知道但现已无法充分、准确地回忆以作证的事项;

(B) 是在该事项在证人记忆中尚新鲜时由证人作出或采纳的;以及

(C) 准确反映证人的认知。

如果被采纳,该记录可以被读入证据,但只有在对方当事人提出时才可以作为物证接收。

(6) 定期开展活动的记录。关于某一行为、事件、状况、意见或诊断的记录,如果:

(A) 该记录是在当时或接近当时由具有知识的人作出,或根据其传递的信息作出;

(B) 该记录是在企业、组织、职业或行业的定期开展活动中保存的,无论是否以营利为目的;

(C)制作该记录是该活动的常规做法;

(D) 所有这些条件均由保管人或其他合格证人的证言证明,或由符合规则902(11) 或(12) 的认证或允许认证的法规证明;以及

(E) 对方未表明信息来源或准备方法或情况表明缺乏可信赖性。

(7) 定期开展活动的记录缺失。证明某一事项未包含在第(6)段所述记录中的证据,如果:

(A) 该证据被采纳以证明该事项未发生或不存在;

(B) 对于该类事项,通常备有记录;

和

(C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

(8) *Public Records*. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

(9) *Public Records of Vital Statistics*. A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) *Absence of a Public Record*. Testimony—or a certification under Rule 902—that a diligent search failed to disclose a public record or statement if:

(A) the testimony or certification is admitted to prove that

(i) the record or statement does not exist; or

(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice—unless the court sets a different time for the notice or the objection.

(11) *Records of Religious Organizations Concerning Personal or Family History*. A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Certificates of Marriage, Baptism, and Similar Ceremonies*. A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

(13) *Family Records*. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) *Records of Documents That Affect an Interest in Property*. The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;



(C) 对方未表明信息的可能来源或其他情况表明缺乏可信赖性。

(8) 公共记录。公共机构的记录或陈述,如果:

(A) 它规定:

该办公室的活动;(ii) 在法定报告义务下观察到的事项,但在刑事案件中不包括执法人员观察到的事项;或(iii) 在民事案件中或在刑事案件中针对政府,来自合法授权调查的事实认定;以及

(i)

(B) 对方未表明信息来源或其他情况表明缺乏可信赖性。

(9) 生命统计公共记录。关于出生、死亡或婚姻的记录,如果按照法律义务向公共办公室报告。

(10) 公共记录缺失。证明经勤勉检索未能披露公共记录或陈述的证言--或根据规则 902 的认证,如果:

(A) 该证言或证明被采纳以证明

该 记录或陈述不存在;或(ii) 某一事项未发生或不存在,如果公共办公室定期为此类事项保存记录或陈述;以及

(i)

(B) 在刑事案件中,打算提出认证的检察官至少在审判前 14 天提供该意图的书面通知,且被告在收到通知后 7 天内未以书面形式提出异议--除非法院为通知或异议设定了不同的时间。

(11) 宗教组织关于个人或家族历史的记录。宗教组织常规保存的记录中所载的关于出生、婚生地位、血统、婚姻、离婚、死亡、血亲或姻亲关系,或类似个人或家族历史事实的陈述。

(12) 结婚、洗礼及类似仪式的证书。证书中所载的事实陈述:

(A) 由经宗教组织或法律授权执行所认证行为的人作出;

(B) 证明该人执行了婚姻或类似仪式或主持了圣礼;以及

(C) 声称是在该行为发生时或在其后的合理时间内签发的。

(13) 家庭记录。包含在家庭记录中的关于个人或家庭历史的事实陈述,例如圣经、家谱、图表、戒指上的刻字、肖像上的题词或骨灰瓮或墓碑上的刻字。

(14) 影响财产权益的文件记录。声称确立或影响财产权益的文件的记录,如果:

(A) 该记录被采纳以证明原始记录文件的内容,连同其签署及每个声称签署该文件的人的交付;

(B) the record is kept in a public office; and
(C) a statute authorizes recording documents of that kind in that office.

(15) *Statements in Documents That Affect an Interest in Property*. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose—unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in Ancient Documents*. A statement in a document that is at least 20 years old and whose authenticity is established.

(17) *Market Reports and Similar Commercial Publications*. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) *Statements in Learned Treatises, Periodicals, or Pamphlets*. A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) *Reputation Concerning Personal or Family History*. A reputation among a person's family by blood, adoption, or marriage—or among a person's associates or in the community—concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) *Reputation Concerning Boundaries or General History*. A reputation in a community—arising before the controversy—concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) *Reputation Concerning Character*. A reputation among a person's associates or in the community concerning the person's character.

(22) *Judgment of a Previous Conviction*. Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;
(C) the evidence is admitted to prove any fact essential to the judgment; and
(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

(23) *Judgments Involving Personal, Family, or General History, or a Boundary*. A judgment that is admitted to prove a matter



(B) 该记录保存在公共办公室;以及
(C) 法规授权在该办公室记录此类文件。

(15) 影响财产权益的文件中的陈述。文件中所含的、旨在设立或影响财产权益的陈述,如果所陈述的事项与文件的目的相关--除非此后对该财产的处理与陈述的真实性或文件的主旨不一致。

(16) 古老文件中的陈述。文件中所含的、至少已有20年历史且其真实性已获确立的陈述。

(17) 市场报告及类似商业出版物。公众或特定职业人士普遍依赖的市场行情、清单、名录或其他汇编。

(18) 学术专著、期刊或小册子中的陈述。学术专著、期刊或小册子中所含的陈述

如

( A) 该陈述在交叉询问中提请专家证人注意,或由专家在直接询问中予以依赖;且

( B) 该出版物经专家的承认或证言、另一专家的证言或司法认知确立为可靠的权威。

如获采纳,该陈述可被宣读为证据,但不得作为展示件接收。

(19) 关于个人或家庭历史的声誉。在某人血亲、收养或婚姻家庭中--或在某人的交往圈中或社区中--关于该人的出生、收养、婚生地位、祖先、婚姻、离婚、死亡、血亲、收养或婚姻关系,或类似个人或家庭历史事实的声誉。

(20) 关于边界或一般历史的声誉。在争议发生之前产生的、社区中关于该社区土地边界或影响该土地的习惯,或关于对该社区、州或国家具有重要意义的普遍历史事件的声誉。

(21) 关于品格的声誉。在某人的交往圈中或社区中关于该人品格的声誉。

(22) 先前定罪的判决。最终定罪判决的证据,如果:

( A) 该判决是在审判或有罪答辩之后作出的,但并非不抗辩答辩;

( B) 该定罪所涉罪行可判处死刑或一年以上监禁;

(C) 该证据被采纳以证明对判决至关重要的任何事实;以及

( D) 当由检察官在刑事案件中为弹劾以外的目的提出时,该判决是针对被告作出的。

上诉的待决状态可以显示,但不影响可采性。

(23) 涉及个人、家庭或一般历史或边界的判决。为证明某一事项而获采纳的判决

of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

(24) [*Other Exceptions.*] [Transferred to Rule 807.]

(As amended Pub. L. 94–149, §1(11), Dec. 12, 1975, 89 Stat. 805; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 13, 2013, eff. Dec. 1, 2013; Apr. 25, 2014, eff. Dec. 1, 2014.)

**Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness**

(a) CRITERIA FOR BEING UNAVAILABLE. A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) THE EXCEPTIONS. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) *Former Testimony*. Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) *Statement Under the Belief of Imminent Death*. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) *Statement Against Interest*. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone



个人、家族或一般历史,或边界,若该事项:

(A) 对判决至关重要;且

(B) 可以通过名誉证据加以证明。

(24) [其他例外。][ 已移至规则 807。]

(经Pub. L. 94–149,1(11),1975年12月12日,89 Stat. 805修订;1987年3月2日,1987年10月1日生效;1997年4月11日,1997年12月1日生效;2000年4月17日,2000年12月1日生效;2011年4月26日,2011年12月1日生效;2013年4月13日,2013年12月1日生效;2014年4月25日,2014年12月1日生效。)

**规则 804. 传闻规则之例外--当陈述人申请人无法作为证人出庭**

( a) 无法到场的标准。如果陈述人符合下列情形,则该陈述人被视为无法作为证人到场:

(1) 因法院裁定适用特权而被免除就陈述人陈述的主题事项作证;

(2) 尽管有法院命令,仍拒绝就主题事项作证;

(3) 作证称不记得主题事项;(4) 因死亡或当时存在的虚弱、身体疾病或精神疾病而无法出席审判或听证或作证;或

(5) 未出席审判或听证,且陈述的提出方未能通过程序或其他合理手段取得:

( A) 在规则 804(b)(1) 或(6)项下的传闻例外情形中,陈述人的出席;或

( B) 在规则 804(b)(2)、(3)或(4)项下的传闻例外情形中,陈述人的出席或证言。

但若陈述的提出方为阻止陈述人出席或作证而促成或不当导致陈述人无法作为证人到场,则本款( a)不适用。

( b) 例外。在陈述人无法作为证人到场的情况下,下列各项不被传闻规则排除:

(1) 先前证言。符合下列条件的证言:

( A) 是在审判、听证或合法庭外取证中作为证人作出的,无论是否在本次程序或另一程序中作出;且

( B) 现被提出针对某一方当事人,而该当事人--或在民事案件中,其利益前手--曾有机会且有类似动机通过直接询问、交叉询问或再直接询问对其进行展开。

(2) 基于临近死亡信念的陈述。在凶杀起诉中或在民事案件中,陈述人在相信自身死亡临近时所作的关于其死因或相关情况的陈述。

(3) 反对声明利益。一项声明,即:

( A) 处于陈述人地位的理性人只有在相信其为真实时才会作出,因为该陈述在作出时如此违背陈述人的财产利益或金钱利益,或具有如此大的倾向使陈述人对他人提出的主张归于无效

else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) *Statement of Personal or Family History*. A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) [*Other Exceptions*.] [Transferred to Rule 807.]

(6) *Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability*. A statement offered against a party that wrongfully caused—or acquiesced in wrongfully causing—the declarant's unavailability as a witness, and did so intending that result.

(As amended Dec. 12, 1975; Mar. 2, 1987, eff. Oct. 1, 1987; Nov. 18, 1988; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 805. Hearsay Within Hearsay**

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 806. Attacking and Supporting the Declarant's Credibility**

When a hearsay statement—or a statement described in Rule 801(d)(2)(C), (D), or (E)—has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 807. Residual Exception**

(a) IN GENERAL. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:

(1) the statement has equivalent circumstantial guarantees of trustworthiness;



其他或使声明人面临民事或刑事责任;以及

(B) 有佐证情况明确表明其可信性,如果它是在刑事案件中作为倾向于使陈述人承担刑事责任的一项陈述提出的。

(4) 关于个人或家庭历史的陈述。关于以下事项的陈述:

(A) 陈述人本人的出生、收养、婚生地位、祖先、婚姻、离婚、血亲、收养或婚姻关系,或类似的个人或家庭历史事实,即使陈述人无法获得关于该事实的个人知识;或

(B) 关于这些事实中的任何一项以及死亡的他人情况,如果陈述人与该人具有血亲、收养或婚姻关系,或与该人的家庭有如此密切的联系,以致陈述人的信息很可能是准确的。

(5) [其他例外。][ 已移至规则 807。]

(6) 针对不当导致陈述人无法作证的一方提出的陈述。针对一方提出的陈述,该方不当导致--或默许不当导致--陈述人作为证人无法作证,并且是意图造成该结果而为之。

(经1975年12月12日、1987年3月2日修订,1987年10月1日生效;1988年11月18日;1997年4月11日修订,1997年12月1日生效;2010年4月28日修订,2010年12月1日生效;2011年4月26日修订,2011年12月1日生效。)

传闻中的传闻,如果组合陈述的每一部分均符合传闻规则的例外,则不被传闻规则排除。(经2011年4月26日修订,2011年12月1日生效。)

规则 806。攻击与支持陈述人可信性当传闻陈述--或规则 801(d)(2)(C)、(D) 或 (E) 所述的陈述--已被采纳为证据时,可以任何证据攻击陈述人的可信性,随后并可以之支持,只要该证据在陈述人作为证人作证时本可为上述目的而采纳。法院可以采纳陈述人不一致陈述或行为的证据,不论其发生于何时,亦不论陈述人是否有机会解释或否认。如果该陈述被采纳所针对的一方当事人传唤陈述人作为证人,该当事人可以就该项陈述对陈述人进行询问,如同交叉询问一样。(1987年3月2日修订,1987年10月1日生效;1997年4月11日修订,1997年12月1日生效;2011年4月26日修订,2011年12月1日生效。)规则 807。剩余例外

(a) 一般规定。在下列情况下,传闻陈述不被传闻规则排除,即使该陈述未被规则 803或804中的传闻例外具体涵盖:

(1) 该陈述具有同等的可信性间接保证;

(2) it is offered as evidence of a material fact;
(3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
(4) admitting it will best serve the purposes of these rules and the interests of justice.

(b) NOTICE. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

(Added Apr. 11, 1997, eff. Dec. 1, 1997; amended Apr. 26, 2011, eff. Dec. 1, 2011.)

## ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

### Rule 901. Authenticating or Identifying Evidence

(a) IN GENERAL. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) EXAMPLES. The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) *Testimony of a Witness with Knowledge*. Testimony that an item is what it is claimed to be.

(2) *Nonexpert Opinion About Handwriting*. A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an Expert Witness or the Trier of Fact*. A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive Characteristics and the Like*. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion About a Voice*. An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence About a Telephone Conversation*. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence About Public Records*. Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.



(2) 作为实质性事实的证据提供;

(3) 就其提出的要点而言,它比提出方通过合理努力所能获得的任何其他证据更具证明力;以及

(4) 采纳它最能服务于本规则的目的和司法利益。

(b) 通知。只有在审判或听证之前,提出方向对方当事人发出关于提出该陈述意图及其细节(包括陈述人的姓名和地址)的合理通知,使该方有公平机会应对时,该陈述才可采纳。

(1997年4月11日增补,1997年12月1日生效;2011年4月26日修订,2011年12月1日生效。)

## 第九条认证与身份识别

### 规则901。证据的鉴真或辨认

(a) 一般规定。为满足鉴真或辨认某项证据的要求,提出方必须提供足以支持认定该证据就是提出方所声称之物的证据。

(b) 示例。以下仅是满足该要求的证据示例--并非完整清单:

(1) 知情证人的证言。证明某项证据就是其所声称之物的证言。

(2) 关于笔迹的非专家意见。非专家基于并非为当前诉讼而获得的熟悉程度,对笔迹真实性发表的意见。

(3) 由专家证人或事实认定者进行的比对。由专家证人或事实认定者与经鉴真的样本进行的比对。

(4) 独特特征及其他类似情况。该证据的外观、内容、实质、内部模式或其他独特特征,结合全部情况一并考虑。

(5) 关于声音的意见。基于在任何时候在将该声音与被指称说话者相联系的情况下听到该声音,对某人声音进行辨认的意见--无论是直接听到的,还是通过机械或电子传输或录音听到的。

(6) 关于电话交谈的证据。对于电话交谈,证明电话是打给当时分配给以下对象的号码的证据:

(A) 特定个人,如果包括自我表明身份在内的情况表明接听者就是被叫者;或

(B) 特定企业,如果电话是打给某企业的,且通话与通过电话合理进行的企业事务有关。

(7) 关于公共记录的证据。证明以下事项的证据:

(A) 某文件经法律授权在公共机关记录或备案;或

(B) 所称的公共记录或陈述来自保存此类物品的机关。

(8) *Evidence About Ancient Documents or Data Compilations*. For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) *Evidence About a Process or System*. Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods Provided by a Statute or Rule*. Any method of authentication or identification allowed by a federal statute or a rule prescribed by the Supreme Court.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 902. Evidence That Is Self-Authenticating**

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) *Domestic Public Documents That Are Sealed and Signed*. A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) *Domestic Public Documents That Are Not Sealed but Are Signed and Certified*. A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) *Foreign Public Documents*. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or



(8) 关于古老文件或数据汇编的证据。对于文件或数据汇编,证明其:

( A) 处于不会引起对其真实性怀疑的状态;

(B) 当时身处一个若属真实便很可能所在的地方;

和

(C) 提供时至少年满 20 岁。

(9) 关于过程或系统的证据。描述某一过程或系统并表明其产生准确结果的证据。

(10) 由法规或规则规定的方法。联邦法规或最高法院规定的规则所允许的任何鉴真或辨认方法。(经2011年4月26日修订,2011年12月1日生效。)

**规则902。自我鉴真的证据**

下列证据项目具有自我鉴真性;为使其可采纳,无需外部证据证明其真实性:

(1) 加盖印章并签署的国内公共文件。带有以下内容的文件:

(A) 一枚声称属于以下实体的印章:美国;美国的任何州、地区、联邦、领土或岛屿属地;前巴拿马运河区;太平洋岛屿托管领土;上述任何实体的政治分区;或上述任何实体的部门、机构或官员;以及

(B) 一项声称是签署或见证的签名。

(2) 未加盖印章但已签署并经核证的国内公共文件。未加盖印章的文件,如果:

(A) 其带有规则 902(1)(A) 中所列实体的官员或雇员的签名;以及

(B) 同一实体内持有印章并有公务职责的另一名公共官员以印章--或其等效形式--核证签名者具有官方身份且签名真实。

(3) 外国公共文件。声称由外国法律授权之人签署或证明的文件。该文件必须附有最终认证,证明签署人或证明人--或任何外国官员--的签名和官方职位的真实性,该外国官员的真实性证书与签名或证明相关,或处于与签名或证明相关的真实性证书链中。该认证可由美国大使馆或公使馆的秘书作出;由美国总领事、副领事或领事代理人作出;或由派驻或 accredited 于美国的外国国家的外交或领事官员作出。如果所有当事人均已被给予合理机会调查该文件的真实性和准确性,法院可以基于正当理由,采取以下任一做法:

(A) 命令将其视为具有推定真实性而无需最终核证;或

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) *Certified Copies of Public Records.* A copy of an official record—or a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.

(5) *Official Publications.* A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) *Newspapers and Periodicals.* Printed material purporting to be a newspaper or periodical.

(7) *Trade Inscriptions and the Like.* An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) *Acknowledged Documents.* A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) *Commercial Paper and Related Documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) *Presumptions Under a Federal Statute.* A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.

(11) *Certified Domestic Records of a Regularly Conducted Activity.* The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)–(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.

(12) *Certified Foreign Records of a Regularly Conducted Activity.* In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a federal statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 903. Subscribing Witness's Testimony**

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)



(B) 允许以经证明的摘要作为其证据,无论是否附有最终核证。

(4) 公共记录的核证副本。官方记录的副本--或经法律授权在公共机关记录或备案的文件的副本--如果该副本由以下主体核证为正确:

(A)保管人或经授权作出认证的另一人;或

(B) 符合规则 902(1)、(2) 或 (3)、联邦法规或最高法院规定规则的证书。

(5) 官方出版物。声称由公共机关发行的书籍、小册子或其他出版物。

(6) 报纸和期刊。声称是报纸或期刊的印刷材料。

(7) 商业标识及类似标识。声称在商业过程中附加并表明来源、所有权或控制的铭文、标志、标签或标牌。

(8) 经确认的文件。附有由公证人或另一名获授权办理确认的官员合法签发的确认证书的文件。

(9) 商业票据及相关文件。商业票据、其上的签名及相关文件,以一般商法允许的范围为限。

(10) 联邦法规下的推定。联邦法规宣布为推定真实或表面真实或真实的签名、文件或其他任何内容。

(11) 经认证的国内记录,来自经常性活动。符合规则 803(6)(A)-(C) 要求的国内记录的原件或副本,由保管人或其他合格人员出具的符合联邦法规或最高法院规定规则的认证予以证明。在审判或听证之前,提出方必须向对方当事人发出关于提出该记录意图的合理书面通知--并且必须使该记录和认证可供查阅--以便该当事人有公平机会对其提出质疑。

(12) 经认证的外国记录,来自经常性活动。在民事案件中,符合规则 902(11) 要求的外国记录的原件或副本,但作如下修改:认证无须符合联邦法规或最高法院规则,而必须以如下方式签署:若系虚假作出,将使作出者在签署认证所在国承担刑事处罚。提出方还必须满足规则 902(11) 的通知要求。(1987年3月2日修订,1987年10月1日生效;1988年4月25日修订,1988年11月1日生效;2000年4月17日修订,2000年12月1日生效;2011年4月26日修订,2011年12月1日生效。)

**规则 903.签名见证人的证言**

仅在管辖文书有效性的法律要求时,才需要签名证人的证言来鉴真文书。

(2011年4月26日修订,2011年12月1日生效。)

## ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

### Rule 1001. Definitions That Apply to This Article

In this article:

(a) A ''writing'' consists of letters, words, numbers, or their equivalent set down in any form.

(b) A ''recording'' consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A ''photograph'' means a photographic image or its equivalent stored in any form.

(d) An ''original'' of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, ''original'' means any printout—or other output readable by sight—if it accurately reflects the information. An ''original'' of a photograph includes the negative or a print from it.

(e) A ''duplicate'' means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

### Rule 1004. Admissibility of Other Evidence of Content

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) an original cannot be obtained by any available judicial process;

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the writing, recording, or photograph is not closely related to a controlling issue.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)



## 第X条文字、录音和照片

### 规则 1001。适用于本条的定义

在本文中:

(a) “文书”由以任何形式载明的字母、文字、数字或其等效形式组成。

(b) “录音”由以任何方式记录的字母、文字、数字或其等效形式组成。

(c) “照片”指以任何形式存储的摄影图像或其等效形式。

(d) 文书或录音的“原件”指文书或录音本身,或由制作或签发者意图具有相同效力的任何对应件。对于电子存储信息,“原件”指任何打印件--或其他可目视读取的输出--如果其准确反映该信息。照片的“原件”包括底片或由其制成的照片。

(e) “复制件”指通过机械、摄影、化学、电子或其他等效过程或技术制作的、准确复制原件的对应件。

(2011年4月26日修订,2011年12月1日生效。)

### 规则 1002.原件要求

为证明文书、录音或照片的内容,要求提供原件,除非本规则或联邦法规另有规定。

(2011年4月26日修订,2011年12月1日生效。)

### 规则 1003。复制件的可采性

复制件在与原件相同的范围内可采纳,除非对原件的真实性提出真正质疑,或情况使得采纳复制件不公平。(2011 年 4 月 26 日修正,2011 年 12 月 1 日生效。)

### 规则 1004.内容的其他证据的可采性

在以下情况下,不要求提供原件,且文书、录音或照片内容的其他证据可采纳:

(a) 所有原件均已遗失或毁损,且并非由提出者恶意为之;

(b) 无法通过任何可用的司法程序获得原件;

(c) 原件将对其提出的当事方曾控制该原件;当时已通过诉答文书或其他方式被告知该原件将成为审判或听证中的证明对象;且未在审判或听证中出示该原件;或

(d) 文书、录音或照片与决定性争点无密切关联。

(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

**Rule 1005. Copies of Public Records to Prove Content**

The proponent may use a copy to prove the content of an official record—or of a document that was recorded or filed in a public office as authorized by law—if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 1006. Summaries to Prove Content**

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 1007. Testimony or Statement of a Party to Prove Content**

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 1008. Functions of the Court and Jury**

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines—in accordance with Rule 104(b)—any issue about whether:

(a) an asserted writing, recording, or photograph ever existed;

(b) another one produced at the trial or hearing is the original; or

(c) other evidence of content accurately reflects the content.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

ARTICLE XI. MISCELLANEOUS RULES

**Rule 1101. Applicability of the Rules**

(a) TO COURTS AND JUDGES. These rules apply to proceedings before:

- United States district courts;
- United States bankruptcy and magistrate judges;
- United States courts of appeals;
- the United States Court of Federal Claims; and
- the district courts of Guam, the Virgin Islands, and the Northern Mariana Islands.



**规则 1005。公共记录的副本用以证明内容**

提出方可以使用副本证明官方记录的内容--或证明经法律授权在公共办公室记录或存档的文件的内容--如果满足以下条件:该记录或文件本来可采纳;且该副本依照规则 902(4) 被认证为正确,或由已将其与原件进行比对的证人作证证明为正确。如果通过合理勤勉无法获得此类副本,则提出方可以使用其他证据证明其内容。(2011年4月26日修订,2011年12月1日生效。)

**规则 1006。用以证明内容的摘要**

提出者可以使用摘要、图表或计算来证明无法在法庭上方便查阅的大量文字、录音或照片的内容。提出者必须在合理的时间和地点使原件或复制件可供其他当事人查阅或复制,或两者兼有。法院可以命令提出者在法庭上出示这些材料。

(2011年4月26日修订,2011年12月1日生效。)

**规则 1007。当事人的证言或陈述用以证明内容**

提出者可以通过证据所针对的当事人的证言、庭外取证或书面陈述来证明文字、录音或照片的内容。提出者无需说明原件的下落。

(1987年3月2日修订,1987年10月1日生效;2011年4月26日修订,2011年12月1日生效。)

**规则 1008。法院和陪审团的职能**

通常情况下,由法院判定提出者是否已满足根据规则 1004 或 1005 采纳文字、录音或照片内容的其他证据的事实条件。但在陪审团审判中,陪审团依照规则 104(b) 判定以下任何问题:

(a) 声称曾存在过的文字、录音或照片;

(b) 在审判或听证中出示的另一份是原件;或

(c) 其他证据表明内容准确反映了该内容。

(2011年4月26日修订,2011年12月1日生效。)

第十一条杂项规则

**规则 1101.规则的适用性**

(a) T O C 法院和法官。这些规则适用于以下程序:

前:

- 美国地区法院;
- 美国破产法官和治安法官;
- 美国上诉法院;
- 美国联邦索赔法院;以及
- 关岛、维尔京群岛和北马里亚纳群岛的地区法院。

(b) TO CASES AND PROCEEDINGS. These rules apply in:
- civil cases and proceedings, including bankruptcy, admiralty, and maritime cases;
- criminal cases and proceedings; and
- contempt proceedings, except those in which the court may act summarily.

(c) RULES ON PRIVILEGE. The rules on privilege apply to all stages of a case or proceeding.

(d) EXCEPTIONS. These rules—except for those on privilege—do not apply to the following:
(1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
(2) grand-jury proceedings; and
(3) miscellaneous proceedings such as:
- extradition or rendition;
- issuing an arrest warrant, criminal summons, or search warrant;
- a preliminary examination in a criminal case;
- sentencing;
- granting or revoking probation or supervised release; and
- considering whether to release on bail or otherwise.

(e) OTHER STATUTES AND RULES. A federal statute or a rule prescribed by the Supreme Court may provide for admitting or excluding evidence independently from these rules.

(As amended Pub. L. 94–149, §1(14), Dec. 12, 1975, 89 Stat. 806; Pub. L. 95–598, title II, §§251, 252, Nov. 6, 1978, 92 Stat. 2673, eff. Oct. 1, 1979; Pub. L. 97–164, title I, §142, Apr. 2, 1982, 96 Stat. 45, eff. Oct. 1, 1982; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 25, 1988, eff. Nov. 1, 1988; Pub. L. 100–690, title VII, §7075(c), Nov. 18, 1988, 102 Stat. 4405; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 1102. Amendments**

These rules may be amended as provided in 28 U.S.C. §2072.

(As amended Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 26, 2011, eff. Dec. 1, 2011.)

**Rule 1103. Title**

These rules may be cited as the Federal Rules of Evidence.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

○



(b) T O C 案件与程序。本规则适用于:
- 民事案件和程序,包括破产、海事和海上案件;
- 刑事案件和诉讼程序;以及
- 藐视法庭程序,但法院可即决处理的除外。

(c) 特权规则。特权规则适用于案件或程序的所有阶段。

例外。本规则--除特权规则外--不适用于以下情形:

(d)

(1) 法院根据规则 104(a) 对支配可采性的初步事实问题所作的判定;

(2) 大陪审团程序;以及(3) 其他各类程序,例如:
- 引渡或移交;
- 签发逮捕令、刑事传票或搜查令;
- 刑事案件的初步审查;
- 量刑;
- 授予或撤销缓刑或监督释放;
- 考虑是否保释或以其他方式释放。

和

(e) 其他制定法和规则。联邦制定法或最高法院规定的规则可以规定独立于本规则采纳或排除证据。

(经Pub. L. 94–149, 142,1982年4月2日,96 Stat. 45,1982年10月1日生效;1987年3月2日,1987年10月1日生效;1988年4月25日,1988年11月1日生效;Pub. L. 100–690, 第七编,7075(c),1988年11月18日,102 Stat. 4405;1993年4月22日,1993年12月1日生效;2011年4月26日,2011年12月1日生效。)

**规则 1102。修订**

本规则可依《美国法典》第28编第2072条之规定予以修正。

(经1991年4月30日修订,1991年12月1日生效;2011年4月26日修订,2011年12月1日生效。)

**规则 1103。标题**

本规则可引称为联邦证据规则。(经 Apr.26, 2011, eff.Dec.1, 2011 修正。)

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