

# ***Restyled* Mississippi Rules of Evidence**

**Legend:** the left column contains the exiting Mississippi Rules of Evidence; the right column offers the proposed *restyle*. The document is color-coded: *green* text indicates that the Mississippi rule and the former federal rule are essentially *identical*; *orange* text indicates that the rules *differ*; *red* text indicates *no corresponding rule language*. Because there are no corresponding federal privilege rules, all text in both columns in Article V is black.

<b>ARTICLE I. GENERAL PROVISIONS</b> [ <i>Current Rules</i> ]	<b>ARTICLE I. GENERAL PROVISIONS</b> [ <i>Restyled</i> ]
<b>RULE 101. SCOPE</b>	<b>Rule 101. Scope; Definitions</b>
<p>These rules govern proceedings in the courts of the <i>State of Mississippi</i> to the extent and with the exceptions stated in rule 1101.</p>	<p><b>(a) Scope.</b> These rules apply to proceedings in <i>Mississippi courts</i>. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.</p> <p><b>(b) Definitions.</b> In these rules:</p> <ul style="list-style-type: none"> <li><b>(1)</b> “civil case” means a civil action or proceeding;</li> <li><b>(2)</b> “criminal case” includes a criminal proceeding;</li> <li><b>(3)</b> “record” includes a memorandum, report, or data compilation; and</li> <li><b>(4)</b> a reference to any kind of written material or any other medium includes electronically stored information.</li> </ul>
<b>RULE 102. PURPOSE AND CONSTRUCTION</b>	<b>Rule 102. Purpose</b>
<p>These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense</p>	<p>These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and</p>

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<p>and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.</p>	<p>delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.</p>
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<b>RULE 103. RULINGS ON EVIDENCE</b>	<b>Rule 103. Rulings on Evidence</b>
<p><b>(a) Effect of Erroneous Ruling.</b> Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and</p> <p>(1) <i>Objection.</i> In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or</p> <p>(2) <i>Offer of Proof.</i> In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. Continuing objections to evidence of the same or a similar nature or subject to the same or similar objections may in the discretion of the trial judge be allowed.</p> <p><b>(b) Record of Offer and Ruling.</b> The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection</p>	<p><b>(a) Preserving a Claim of Error.</b> 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:</p> <p>(1) if the ruling admits evidence, a party, on the record:</p> <p style="padding-left: 20px;"><b>(A)</b> timely objects or moves to strike; and</p> <p style="padding-left: 20px;"><b>(B)</b> states the specific ground, unless it was apparent from the context; or</p> <p>(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.</p> <p><b>(b) Continuing Objection.</b> The court may allow a continuing objection to evidence of the same or similar nature or subject to the same or similar objection.</p> <p><b>(c) Court’s Statement About the Ruling; Directing an Offer of Proof.</b> The court may make any statement about the character or form of the evidence, the objection made,</p>

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made, and the ruling thereon. It may direct the making of an offer in question and answer form.

**(c) Hearing of Jury.** In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

**(d) Plain Error.** Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

and the ruling. 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.

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RULE 104. PRELIMINARY QUESTIONS	Rule 104. Preliminary Questions
<p><b>(a) Questions of Admissibility Generally.</b> Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.</p> <p><b>(b) Relevancy Conditioned on Fact.</b> When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition. <i>If offeror fails to meet the condition, the objector may request the jury be instructed to disregard the evidence; however, such request shall not be a prerequisite to motion for mistrial. For purposes of punitive damages, proof of net worth shall not be offered until the close of evidence and the court has determined that issue will be submitted to the jury.</i></p> <p><b>(c) Hearing of Jury.</b> Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or,</p>	<p><b>(a) In General.</b> 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.</p> <p><b>(b) Relevance that Depends on a Fact.</b> 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. <i>If the proof is not introduced, the objector may request an instruction directing the jury to disregard the evidence. This request is not prerequisite to a motion for mistrial.</i></p> <p><b>(c) Conducting a Hearing So That the Jury Cannot Hear It.</b> The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:</p> <ol style="list-style-type: none"> <li>(1) the hearing involves the admissibility of a confession;</li> <li>(2) a defendant in a criminal case is a witness and so requests; or</li> <li>(3) justice so requires.</li> </ol> <p><b>(d) Cross-Examining a Defendant in a Criminal Case.</b> By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other</p>

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<p>when an accused is a witness, if he so requests.</p> <p><b>(d) Testimony by Accused.</b> The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.</p> <p><b>(e) Weight and Credibility.</b> This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.</p>	<p>issues in the case.</p> <p><b>(e) Evidence Relevant to Weight and Credibility.</b> 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.</p> <p><b>(f) Punitive Damages.</b> If the court allows the jury to consider punitive damages, evidence of net worth may not be offered until the close of evidence.</p>
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<p><b>RULE 105. LIMITED ADMISSIBILITY</b></p>	<p><b>Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes</b></p>
<p>When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.</p>	<p>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, <b>unless expressly waived or rebutted</b>, shall restrict the evidence to its proper scope, <b>contemporaneously</b> instruct the jury accordingly, <b>and give a written instruction if requested.</b></p> <p><i>Reporter’s Note:</i> Rule 105 was amended by the Supreme Court on its own motion while the restyling project was pending and has not been restyled.</p>
<p><b>RULE 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS</b></p>	<p><b>Rule 106. Remainder of or Related Writings or Recorded Statements</b></p>

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<p>When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.</p>	<p>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.</p>
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<p><b>ARTICLE II. JUDICIAL NOTICE</b> [<i>Current Rules</i>]</p> <p><b>RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS</b></p>	<p><b>ARTICLE II. JUDICIAL NOTICE</b> [<i>Restyled</i>]</p> <p><b>Rule 201. Judicial Notice of Adjudicative Facts</b></p>
<p><b>(a) Scope of Rule.</b> This rule governs only judicial notice of adjudicative facts.</p> <p><b>(b) Kinds of Facts.</b> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.</p> <p><b>(c) When Discretionary.</b> A court may take judicial notice, whether requested or not.</p> <p><b>(d) When Mandatory.</b> A court shall take judicial notice if requested by a party and supplied with the necessary information.</p> <p><b>(e) Opportunity to Be Heard.</b> A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.</p> <p><b>(f) Time of Taking Notice.</b> Judicial</p>	<p><b>(a) Scope.</b> This rule governs judicial notice of an adjudicative fact only, not a legislative fact.</p> <p><b>(b) Kinds of Facts That May Be Judicially Noticed.</b> The court may judicially notice a fact that is not subject to reasonable dispute because it:</p> <p style="padding-left: 2em;"><b>(1)</b> is generally known within the trial court’s territorial jurisdiction; or</p> <p style="padding-left: 2em;"><b>(2)</b> can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.</p> <p><b>(c) Taking Notice.</b> The court:</p> <p style="padding-left: 2em;"><b>(1)</b> may take judicial notice on its own; or</p> <p style="padding-left: 2em;"><b>(2)</b> must take judicial notice if a party requests it and the court is supplied with the necessary information.</p> <p><b>(d) Timing.</b> The court may take judicial notice at any stage of the proceeding.</p> <p><b>(e) Opportunity to Be Heard.</b> 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</p>

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notice may be taken at any stage of the proceeding.

**(g) Instructing Jury.** In a civil action or proceeding the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

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.

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<p><b>ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS</b> <i>[Current Rules]</i></p> <p><b>RULE 301. PRESUMPTIONS IN GENERAL IN CIVIL ACTIONS AND PROCEEDINGS</b></p>	<p><b>ARTICLE III. PRESUMPTIONS IN CIVIL CASES</b> <i>[Restyled]</i></p> <p><b>Rule 301. Presumptions in Civil Cases Generally</b></p>
<p>In all civil actions and proceedings not otherwise provided for by act of the Legislature or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.</p>	<p>In a civil case, unless a Mississippi 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.</p>

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<p><b>ARTICLE IV. RELEVANCY AND ITS LIMITS</b> [<i>Current Rules</i>]</p> <p><b>RULE 401. DEFINITION OF "RELEVANT EVIDENCE"</b></p>	<p><b>ARTICLE IV. RELEVANCE AND ITS LIMITS</b> [<i>Restyled</i>]</p> <p><b>Rule 401. Test for Relevant Evidence</b></p>
<p>"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.</p>	<p>Evidence is relevant if:</p> <p>(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and</p> <p>(b) the fact is of consequence in determining the case.</p>
<p><b>RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE</b></p>	<p><b>Rule 402. General Admissibility of Relevant Evidence</b></p>
<p>All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Mississippi, or by these rules. Evidence which is not relevant is not admissible.</p>	<p>Relevant evidence is admissible unless any of the following provides otherwise:</p> <ul style="list-style-type: none"> <li>• the United States Constitution;</li> <li>• the Mississippi Constitution; or</li> <li>• these rules.</li> </ul> <p>Irrelevant evidence is not admissible.</p>
<p><b>RULE 403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME</b></p>	<p><b>Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons</b></p>
<p>Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by</p>	<p>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,</p>

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<p style="color: green;">considerations of undue delay, waste of time, or needless presentation of cumulative evidence.</p>	<p style="color: green;">misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>
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<p><b>RULE 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES</b></p>	<p><b>Rule 404. Character Evidence; Crimes or Other Acts</b></p>
<p><b>(a) Character Evidence Generally.</b> Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:</p> <p style="padding-left: 20px;">(1) Character of Accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;</p> <p style="padding-left: 20px;">(2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution to rebut evidence that the victim was the first aggressor;</p> <p style="padding-left: 20px;">(3) Character of Witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.</p>	<p><b>(a) Character Evidence.</b></p> <p><b>(1) <i>Prohibited Uses.</i></b> 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.</p> <p><b>(2) <i>Exceptions for a Defendant or Victim in a Criminal Case.</i></b> The following exceptions apply in a criminal case:</p> <p style="padding-left: 20px;"><b>(A)</b> 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;</p> <p style="padding-left: 20px;"><b>(B)</b> a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it; and</p> <p style="padding-left: 20px;"><b>(C)</b> the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.</p> <p><b>(3) <i>Exceptions for a Witness.</i></b> Evidence of a witness's character</p>

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	may be admitted under Rules 607, 608, and 609.
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<p><b>(b) Other Crimes, Wrongs, or Acts.</b> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.</p>	<p><b>(b) Crimes, Wrongs, or Other Acts.</b></p> <p><b>(1) <i>Prohibited Uses.</i></b> 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.</p> <p><b>(2) <i>Permitted Uses.</i></b> 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.</p>
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<b>RULE 405. METHODS OF PROVING CHARACTER</b>	<b>Rule 405. Methods of Proving Character</b>
<p><b>(a) Reputation or Opinion.</b> In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.</p> <p><b>(b) Specific Instances of Conduct.</b> In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.</p>	<p><b>(a) By Reputation or Opinion.</b> 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.</p> <p><b>(b) By Specific Instances of Conduct.</b> 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.</p>
<b>RULE 406. HABIT; ROUTINE PRACTICE</b>	<b>Rule 406. Habit; Routine Practice</b>
<p>Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.</p>	<p>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.</p>

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<b>RULE 407. SUBSEQUENT REMEDIAL MEASURES</b>	<b>Rule 407. Subsequent Remedial Measures</b>
<p>When, after an injury or harm allegedly caused by an event, measures are taken <b>which</b>, if taken previously, would have made the 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, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for <b>other purposes</b>, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or <b>for</b> impeachment.</p>	<p>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:</p> <ul style="list-style-type: none"><li>• negligence;</li><li>• culpable conduct;</li><li>• a defect in a product or its design;</li></ul> <p>or</p> <ul style="list-style-type: none"><li>• a need for a warning or instruction.</li></ul> <p>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.</p>

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<p><b>RULE 408. COMPROMISE AND OFFERS TO COMPROMISE</b></p>	<p><b>Rule 408. Compromise Offers and Negotiations</b></p>
<p>Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.</p>	<p><b>(a) Prohibited Uses.</b> Evidence of the following is not admissible either to prove or disprove the validity or amount of a disputed claim:</p> <ul style="list-style-type: none"> <li><b>(1)</b> 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</li> <li><b>(2)</b> conduct or a statement made during compromise negotiations about the claim.</li> </ul> <p><b>(b) Exceptions.</b></p> <ul style="list-style-type: none"> <li><b>(1)</b> 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.</li> <li><b>(2)</b> This rule does not apply to otherwise discoverable evidence presented during compromise negotiations.</li> </ul>
<p><b>RULE 409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES</b></p>	<p><b>Rule 409. Offers to Pay Medical and Similar Expenses</b></p>
<p>Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.</p>	<p>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.</p>

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<b>RULE 410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS</b>	<b>Rule 410. Pleas, Plea Discussions, and Related Statements</b>
<p>Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:</p> <ul style="list-style-type: none"><li>(1) A plea of guilty which was later withdrawn;</li><li>(2) A plea of nolo contendere;</li><li>(3) Any statement made in the course of any proceedings under Mississippi statutory or rule of court provisions regarding either of the foregoing pleas; or</li><li>(4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which does not result in a plea of guilty or which results in a plea of guilty later withdrawn.</li></ul> <p>However, such a statement is admissible (1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.</p>	<p><b>(a) Prohibited Uses.</b> 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:</p> <ul style="list-style-type: none"><li>(1) a guilty plea that was later withdrawn;</li><li>(2) a nolo contendere plea;</li><li>(3) a statement made during a proceeding on either of those pleas under a Mississippi statute or court rule; or</li><li>(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.</li></ul> <p><b>(b) Exceptions.</b> The court may admit a statement described in Rule 410(a)(3) or (4):</p> <ul style="list-style-type: none"><li>(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</li><li>(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.</li></ul>

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<b>RULE 411. LIABILITY INSURANCE</b>	<b>Rule 411. Liability Insurance</b>
<p>Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.</p>	<p>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.</p>

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<b>RULE 412. SEX OFFENSE CASES; RELEVANCE OF VICTIM'S PAST BEHAVIOR</b>	<b>Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition</b>
<p>(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sexual offense against another person, reputation or opinion evidence of the past sexual behavior of an alleged victim of such sexual offense is not admissible.</p> <p>(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sexual offense against another person, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is:</p> <p style="padding-left: 2em;">(1) Admitted in accordance with subdivisions (c)(1) and (c)(2) hereof and is constitutionally required to be admitted; or</p> <p style="padding-left: 2em;">(2) Admitted in accordance with subdivision (c) hereof and is evidence of</p> <p style="padding-left: 4em;">(A) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen, pregnancy, disease, or injury; or</p> <p style="padding-left: 4em;">(B) Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual</p>	<p>(a) <b>Prohibited Uses.</b> The following is not admissible in a criminal case involving an alleged sexual offense:</p> <p style="padding-left: 2em;">(1) reputation or opinion evidence of a victim's past sexual behavior; and</p> <p style="padding-left: 2em;">(2) evidence of a victim's past sexual behavior other than reputation or opinion, except under subdivisions (b) and (c).</p> <p>(b) <b>Exceptions.</b> The court may admit evidence of:</p> <p style="padding-left: 2em;">(1) specific instances of a victim's past sexual behavior:</p> <p style="padding-left: 4em;">(A) with a person other than the defendant, if offered by the defendant to prove that someone else was the source of semen, pregnancy, disease, or injury;</p> <p style="padding-left: 4em;">(B) with the defendant, if offered by the defendant to prove consent; and</p> <p style="padding-left: 4em;">(C) if constitutionally required to be admitted; and</p> <p style="padding-left: 2em;">(2) false allegations of sexual offenses made at any time before trial by the victim.</p>

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<p>behavior with respect to which a sexual offense is alleged; or</p> <p style="padding-left: 40px;">(C) False allegations of past sexual offenses made by the alleged victim at any time prior to the trial.</p>	
<p><b>(c)</b> (1) If the person accused of committing a sexual offense intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior or evidence of past false allegations made by the alleged victim, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.</p> <p style="padding-left: 40px;">(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision (b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses including the alleged victim, and offer relevant evidence.</p>	<p><b>(c) Procedure to Determine Admissibility.</b></p> <p><b>(1) Motion.</b> A defendant who intends to offer evidence under subdivision (b) must:</p> <ul style="list-style-type: none"> <li><b>(A)</b> make a motion accompanied by an offer of proof describing the evidence;</li> <li><b>(B)</b> file the written motion and offer of proof at least 15 days before trial, unless the court sets a later time – including during trial – after determining: <ul style="list-style-type: none"> <li><b>(i)</b> the evidence is newly discovered and with reasonable diligence could not have been discovered earlier; or</li> <li><b>(ii)</b> the issue is newly arisen; and</li> </ul> </li> <li><b>(C)</b> serve all parties and the victim.</li> </ul> <p><b>(2) Hearing and Order.</b> When the offer of proof is sufficient, the evidence may be admitted only if the court:</p> <ul style="list-style-type: none"> <li><b>(A)</b> conducts a hearing in chambers to determine admissibility of the evidence;</li> <li><b>(B)</b> allows the parties to offer relevant evidence and call witnesses – including the victim – at the hearing;</li> <li><b>(C)</b> if the relevance of the evidence depends on whether a</li> </ul>

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Notwithstanding subdivision (b) of Rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

**(d)** For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which the sexual offense is alleged.

fact exists, determines – at this or a later hearing – whether the fact exists, notwithstanding Rule 104(b);

**(D)** finds that the probative value of relevant evidence outweighs the danger of unfair prejudice, except this subparagraph (D) does not apply when the evidence is offered under subparagraph (b)(1)(C); and

**(E)** makes an order that specifies:

**(i)** the admissible evidence; and

**(ii)** the areas about which the victim may be examined.

**(d) Definitions.** In this rule:

**(1)** "victim" includes an alleged victim; and

**(2)** "past sexual behavior" means sexual behavior other than the alleged offense.

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<p><b>ARTICLE V. PRIVILEGES</b> [<i>Current Rules</i>]</p> <p><b>RULE 501. PRIVILEGES RECOGNIZED ONLY AS PROVIDED</b></p>	<p><b>ARTICLE V. PRIVILEGES</b> [<i>Restyled</i>]</p> <p><b>Rule 501. Privileges Established by Constitution or Rule Only</b></p>
<p>Except as otherwise provided by the United States Constitution, the State Constitution, by these rules, or by other rules applicable in the courts of this state to which these rules apply, no person has a privilege to:</p> <p>(1) Refuse to be a witness;</p> <p>(2) Refuse to disclose any matter;</p> <p>(3) Refuse to produce any object or writing; or</p> <p>(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.</p>	<p>Unless the federal or state constitution or these or other applicable rules provide otherwise, no person has a privilege to:</p> <ul style="list-style-type: none"> <li>• refuse to be a witness;</li> <li>• refuse to disclose any matter;</li> <li>• refuse to produce an object or writing; or</li> <li>• prevent another from being a witness, disclosing any matter, or producing an object or writing.</li> </ul>

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<b>RULE 502. LAWYER-CLIENT PRIVILEGE</b>	<b>Rule 502. Lawyer-Client Privilege</b>
<p><b>(a) Definitions.</b> As used in this rule:</p> <p>(1) A "<i>client</i>" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him.</p> <p>(2) A "<i>representative of the client</i>" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client, or an employee of the client having information needed to enable the lawyer to render legal services to the client.</p> <p>(3) A "<i>lawyer</i>" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation.</p> <p>(4) A "<i>representative of the lawyer</i>" is one employed by the lawyer to assist the lawyer in the rendition of professional legal services.</p> <p>(5) A communication is "<i>confidential</i>" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client</p>	<p><b>(a) Definitions.</b> In this rule:</p> <p>(1) "Client" means a person, public officer, corporation, association, or any other public or private organization or entity:</p> <p style="padding-left: 2em;"><b>(A)</b> to whom a lawyer renders professional legal services; or</p> <p style="padding-left: 2em;"><b>(B)</b> who consults a lawyer with a view to obtaining professional legal services from the lawyer.</p> <p>(2) "Client's representative" means:</p> <p style="padding-left: 2em;"><b>(A)</b> one authorized to:</p> <p style="padding-left: 4em;"><b>(i)</b> obtain professional legal services on behalf of the client; or</p> <p style="padding-left: 4em;"><b>(ii)</b> act on behalf of the client on the legal advice rendered; or</p> <p style="padding-left: 2em;"><b>(B)</b> an employee of the client with information the lawyer needs to render legal services to the client.</p> <p>(3) "Lawyer" means a person authorized – or who the client reasonably believes is authorized – to practice law in any state or nation.</p> <p>(4) "Lawyer's representative" means one employed by the lawyer to assist the lawyer in rendering professional legal services.</p> <p>(5) A communication is "confidential" if not intended to be disclosed to third persons other than those:</p> <p style="padding-left: 2em;"><b>(A)</b> to whom disclosure is made to further rendition of</p>

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or those reasonably necessary for the transmission of the communication.

**(b) General Rule of Privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative, (2) between his lawyer and the lawyer's representative, (3) by him or his representative or his lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

professional legal services to the client; or

**(B)** reasonably necessary to transmit the communication.

**(b) General Rule of Privilege.** A client has a privilege to refuse to disclose – and to prevent others from disclosing – any confidential communication made to facilitate professional legal services to the client:

**(1)** between the client or the client's representative and the client's lawyer or the lawyer's representative;

**(2)** between the client's lawyer and the lawyer's representative;

**(3)** by the client, the client's representative, the client's lawyer, or the lawyer's representative to another lawyer or that lawyer's representative, if:

**(A)** the other lawyer represents another party in a pending case; and

**(B)** the communication concerns a matter of common interest;

**(4)** between the client's representatives or between the client and a client representative; or

**(5)** among lawyers and their representatives representing the same client.

**(c) Who May Claim the Privilege.**

**(1)** The privilege may be claimed by:

**(A)** the client;

**(B)** the client's guardian or conservator;

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### **(c) Who May Claim the Privilege.**

The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

**(d) Exceptions.** There is no privilege under this rule:

(1) *Furtherance of Crime or Fraud.* If the services of the lawyer were sought

(C) a deceased client's personal representative; or

(D) the successor, trustee, or similar representative of a corporate, associational, or other organizational client, whether in existence or not.

(2) The client's lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege, but only on the client's behalf.

**(d) Exceptions.** The privilege does not apply if:

(1) *Furtherance of Crime or Fraud.* The lawyer's services were sought or obtained to enable or aid anyone to plan or commit what the client knew – or reasonably should have known – was a crime or fraud;

(2) *Claimants Through Same Deceased Client.* The communication is relevant to an issue between parties who claim – by testate or intestate succession or by *inter vivos* transaction – through the same deceased client;

(3) *Breach of Duty.* The communication is relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer;

(4) *Document Attested by Lawyer.* The communication is relevant to an issue about an attested document to which the lawyer is an attesting witness; or

(5) *Joint Clients.* The communication:

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or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) *Claimants Through Same Deceased Client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(3) *Breach of Duty by a Lawyer or Client.* As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

(4) *Document Attested by a Lawyer.* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(5) *Joint Clients.* As to a communication relevant to a matter of common interest between or among two (2) or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.

(A) is offered in a case between or among clients who retained or consulted a lawyer in common; (B) was made by any of the clients to the lawyer; and (C) is relevant to a matter of common interest between two or more clients.

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<p><b>RULE 503. PHYSICIAN AND PSYCHOTHERAPIST-PATIENT PRIVILEGE</b></p>	<p><b>Rule 503. Privilege between Patient and Physician or Psychotherapist</b></p>
<p><b>(a) Definitions.</b> As used in this rule:</p> <p>(1) A "<i>patient</i>" is a person who consults or is examined or interviewed by a physician or psychotherapist.</p> <p>(2) A "<i>physician</i>" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.</p> <p>(3) A "<i>psychotherapist</i>" is (1) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or (2) a person licensed or certified as a psychologist under the laws of any state or nation, while similarly engaged.</p> <p>(4) A communication is "<i>confidential</i>" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.</p>	<p><b>(a) Definitions.</b> In this rule:</p> <p>(1) "Patient" means a person who consults, is examined by, or is interviewed by a physician or psychotherapist;</p> <p>(2) "Physician" means a person who is – or the patient reasonably believes to be – authorized to practice medicine in any state or nation;</p> <p>(3) "Psychotherapist" means:</p> <p style="padding-left: 20px;"><b>(A)</b> a physician, or a person licensed or certified as a psychologist by any state or nation,</p> <p style="padding-left: 20px;"><b>(B)</b> while engaged in diagnosing or treating a mental or emotional condition, including alcohol or drug addiction.</p> <p>(4) A communication is "confidential" if not intended to be disclosed to third persons, other than those:</p> <p style="padding-left: 20px;"><b>(A)</b> present to further the patient's interests in the consultation, examination, or interview;</p> <p style="padding-left: 20px;"><b>(B)</b> reasonably necessary to transmit the communication; or</p> <p style="padding-left: 20px;"><b>(C)</b> participating in the diagnosis or treatment under the physician's or psychotherapist's direction, including members of the patient's family.</p> <p><b>(b) General Rule of Privilege.</b> A</p>

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<p><b>(b) General Rule of Privilege.</b> A patient has a privilege to refuse to disclose and to prevent any other person from disclosing (A) knowledge derived by the physician or psychotherapist by virtue of his professional relationship with the patient, or (B) confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional condition, including alcohol or drug addiction, among himself, his physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.</p> <p><b>(c) Who May Claim the Privilege.</b> The privilege may be claimed by the patient, his guardian or conservator, or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.</p> <p><b>(d) Exceptions.</b> (1) <i>Proceedings for Hospitalization.</i> There is no privilege under this rule in a proceeding to hospitalize the patient for mental illness, if the physician or psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.</p>	<p>patient has a privilege to refuse to disclose, and to prevent others from disclosing:</p> <p>(1) knowledge the physician or psychotherapist derived from the professional relationship with the patient; and</p> <p>(2) confidential communications: (A) made for the purpose of diagnosing or treating the patient's physical, mental, or emotional condition, including alcohol or drug addiction, and (B) between or among the patient, the patient's physician or psychotherapist, and persons – including the patient's family – participating in the diagnosis or treatment under the direction of the physician or psychotherapist.</p> <p><b>(c) Who may Claim the Privilege.</b> (1) The privilege may be claimed by: (A) the patient; (B) the patient's guardian or conservator; or (C) a deceased patient's personal representative. (2) The physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege, but only on the patient's behalf.</p> <p><b>(d) Exceptions.</b> The privilege does not apply: (1) <i>Hospitalization Proceedings.</i> In proceedings to hospitalize the patient for mental illness, if the physician or psychotherapist has determined in the course of</p>
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(2) *Examination by Order of Court.* If the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or a witness, there is no privilege under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) There is no privilege under this rule as to an issue of breach of duty by the physician or psychotherapist to his patient or by the patient to his physician or psychotherapist.

(4) There is no privilege under this rule for communications, including past and current records of whatever nature, regarding a party's physical, mental, or emotional health or drug or alcohol condition relevant to child custody, visitation, adoption, or termination of parental rights. Upon a hearing in chambers, a judge, in the exercise of discretion, may order release of such records relevant to the custody, visitation, adoption, or termination action. The court may order the records sealed.

(e) In an action commenced or claim made against a person for professional services rendered or which should have been rendered, the delivery of written notice of such claim or the filing of such an action shall constitute a waiver of the privilege under this rule.

diagnosis or treatment that the patient needs to be hospitalized;  
(2) *Court-Ordered Examination.* To any communication related to the purpose of a court order directing an examination of the physical, mental, or emotional condition of a patient who is a party or witness, unless the order states that the privilege applies;

(3) *Breach of Duty.* To an issue of breach of duty by the physician or psychotherapist to the patient or by the patient to the physician or psychotherapist; or

(4) *Children and Parents; Seal or Release Records.* To communications – including records – regarding a party's physical, mental, or emotional health or drug or alcohol condition when relevant to child custody, visitation, adoption, or termination of parental rights.

As to this paragraph (4), the court may order the records sealed or – after a hearing in chambers – order the relevant records released.

(e) *Waiver by Filing Case or Delivering Notice.* In a case or claim for professional services that were or should have been rendered, filing the case or delivering written notice of the claim waives the privilege.

(f) *Waiver by Pleadings; Ex Parte Contact.* A party whose pleadings place in issue any aspect of that party's physical, mental, or emotional condition thereby – and to that extent only –

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<p><b>(f)</b> Any party to an action or proceeding subject to these rules who by his or her pleadings places in issue any aspect of his or her physical, mental or emotional condition thereby and to that extent only waives the privilege otherwise recognized by this rule. This exception does not authorize <i>ex parte</i> contact by the opposing party.</p>	<p>waives the privilege.</p> <p>The exception in this subdivision (f) does not authorize <i>ex parte</i> contact by an opposing party.</p>
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<p><b>RULE 504. HUSBAND-WIFE PRIVILEGE</b></p>	<p><b>Rule 504. Spousal Privilege</b></p>
<p><b>(a) Definition.</b> A communication is confidential if it is made privately by any person to that person’s spouse and is not intended for disclosure to any other person.</p> <p><b>(b) General Rule of Privilege.</b> In any proceeding, civil or criminal, a person has a privilege to prevent that person’s spouse, or former spouse, from testifying as to any confidential communication between that person and that person’s spouse.</p> <p><b>(c) Who May Claim the Privilege.</b> The privilege may be claimed by either spouse in that spouse’s own right or on behalf of the other.</p> <p><b>(d) Exceptions.</b> There is no privilege under this rule in civil actions between</p>	<p><b>(a) Definition.</b> A communication is “confidential” if a person makes it privately to the person's spouse and does not intend its disclosure to any other person.</p> <p><b>(b) General Rule of Privilege.</b> A person has a privilege to prevent the person's current or former spouse from testifying in a civil or criminal case about any confidential communication between them.</p> <p><b>(c) Who may Claim the Privilege.</b> Either spouse may claim the privilege. A spouse has authority to claim the privilege on the other spouse's behalf.</p> <p><b>(d) Exceptions.</b> The privilege does not apply:</p> <p style="padding-left: 20px;"><b>(1)</b> in a civil case between the</p>

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<p>the spouses or in a proceeding in which one spouse is charged with a crime against (1) the person of any minor child or (2) the person or property of (i) the other spouse, (ii) a person residing in the household of either spouse, or (iii) a third person committed in the course of committing a crime against any of the persons described in (d)(1), or (2) of this rule.</p>	<p>spouses; or  <b>(2)</b> in a criminal case when one spouse is charged with a crime against:              <b>(A)</b> the person of a minor child;              or              <b>(B)</b> the person or property of:                  <b>(i)</b> the other spouse;                  <b>(ii)</b> a resident of either spouse's household; or                  <b>(iii)</b> a third person when committed during a crime against any person described in paragraphs (d)(1) and (2).</p>
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<p><b>RULE 505. PRIEST-PENITENT PRIVILEGE</b></p> <p><b>(a) Definitions.</b> As used in this rule:</p> <p style="padding-left: 40px;">(1) A "<i>clergyman</i>" is a minister, priest, rabbi or other similar functionary of a church, religious organization, or religious denomination.</p> <p style="padding-left: 40px;">(2) A communication is "<i>confidential</i>" if made privately and not intended for further disclosure except in furtherance of the purpose of the communication.</p> <p><b>(b) General Rule of Privilege.</b> A person has a privilege to refuse to disclose and prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.</p>	<p><b>Rule 505. Communications to Clergy</b></p> <p><b>(a) Definitions.</b> In this rule:</p> <p style="padding-left: 40px;"><b>(1)</b> "Clergy member" means a minister, priest, rabbi, or other similar functionary of a church, religious organization, or religious denomination.</p> <p style="padding-left: 40px;"><b>(2)</b> A communication is "confidential" when:</p> <p style="padding-left: 80px;"><b>(A)</b> made privately, and</p> <p style="padding-left: 80px;"><b>(B)</b> not intended to be disclosed except to further the purpose of the communication.</p> <p><b>(b) General Rule of Privilege.</b> A person has a privilege to refuse to disclose – and to prevent others from disclosing – a confidential communication made by the person to a clergy member as spiritual adviser.</p> <p><b>(c) Who may Claim the Privilege.</b></p>
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<p><b>(c) Who May Claim the Privilege.</b> The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The clergyman shall claim the privilege on behalf of the person unless the privilege is waived.</p> <p><b>(d) Other.</b> A clergyman's secretary, stenographer, or clerk shall not be examined without the consent of the clergyman concerning any fact, the knowledge of which was acquired in such capacity.</p>	<p><b>(1)</b> The privilege may be claimed by:</p> <ul style="list-style-type: none"><li><b>(A)</b> the person who made the communication;</li><li><b>(B)</b> the person's guardian or conservator; or</li><li><b>(C)</b> a deceased person's personal representative.</li></ul> <p><b>(2)</b> Unless the privilege is waived, the clergy member must claim it on the person's behalf.</p> <p><b>(d) Clerical Staff.</b> A clergy member's secretary, stenographer, or clerk must not be examined about any fact learned in that capacity without the clergy member's consent.</p>
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ARTICLE VI. WITNESSES [ <i>Current Rules</i> ]	ARTICLE VI. WITNESSES [ <i>Restyled</i> ]
<b>RULE 601. GENERAL RULE OF COMPETENCY</b>	<b>Rule 601. Competency to Testify</b>
<p>Every person is competent to be a witness except as restricted by the following:</p> <p><b>(a)</b> In all instances where one spouse is a party litigant the other spouse shall not be competent as a witness without the consent of both, except as provided in Rule 601(a)(1) or Rule 601(a)(2):</p> <p style="padding-left: 2em;">(1) Husbands and wives may be introduced by each other in all cases, civil or criminal, and shall be competent witnesses in their own behalf, as against each other, in all controversies between them;</p> <p style="padding-left: 2em;">(2) Either spouse is a competent witness and may be compelled to testify against the other in any criminal prosecution of either husband or wife for a criminal act against any child, for contributing to the neglect or delinquency of a child, or desertion or nonsupport of children under the age of sixteen (16) years, or abandonment of children.</p> <p><b>(b)</b> A person appointed by a court as required by state law to make an appraisal in an eminent domain proceeding for the immediate possession of land shall not be eligible to testify in the trial of such case, and the report of such court appointed</p>	<p><b>(a) In General.</b> Every person is competent to be a witness, <b>except as provided in subdivisions (b) and (c).</b></p> <p><b>(b) Competency of Spouse.</b> If one spouse is a party, the other spouse may not testify as a witness in the case unless both consent, except:</p> <p style="padding-left: 2em;"><b>(1)</b> when called as a witness by the spouse who is a party;</p> <p style="padding-left: 2em;"><b>(2)</b> in a controversy between them; or</p> <p style="padding-left: 2em;"><b>(3)</b> in a criminal case for:</p> <p style="padding-left: 4em;"><b>(A)</b> a criminal act against a child;</p> <p style="padding-left: 4em;"><b>(B)</b> contributing to the neglect or delinquency of a child;</p> <p style="padding-left: 4em;"><b>(C)</b> desertion or nonsupport of a child under 16; and</p> <p style="padding-left: 4em;"><b>(D)</b> abandonment of a child.</p> <p><b>(c) Competency of Appraiser.</b> When the court -- as required by law -- appoints a person to make an appraisal for the immediate possession of property in an eminent domain case:</p> <p style="padding-left: 2em;"><b>(1)</b> the appraiser may not testify as a witness in the trial of the case; and</p> <p style="padding-left: 2em;"><b>(2)</b> the appraiser's report is not admissible in evidence during the trial.</p>

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appraiser shall not be admissible in evidence during such trial.	
<b>RULE 602. LACK OF PERSONAL KNOWLEDGE</b>	<b>Rule 602. Need for Personal Knowledge</b>
A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.	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.
<b>RULE 603. OATH OR AFFIRMATION</b>	<b>Rule 603. Oath or Affirmation to Testify Truthfully</b>
Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.	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.
<b>RULE 604. INTERPRETERS</b>	<b>Rule 604. Interpreter</b>
An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.	An interpreter must be qualified and must give an oath or affirmation to make a true translation.

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<b>RULE 605. COMPETENCY OF JUDGE AS WITNESS</b>	<b>Rule 605. Judge’s Competency as a Witness</b>
The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.	The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

<b>RULE 606. COMPETENCY OF JUROR AS WITNESS</b>	<b>Rule 606. Juror’s Competency as a Witness</b>
<p><b>(a) At the Trial.</b> A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.</p> <p><b>(b) Inquiry Into Validity of Verdict or Indictment.</b> Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about</p>	<p><b>(a) At the Trial.</b> 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.</p> <p><b>(b) During an Inquiry into the Validity of a Verdict or Indictment.</b></p> <p><b>(1) Prohibited Testimony or Other Evidence.</b> 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.</p> <p><b>(2) Exceptions.</b> A juror may testify about whether:</p> <p style="padding-left: 40px;"><b>(A)</b> extraneous prejudicial information was improperly brought to the jury’s attention; or</p> <p style="padding-left: 40px;"><b>(B)</b> an outside influence was</p>

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<p>which he would be precluded from testifying be received for these purposes.</p>	<p>improperly brought to bear on any juror.</p>
<p><b>RULE 607. WHO MAY IMPEACH</b></p>	<p><b>Rule 607. Who May Impeach a Witness</b></p>
<p>The credibility of a witness may be attacked by any party, including the party calling him.</p>	<p>Any party, including the party that called the witness, may attack the witness's credibility.</p>
<p><b>RULE 608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS</b></p>	<p><b>Rule 608. A Witness's Character for Truthfulness or Untruthfulness</b></p>
<p><b>(a) Opinion and Reputation Evidence of Character.</b> The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.</p> <p><b>(b) Specific Instances of Conduct.</b> Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, other than conviction of crime as provided in Rule 609, may</p>	<p><b>(a) Reputation or Opinion Evidence.</b> 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.</p> <p><b>(b) Specific Instances of Conduct.</b> 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,</p>

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<p>not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness's character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the privilege against self-incrimination when examined with respect to matters which relate only to character for truthfulness.</p>	<p>allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:</p> <ul style="list-style-type: none"><li>(1) the witness; or</li><li>(2) another witness whose character the witness being cross-examined has testified about.</li></ul> <p>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.</p>
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<p><b>RULE 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME</b></p>	<p><b>Rule 609. Impeachment by Evidence of a Criminal Conviction</b></p>
<p><b>(a) General Rule.</b>          For the purpose of attacking the character for truthfulness of a witness, (1) evidence that (A) a <b>nonparty witness</b> has been convicted of a crime shall be admitted subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and (B) a <b>party</b> has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the <b>party</b>; and (2) <b>evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of punishment.</b></p> <p><b>(b) Time Limit.</b>          Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by the specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein is not admissible unless the proponent gives to the</p>	<p><b>(a) In General.</b> The following rules apply to attacking a witness’s character for truthfulness by evidence of a criminal conviction:</p> <p><b>(1)</b> for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:</p> <p><b>(A)</b> must be admitted, subject to Rule 403, <b>when the witness is not a party</b>; and</p> <p><b>(B)</b> must be admitted <b>when the witness is a party</b>, if the probative value of the evidence outweighs its prejudicial effect to that <b>party</b>; and</p> <p><b>(2)</b> 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.</p> <p><b>(b) Limit on Using the Evidence After 10 Years.</b> 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:</p> <p><b>(1)</b> its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and</p>

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adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

### **(c) Effect of Pardon, Annulment, Expungement or Certificate of Rehabilitation.**

Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, expungement, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of 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 juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

### **(e) Pendency of Appeal.**

The pendency of an appeal therefrom

(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:

- (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

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<p>does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.</p>	<p>pending. Evidence of the pendency is also admissible.</p>
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<p><b>RULE 610. RELIGIOUS BELIEFS OR OPINIONS</b></p>	<p><b>Rule 610. Religious Beliefs or Opinions</b></p>
<p>Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.</p>	<p>Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.</p>
<p><b>RULE 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION</b></p>	<p><b>Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence</b></p>
<p><b>(a) Control by Court.</b> The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.</p> <p><b>(b) Scope of Cross-Examination.</b> Cross-examination shall not be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.</p> <p><b>(c) Leading Questions.</b> Leading questions should not be used on the direct examination of a witness</p>	<p><b>(a) Control by the Court; Purposes.</b> The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:</p> <ul style="list-style-type: none"> <li><b>(1)</b> make those procedures effective for determining the truth;</li> <li><b>(2)</b> avoid wasting time; and</li> <li><b>(3)</b> protect witnesses from harassment or undue embarrassment.</li> </ul> <p><b>(b) Scope of Cross-Examination.</b> The court may not limit cross-examination to the subject matter of the direct examination and matters affecting the witness's credibility.</p> <p><b>(c) Leading Questions.</b> Leading questions should not be used on direct examination except as necessary to</p>

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<p>except as may be necessary to develop his testimony. Ordinarily, leading questions should be permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.</p>	<p>develop the witness's testimony. Ordinarily, the court should allow leading questions:</p> <ul style="list-style-type: none"> <li>(1) on cross-examination; and</li> <li>(2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.</li> </ul>
<p><b>RULE 612. REFRESHING THE MEMORY OF A WITNESS</b></p>	<p><b>Rule 612. Writing Used to Refresh a Witness's Memory</b></p>
<p>If a witness uses a writing, <b>recording or object</b> to refresh his memory for the purpose of testifying, either (1) while testifying, or (2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing, <b>recording or object</b> produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce into evidence those portions which relate to the testimony of the witness. If it is claimed that the writing, <b>recording or object</b> contains matters not related to the subject matter of the testimony, the court shall examine the writing, <b>recording or object</b> in camera, excise any portions not related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing, <b>recording or object</b> is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not</p>	<p>(a) <b>Scope.</b> This rule gives an adverse party certain options when a witness uses a writing, <b>recording, or object</b> to refresh memory:</p> <ul style="list-style-type: none"> <li>(1) while testifying; or</li> <li>(2) before testifying, if the court decides that justice requires the party to have those options.</li> </ul> <p>(b) <b>Adverse Party's Options; Deleting Unrelated Matter.</b> An adverse party is entitled to have the writing, <b>recording, or object</b> 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, <b>recording, or object</b> includes unrelated matter, the court must examine the writing, <b>recording, or object</b> 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.</p> <p>(c) <b>Failure to Produce or Deliver.</b> If a writing, <b>recording, or object</b> is not</p>

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<p>to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.</p>	<p>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.</p>
<p><b>RULE 613. PRIOR STATEMENTS OF WITNESSES</b></p>	<p><b>Rule 613. Witness’s Prior Statement</b></p>
<p><b>(a) Examining Witness Concerning Prior Statement.</b> In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.</p> <p><b>(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness.</b> Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).</p>	<p><b>(a) Showing or Disclosing the Statement During Examination.</b> 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.</p> <p><b>(b) Extrinsic Evidence of a Prior Inconsistent Statement.</b> 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).</p>

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<p><b>RULE 614. CALLING AND INTERROGATION OF WITNESSES BY COURT</b></p>	<p><b>Rule 614. Court's Calling or Examining a Witness</b></p>
<p><b>(a) Calling by Court.</b> The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.</p> <p><b>(b) Interrogation by Court.</b> The court may interrogate witnesses, whether called by itself or by a party.</p> <p><b>(c) Objections.</b> Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.</p>	<p><b>(a) Calling.</b> The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.</p> <p><b>(b) Examining.</b> The court may examine a witness regardless of who calls the witness.</p> <p><b>(c) Objections.</b> 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.</p>
<p><b>RULE 615. EXCLUSION OF WITNESSES</b></p>	<p><b>Rule 615. Excluding Witnesses</b></p>
<p>At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.</p>	<p>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:</p> <p><b>(a)</b> a party who is a natural person;  <b>(b)</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; or  <b>(c)</b> a person whose presence a party shows to be essential to presenting the party's claim or defense.</p>

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<b>RULE 616. BIAS OF WITNESS</b>	<b>Rule 616. Witness's Bias</b>
For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible.	Evidence of a witness's bias, prejudice, or interest -- for or against any party -- is admissible to attack the witness's credibility

<b>RULE 617. USE OF CLOSED CIRCUIT TELEVISION TO SHOW CHILD'S TESTIMONY</b>	<b>Rule 617. Taking Testimony of a Child by Closed Circuit Television</b>
<p><b>(a)</b> Upon motion and hearing in camera, the trial court may order that the testimony of a child under the age of sixteen (16) years, that an unlawful sexual act, contact, intrusion, penetration or other sexual offense was committed upon him or her be taken outside of the courtroom and shown in the courtroom by means of closed-circuit television upon a finding that there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify in open court and, in the case of a criminal prosecution, if compelled to testify in the presence of the accused.</p> <p><b>(b)</b> The motion may be filed by the child, his attorney, parent, legal guardian or guardian ad litem, the prosecuting attorney, or any party to the case. In addition, the court may act upon its own motion.</p> <p><b>(c)</b> Upon stipulation of the parties, the court may appoint a person, who is qualified as an expert in the field of</p>	<p><b>(a) Grounds.</b> On the motion of a person named in subdivision (b), or on its own, the court may order that a child's testimony be taken outside the courtroom and shown in the courtroom by means of closed-circuit television if the court determines that:</p> <p style="padding-left: 2em;"><b>(1)</b> the child is under the age of 16 years;</p> <p style="padding-left: 2em;"><b>(2)</b> the testimony is that an unlawful sexual act, contact, intrusion, penetration, or other sexual offense was committed on the child; and</p> <p style="padding-left: 2em;"><b>(3)</b> there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify:</p> <p style="padding-left: 4em;"><b>(A)</b> in open court; and</p> <p style="padding-left: 4em;"><b>(B)</b> in a criminal case, in the presence of the accused.</p> <p><b>(b) Procedure on the Motion.</b></p> <p style="padding-left: 2em;"><b>(1) Motion.</b> The motion may be filed by:</p> <p style="padding-left: 4em;"><b>(A)</b> the child;</p> <p style="padding-left: 4em;"><b>(B)</b> the child's attorney, parent, legal guardian, or guardian <i>ad litem</i>;</p>

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child sexual abuse and who has dealt with the child in a therapeutic setting concerning the offense or act, to aid in formulating methods of questioning the child and to assist the court in interpreting the answers of the child.

(d) Closed circuit television testimony may be taken by any method not inconsistent with the Confrontation Clauses of the Constitution of the United States and of the State of Mississippi, the Mississippi Rules of Civil Procedure, the Mississippi Uniform Criminal Rules of Circuit Court Practice, and these rules. In the case of a criminal prosecution, after a determination that the defendant's presence would cause a substantial likelihood of serious traumatic emotional or mental distress to the child, the trial court may exclude the defendant from the room where the testimony is taken. In any such case in which the defendant is so excluded, arrangements must be made for the defense attorney to be in continual contact with the defendant by any appropriate private electronic or telephonic method throughout the questioning. The defendant, the court and the jury must be able to observe the demeanor of the child witness at all times during the questioning.

(e) The court shall make specific findings of fact, on the record, as to the basis for its rulings under this rule.

(f) All parties must be represented by counsel at any taking of any testimony

(C) the prosecutor; or  
(D) any party.

(2) **Hearing and Order.** In ruling on the motion, the court must:

(A) conduct a hearing *in camera*; and  
(B) make specific findings of fact, on the record, as to the basis of the ruling.

(c) **Taking Testimony.**

(1) **Methods.** Closed-circuit television testimony may be taken by any method for taking testimony outside the courtroom and showing it in the courtroom that is not inconsistent with the Confrontation Clauses of the United States and Mississippi Constitutions or applicable rules adopted by the Mississippi Supreme Court.

(2) **Counsel.** All parties must be represented by counsel when testimony is taken.

(3) **Criminal Case.** If the conditions in subdivision (a) are met in a criminal case, the court may exclude the defendant from the room where the testimony is taken if:

(A) an appropriate private electronic or telephonic device enables the defense attorney to be in continual contact with the defendant; and

(B) the defendant, the court, and the jury can observe the demeanor of the child witness.

(4) **Expert Assistance.** If the parties agree, the court may appoint a person to aid in formulating

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<p>under this rule.</p> <p><b>(g)</b> This rule does not preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time.</p>	<p>methods of questioning the child and to assist the court in interpreting the child's answers. The person appointed must be a child sexual abuse expert who has dealt with the child in a therapeutic setting concerning the offense or act.</p> <p><b>(d) Identifying the Defendant.</b> When the child is asked to identify the defendant, both may be present in the courtroom simultaneously.</p>
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<p><b>ARTICLE VII. OPINIONS AND EXPERT TESTIMONY</b>  <i>[Current Rules]</i></p> <p><b>RULE 701. OPINION TESTIMONY BY LAY WITNESSES</b></p>	<p><b>ARTICLE VII. OPINIONS AND EXPERT TESTIMONY</b>  <i>[Restyled]</i></p> <p><b>Rule 701. Opinion Testimony by Lay Witnesses</b></p>
<p>If the witness is not testifying as an expert, his the witness’s testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to the clear understanding of the testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.</p>	<p>If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:</p> <ul style="list-style-type: none"> <li><b>(a)</b> rationally based on the witness’s perception;</li> <li><b>(b)</b> helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and</li> <li><b>(c)</b> not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.</li> </ul>
<p><b>RULE 702. TESTIMONY BY EXPERTS</b></p>	<p><b>Rule 702. Testimony by Expert Witnesses</b></p>
<p>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.</p>	<p>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:</p> <ul style="list-style-type: none"> <li><b>(a)</b> 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;</li> <li><b>(b)</b> the testimony is based on sufficient facts or data;</li> <li><b>(c)</b> the testimony is the product of reliable principles and methods; and</li> <li><b>(d)</b> the expert has reliably applied the principles and methods to the facts of the case.</li> </ul>

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<p><b>RULE 703. BASES OF OPINION TESTIMONY BY EXPERTS</b></p>	<p><b>Rule 703. Bases of an Expert's Opinion Testimony</b></p>
<p>The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.</p>	<p>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.</p>
<p><b>RULE 704. OPINION ON ULTIMATE ISSUE</b></p>	<p><b>Rule 704. Opinion on an Ultimate Issue</b></p>
<p>Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.</p>	<p>An opinion is not objectionable just because it embraces an ultimate issue.</p>
<p><b>RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION</b></p>	<p><b>Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion</b></p>
<p>The expert may testify in terms of opinion or inferences and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.</p>	<p>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.</p>

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<b>RULE 706. COURT APPOINTED EXPERTS</b>	<b>Rule 706. Court-Appointed Expert Witnesses</b>
<p><b>(a) Appointment.</b> The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have the opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.</p> <p><b>(b) Compensation.</b> Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the Fifth Amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion</p>	<p><b>(a) Appointment Process.</b> 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.</p> <p><b>(b) Expert's Role.</b> 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:</p> <ul style="list-style-type: none"><li><b>(1)</b> must advise the parties of any findings the expert makes;</li><li><b>(2)</b> may be deposed by any party;</li><li><b>(3)</b> may be called to testify by the court or any party; and</li><li><b>(4)</b> may be cross-examined by any party, including the party that called the expert.</li></ul> <p><b>(c) Compensation.</b> The expert is entitled to a reasonable compensation, as set by the court. The compensation is payable as follows:</p> <ul style="list-style-type: none"><li><b>(1)</b> 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</li><li><b>(2)</b> in any other civil case, by the parties in the proportion and at the</li></ul>

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and at such time as the court directs, and thereafter charged in like manner as other costs.

**(c) Disclosure of Appointment.**

In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

**(d) Parties' Experts of Own Selection.**

Nothing in this rule limits the parties in calling expert witnesses of their own selection.

**(e) Certain Eminent Domain Proceedings.**

The provisions of Rule 706(a), (b), and (c) are inapplicable to appraisers who are appointed by the court as required by state law for purposes of claims for immediate possession in eminent domain cases.

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.

**(f) Certain Eminent Domain Cases.** Subdivisions (a)-(d) do not apply to an appraiser whom a court appoints — as required by law — for an immediate possession claim in an eminent domain case.

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<p><b>ARTICLE VIII. HEARSAY</b> [<i>Current Rules</i>]</p> <p><b>Rule 801. Definitions</b></p>	<p><b>ARTICLE VIII. HEARSAY</b> [<i>restyled</i>]</p> <p><b>Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay</b></p>
<p><b>(a) Statement.</b> A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.</p> <p><b>(b) Declarant.</b> A "declarant" is a person who makes a statement.</p> <p><b>(c) Hearsay.</b> "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.</p> <p><b>(d) Statements Which Are Not Hearsay.</b> A statement is not hearsay if:              (1) <i>Prior Statement by Witness.</i> The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or</p>	<p><b>(a) Statement.</b> "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.</p> <p><b>(b) Declarant.</b> "Declarant" means the person who made the statement.</p> <p><b>(c) Hearsay.</b> "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.</p> <p><b>(d) Statements That Are Not Hearsay.</b> A statement that meets the following conditions is not hearsay:              (1) <b><i>A Declarant-Witness's Prior Statement.</i></b> 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 to rebut an express or</p>

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improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) *Admission by Party-Opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; 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).

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<b>RULE 802. HEARSAY RULE</b>	<b>Rule 802. The Rule Against Hearsay</b>
Hearsay is not admissible except as provided by law.	Hearsay is not admissible except as provided by law. The words “as provided by law” include other rules prescribed by the Mississippi Supreme Court.”

<b>RULE 803. HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL</b>	<b>Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness</b>
<p>The following are not excluded by the hearsay rule, even though the declarant is available as a witness:</p> <p><b>(1) Present Sense Impression.</b> A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.</p> <p><b>(2) Excited Utterance.</b> A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.</p> <p><b>(3) Then Existing Mental, Emotional, or Physical Condition.</b> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact</p>	<p>The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:</p> <p><b>(1) Present Sense Impression.</b> A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.</p> <p><b>(2) Excited Utterance.</b> A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.</p> <p><b>(3) Then-Existing Mental, Emotional, or Physical Condition.</b> 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</p>

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remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

### **(4) Statements for Purposes of Medical Diagnosis or Treatment.**

Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment, **regardless of to whom the statements are made, or when the statements are made, if the court, in its discretion, affirmatively finds that the proffered statements were made under circumstances substantially indicating their trustworthiness. For purposes of this rule, the term "medical" refers to emotional and mental health as well as physical health.**

**(5) Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

**(6) Records of Regularly Conducted Activity.** A memorandum, report, record, or data

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 **to any person at any time** for — and is reasonably pertinent to — medical diagnosis or treatment;
- (B)** describes medical history; past or present symptoms or sensations; their inception; or their general cause; and
- (C)** is supported by **circumstances that substantially indicate its trustworthiness.**

**In this paragraph, "medical" includes emotional, mental, and physical health.**

**(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:

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compilation, in any form, of acts, events, conditions, opinions or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness **or self-authenticated pursuant to Rule 902(11)**, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

### **(7) Absence of Entry in Records Kept in Accordance With the Provision of Paragraph (6).**

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

### **(8) Public Records and Reports.**

Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A)

(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)**; and

(E) neither the source of information nor 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

(C) neither the possible source of the information nor 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;

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the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the state in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

### **(9) Records of Vital Statistics.**

Records or data compilations of vital statistics, in any form, if the report thereof was made to a public officer pursuant to requirements of law.

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

(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 prosecution in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.

### **(9) Public Records of Vital Statistics.**

A record of a vital statistic, if reported to a public office in accordance with a legal duty.

*Reporter's Note:* the federal rule reads "birth, death, or marriage." While this covers most vital statistics published by the Mississippi Department of Health, some include other health data.

### **(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 the testimony or certification is admitted to prove that:

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

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

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or data compilation, or entry.

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

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

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

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

**(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

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

**(16) Statements in Ancient Documents.** Statements in a document in existence twenty years or more, the authenticity of which is established.

**(17) Market Reports, Commercial Publications.** Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

**(18) Learned Treatises.** To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits. **Treatises used in direct examination must be disclosed to opposing party without charge pursuant to discovery.**

purports to have signed it;  
**(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

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### **(19) Reputation Concerning Personal or Family History.**

Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

### **(20) Reputation Concerning Boundaries or General History.**

Reputation in a community arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community, State or nation in which located.

### **(21) Reputation as to Character.**

Reputation of a person's character among his associates or in the community.

**(22) Judgment of Previous Conviction** Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain

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. **A treatise used in direct examination must be disclosed to an opposing party without charge in discovery.**

### **(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

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the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

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

**(24) Other Exceptions.** A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may

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 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.** A statement not specifically covered by this Rule if:

**(A)** the statement has equivalent circumstantial guarantees of trustworthiness;

**(B)** it is offered as evidence of a material fact;

**(C)** it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts;

**(D)** admitting it will best serve the purposes of these rules and the interests of justice; and

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not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

**(25) Tender Years Exception.** A statement made by a child of tender years describing any act of sexual contact performed with or on the child by another is admissible in evidence if: (a) the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide substantial indicia of reliability; and (b) the child either (1) testifies at the proceedings; or (2) is unavailable as a witness: provided, that when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

**(E)** 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.

**(25) Tender Years Exception.** A statement by a child of tender years describing any act of sexual contact with or by another is admissible if:

**(A)** the court – after a hearing outside the jury's presence – determines that the statement's time, content, and circumstances provide substantial indicia of reliability; and

**(B)** the child either:

(i) testifies; or

(ii) is unavailable as a witness, and other evidence corroborates the act.

*Reporter's Note:* Former Federal Rule 803(24) was transferred to Rule 807. Former Federal Rule 807 does not differ materially from Mississippi Rule 803(24).

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<p><b>RULE 804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE</b></p>	<p><b>Rule 804. Exceptions to the Rule Against Hearsay — When the Declarant Is Unavailable as a Witness</b></p>
<p><b>(a) Definition of Unavailability.</b>  "Unavailability as a witness" includes situations in which the declarant:</p> <ul style="list-style-type: none"> <li>(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or</li> <li>(2) Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or</li> <li>(3) Testifies to a lack of memory of the subject matter of his statement; or</li> <li>(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or</li> <li>(5) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), his attendance or testimony) by process or other reasonable means; or</li> <li>(6) <b>In the case of a child, because of the substantial likelihood that the emotional or psychological health of the witness would be substantially impaired if the child had to testify in the physical presence of the accused.</b></li> </ul> <p>A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his</p>	<p><b>(a) Criteria for Being Unavailable.</b>  A declarant is considered to be unavailable as a witness if the declarant:</p> <ul style="list-style-type: none"> <li>(1) is exempted from testifying about the subject matter of the declarant’s statement because the court rules that a privilege applies;</li> <li>(2) refuses to testify about the subject matter despite a court order to do so;</li> <li>(3) testifies to not remembering the subject matter;</li> <li>(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness;</li> <li>(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: <ul style="list-style-type: none"> <li>(A) the declarant’s attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or</li> <li>(B) the declarant’s attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4); or</li> </ul> </li> <li>(6) <b>is a child for whom testifying in the physical presence of the accused is substantially likely to impair the child’s emotional or psychological health substantially.</b></li> </ul>

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statement for the purpose of preventing the witness from attending or testifying.

**(b) Hearsay Exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement Under Belief of Impending Death.* In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.

(3) *Statement Against Interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be

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

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true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of Personal or Family History.* (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other Exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on

great a tendency to invalidate the declarant's claim against someone 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 tends to expose the declarant to criminal liability and is offered to exculpate the accused.

(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.* A statement not specifically covered by this Rule if:

(A) the statement has equivalent circumstantial guarantees of trustworthiness; (B) it is offered as evidence of a material fact;

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<p>the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.</p> <p><i>(6) Forfeiture by Wrongdoing.</i> A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.</p>	<p><b>(C)</b> it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts;</p> <p><b>(D)</b> admitting it will best serve the purposes of these rules and the interests of justice; and</p> <p><b>(E)</b> 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.</p> <p><b><i>(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.</i></b> 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.</p> <p><i>Reporter's Note:</i> Former Federal Rule 804(b)(5) was transferred to 807 and is the same as Mississippi Rule 804(b)(5).</p>
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<b>RULE 805. HEARSAY WITHIN HEARSAY</b>	<b>Rule 805. Hearsay Within Hearsay</b>
<p>Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.</p>	<p>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.</p>

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<b>RULE 806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT</b>	<b>Rule 806. Attacking and Supporting the Declarant's Credibility</b>
<p>When a hearsay statement, or a statement defined in rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.</p>	<p>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.</p>

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<p><b>ARTICLE IX. AUTHENTICATION AND IDENTIFICATION</b> [<i>Current Rules</i>]</p> <p><b>RULE 901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION</b></p>	<p><b>ARTICLE IX. AUTHENTICATION AND IDENTIFICATION</b> [<i>Restyled</i>]</p> <p><b>Rule 901. Authenticating or Identifying Evidence</b></p>
<p><b>(a) General Provision.</b> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.</p> <p><b>(b) Illustrations.</b> By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:</p> <p style="padding-left: 20px;">(1) <i>Testimony of Witness With Knowledge.</i> Testimony that a matter is what it is claimed to be.</p> <p style="padding-left: 20px;">(2) <i>Non-expert Opinion on Handwriting.</i> Non-expert opinion as to the genuineness of and writing, based upon familiarity not acquired for purposes of the litigation.</p> <p style="padding-left: 20px;">(3) <i>Comparison by Trier or Expert Witness.</i> Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.</p> <p style="padding-left: 20px;">(4) <i>Distinctive Characteristics and the Like.</i> Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction</p>	<p><b>(a) In General.</b> 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.</p> <p><b>(b) Examples.</b> The following are examples only — not a complete list — of evidence that satisfies the requirement:</p> <p style="padding-left: 20px;">(1) <i>Testimony of a Witness with Knowledge.</i> Testimony that an item is what it is claimed to be.</p> <p style="padding-left: 20px;">(2) <i>Nonexpert Opinion About Handwriting.</i> A nonexpert’s opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.</p> <p style="padding-left: 20px;">(3) <i>Comparison by an Expert Witness or the Trier of Fact.</i> A comparison with an authenticated specimen by an expert witness or the trier of fact.</p> <p style="padding-left: 20px;">(4) <i>Distinctive Characteristics and the Like.</i> The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.</p>

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with circumstances.

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

(6) *Telephone Conversations.*

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

(7) *Public Records or Reports.*

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

(8) *Ancient Documents or Data*

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

(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.

(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;

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<p>(9) <i>Process or System.</i> Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.</p> <p>(10) <i>Other Methods.</i> Any method of authentication or identification provided by the Mississippi Supreme Court or by the Constitution of Mississippi.</p>	<p>and (C) is at least 20 years old when offered.</p> <p><b>(9) Evidence About a Process or System.</b> Evidence describing a process or system and showing that it produces an accurate result.</p> <p><b>(10) Methods Provided by the Mississippi Constitution or Court Rule.</b> Any method of authentication or identification allowed by the Mississippi Constitution or a rule prescribed by the Mississippi Supreme Court.</p>
<p><b>RULE 902. SELF-AUTHENTICATION</b></p>	<p><b>Rule 902. Evidence That Is Self-Authenticating</b></p>
<p>Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:</p> <p><b>(1) Domestic Public Documents Under Seal.</b> A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or of the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.</p> <p><b>(2) Domestic Public Documents Not Under Seal.</b> A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in</p>	<p>The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:</p> <p><b>(1) Domestic Public Documents That Are Sealed and Signed.</b> A document that bears:</p> <p><b>(A)</b> 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</p> <p><b>(B)</b> a signature purporting to be an execution or attestation.</p> <p><b>(2) Domestic Public Documents</b></p>

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paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

**(3) Foreign Public Documents.** A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

**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:

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<p><b>(4) Certified Copies of Public Records.</b> A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.</p> <p><b>(5) Official Publications.</b> Books, pamphlets, or other publications purporting to be issued by public authority.</p> <p><b>(6) Newspapers and Periodicals.</b> Printed materials purporting to be newspapers or periodicals.</p> <p><b>(7) Trade Inscriptions and the Like.</b> Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin.</p> <p><b>(8) Acknowledged Documents.</b> Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take</p>	<p><b>(A)</b> order that it be treated as presumptively authentic without final certification; or</p> <p><b>(B)</b> allow it to be evidenced by an attested summary with or without final certification.</p> <p><b>(4) Certified Copies of Public Records.</b> 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:</p> <p><b>(A)</b> the custodian or another person authorized to make the certification; or</p> <p><b>(B)</b> a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Mississippi Supreme Court pursuant to statutory authority.</p> <p><b>(5) Official Publications.</b> A book, pamphlet, or other publication purporting to be issued by a public authority.</p> <p><b>(6) Newspapers and Periodicals.</b> Printed material purporting to be a newspaper or periodical.</p> <p><b>(7) Trade Inscriptions and the Like.</b> An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.</p> <p><b>(8) Acknowledged Documents.</b> A</p>
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acknowledgments.

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

**(10) Presumptions Created by Law.** Any signature, document, or other matter declared by any law of the United States or of Mississippi to be presumptively or *prima facie* genuine or authentic.

**(11) Certified Records of Regularly Conducted Activities.**

(A) The records of a regularly conducted activity, within the scope of Rule 803(6), about which a certificate of the custodian or other qualified witness shows (i) the first hand knowledge of that person about the making, maintenance and storage of the records; (ii) evidence that the records are authentic as required by Rule 901(a) and comply with Article X; and (iii) that the records were (a) made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (b) kept in the course of the regularly conducted activity; and (c) made by the regularly conducted activity as a regular practice. Such records are not self-authenticating if the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

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 or State Statute.** A signature, document, or other matter that a Mississippi or federal statute declares to be presumptively or *prima facie* genuine or authentic.

**(11) Certified Records of a Regularly Conducted Activity.** A record that meets the requirements of Rule 803(6), if a certificate of the custodian or another qualified witness complies with subparagraph (A).

**(A) Certificate.** The certificate must show:

- (i) the custodian's or witness's first hand knowledge of the making, maintenance, and storage of the record; and
- (ii) that the record complies with Article X and Rules 803(6)(A)-(C) and 901(a).

A certificate relating to a foreign record must also be accompanied by the final certification required by paragraph (3).

**(B) Notice.** Before the trial or

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(B) As used in this subsection, "certificate" means, (i) with respect to a domestic record, a written declaration under oath or attestation subject to the penalty of perjury; and, (ii) with respect to records maintained or located in a foreign country, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country. A certificate relating to a foreign record must be accompanied by a final certification as to the genuineness of the signature and the position in the regularly conducted activity of the executing individual as is required for certification of Foreign Public Documents by subsection (3) of this rule.

(C) (i) Records so certified will be self-authenticating only if the proponent gives notice to adverse parties of the intent to offer the records as self-authenticating under this rule and provides a copy of the records and of the authenticating certificate. Such notice must be given sufficiently in advance of the trial or hearing at which they will be offered to provide the adverse party a fair opportunity to consider the offer and state any objections. (ii) Objections will be waived unless, within fifteen days after receiving the notice, the objector serves written specific objections or obtains agreement of the proponent or moves the court to enlarge the time. (iii) The proponent will be responsible for scheduling a hearing on any objections and the

hearing at which the record will be offered, the proponent must give an adverse party notice of the intent to offer the record — and must provide a copy of the record and certificate — so that the party has a fair opportunity to state any objection. Otherwise, the record is not self-authenticating under this paragraph (11).

***(C) Making Objections.*** An adverse party waives any objection that is not:

- (i) stated specifically in writing; and
- (ii) served within 15 days after receiving the notice required by subparagraph (B), or at a later time that the parties agree on or that the court allows.

***(D) Hearing and Ruling on Objections.*** The proponent must schedule a hearing on any objection, and the court should determine admissibility of the record before the trial or hearing at which it may be offered. If the court cannot do so, the record is not self-authenticating under this paragraph (11).

***(E) Sanctions.*** In a civil case after the trial or hearing, the proponent may move that the objecting party and attorney pay the expenses of presenting the evidence necessary to have the record admitted. The court must so order, if it determines that the objection raised no genuine question and lacked arguable

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<p>court should hear and decide such objections before the trial or hearing at which they will be offered. If the court cannot rule on the objections before the trial or hearing, the records will not be self-authenticating. (iv) If in a civil case, on motion by the proponent after the trial or hearing, the court determines that the objections raised no genuine questions and were made without arguable good cause, the expenses incurred by the proponent in presenting the evidence necessary to secure admission of the records shall be assessed against the objecting party and attorney.</p>	<p>good cause.  <b>(F) Definitions.</b> In this paragraph "certificate" means:  <i>(i)</i> for a domestic record, a written declaration under oath or attestation given under penalty of perjury; and  <i>(ii)</i> for a foreign record, a written declaration signed in a foreign country that, if falsely made, would subject the maker to criminal penalty under that country's laws.</p>
<p><b>RULE 903. SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY</b></p>	<p><b>Rule 903. Subscribing Witness's Testimony</b></p>
<p>The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.</p>	<p>A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.</p>

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<p><b>ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS</b>  <i>[Current Rules]</i></p> <p><b>RULE 1001. DEFINITIONS</b></p>	<p><b>ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS</b>  <i>[Restyled]</i></p> <p><b>Rule 1001. Definitions That Apply to This Article</b></p>
<p>For purposes of this article the following definitions are applicable:</p> <p><b>(1) Writings and Recordings.</b> "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.</p> <p><b>(2) Photographs.</b> "Photographs" include still photographs, x-ray films, video tapes, and motion pictures.</p> <p><b>(3) Original.</b> An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."</p> <p><b>(4) Duplicate.</b> A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of</p>	<p>In this article:</p> <p><b>(a)</b> A “writing” consists of letters, words, numbers, or their equivalent set down in any form.</p> <p><b>(b)</b> A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.</p> <p><b>(c)</b> A “photograph” means a photographic image or its equivalent stored in any form.</p> <p><b>(d)</b> 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.</p> <p><b>(e)</b> A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.</p>

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<p>photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction or by other equivalent techniques which accurately reproduce the original.</p>	
<p><b>RULE 1002. REQUIREMENT OF ORIGINAL</b></p>	<p><b>Rule 1002. Requirement of the Original</b></p>
<p>To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by law.</p>	<p>An original writing, recording, or photograph is required in order to prove its content unless otherwise provided by law.</p>
<p><b>RULE 1003. ADMISSIBILITY OF DUPLICATES</b></p>	<p><b>Rule 1003. Admissibility of Duplicates</b></p>
<p>A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.</p>	<p>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.</p>
<p><b>RULE 1004. ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS</b></p>	<p><b>Rule 1004. Admissibility of Other Evidence of Content</b></p>
<p>The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:</p> <p><b>(1) Originals Lost or Destroyed.</b> All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or</p> <p><b>(2) Original Not Obtainable.</b> No</p>	<p>An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:</p> <p><b>(a)</b> all the originals are lost or destroyed, and not by the proponent acting in bad faith;</p> <p><b>(b)</b> an original cannot be obtained by any available judicial process;</p>

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<p>original can be obtained by any available judicial process or procedure; or</p> <p><b>(3) Original in Possession of Opponent.</b> At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or</p> <p><b>(4) Collateral Matters.</b> The writing, recording, or photograph is not closely related to a controlling issue.</p>	<p><b>(c)</b> 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</p> <p><b>(d)</b> the writing, recording, or photograph is not closely related to a controlling issue.</p>
<p><b>RULE 1005. PUBLIC RECORDS</b></p>	<p><b>Rule 1005. Copies of Public Records to Prove Content</b></p>
<p>The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.</p>	<p>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.</p>

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<p><b>RULE 1006. SUMMARIES</b></p>	<p><b>Rule 1006. Summaries to Prove Content</b></p>
<p>The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.</p>	<p>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.</p>
<p><b>RULE 1007. TESTIMONY OR WRITTEN ADMISSION OF PARTY</b></p>	<p><b>Rule 1007. Testimony or Statement of a Party to Prove Content</b></p>
<p>Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.</p>	<p>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.</p>
<p><b>RULE 1008. FUNCTIONS OF COURT AND JURY</b></p>	<p><b>Rule 1008. Functions of the Court and Jury</b></p>
<p>When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 104. However, when an issue is raised (a) whether the</p>	<p>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:</p> <p><b>(a)</b> an asserted writing, recording, or</p>

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asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.	photograph ever existed; <b>(b)</b> another one produced at the trial or hearing is the original; or <b>(c)</b> other evidence of content accurately reflects the content.
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<p><b>ARTICLE XI. MISCELLANEOUS RULES [<i>Restyled</i>]</b></p> <p><b>RULE 1101. APPLICABILITY OF RULES</b></p>	<p><b>ARTICLE XI. MISCELLANEOUS RULES [<i>Restyled</i>]</b></p> <p><b>Rule 1101. Applicability of the Rules</b></p>
<p><b>(a) Courts and Proceedings.</b> Except as otherwise provided by subdivision (b), these rules apply to all actions and proceedings in the courts of the State of Mississippi.</p> <p><b>(b) Rules Inapplicable.</b> Except for the rules pertaining to privileges, these rules do not apply in the following situations:</p> <p style="padding-left: 20px;">(1) <i>Preliminary Questions of Fact.</i> The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).</p> <p style="padding-left: 20px;">(2) <i>Grand Jury.</i> Proceedings before grand juries.</p> <p style="padding-left: 20px;">(3) <i>Miscellaneous Proceedings.</i> Proceedings for extradition or rendition; probable cause hearings in criminal cases and youth court cases; sentencing; disposition hearings; granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.</p> <p style="padding-left: 20px;">(4) <i>Contempt Proceedings.</i> Contempt proceedings in which the court may act summarily.</p>	<p><b>(a) To Courts and Proceedings.</b> These rules apply to all cases and proceedings in Mississippi courts, except as provided in subdivision (b).</p> <p><b>(b) Exceptions.</b> These rules — except for those on privilege — do not apply to the following:</p> <p style="padding-left: 20px;">(1) the court’s determination, under Rule 104(a), on a preliminary question of fact governing admissibility;</p> <p style="padding-left: 20px;">(2) grand-jury proceedings;</p> <p style="padding-left: 20px;">(3) contempt proceedings in which the court may act summarily; and</p> <p style="padding-left: 20px;">(4) these miscellaneous proceedings:</p> <ul style="list-style-type: none"> <li>• extradition or rendition;</li> <li>• issuing an arrest warrant, criminal summons, or search warrant;</li> <li>• probable cause hearings in criminal cases and youth court cases;</li> <li>• sentencing;</li> <li>• disposition hearings;</li> <li>• granting or revoking probation; and</li> <li>• considering whether to release on bail or otherwise.</li> </ul>

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<b>RULE 1102. TITLE</b>	<b>Rule 1102. Title</b>
These rules shall be known as the Mississippi Rules of Evidence and may be cited as M.R.E., <i>e.g.</i> , M.R.E. 501.	These rules are the Mississippi Rules of Evidence, and may be cited as MRE.
<b>RULE 1103.</b>	<b>Rule 1103. Inconsistent Rules Repealed</b>
All evidentiary rules, whether provided by statute, court decision or court rule, which are inconsistent with the Mississippi Rules of Evidence are hereby repealed.	Any evidentiary rule in a statute, court decision, or court rule that is inconsistent with the Mississippi Rules of Evidence is hereby repealed.