

AGENDA

COLORADO SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF EVIDENCE

Friday, October 30, 2015, 1:30p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver CO 80203
Fourth Floor, Supreme Court Conference Room

- I. Call to order
- II. Approval of May 8, 2015 Meeting Minutes [page 2 to 4]
- III. Announcements from the Chair
CRE 502 submitted to the supreme court on August 27, 2015 [page 5 to 10]
- IV. Old Business
Restyling [page 11 to 51]
- V. New Business
FRE 803(16) and FRE 902(13) and (14) [page 52 to 68]
- VI. Adjourn

Conference Call Information:

Dial (720) 625-5050 and enter the access code, 31828261, followed by # key.

**COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF EVIDENCE**

May 8, 2015 Meeting Minutes

A quorum being present, the Colorado Supreme Court’s Advisory Committee on the Rules of Evidence was called to order by Judge Gale T. Miller at 1:30, in the Full Court Conference Room on the third floor of the Ralph L. Carr Colorado Judicial Center. Members and guests present or excused from the meeting were:

Name	Present	Excused
Judge Gale T. Miller, Chair	X	
Catherine P. Adkisson	X	
Harlan Bockman	X	
Philip A. Cherner	X	
Judge Theresa Cisneros	X	
David DeMuro	X	
Judge Martin Egelhoff		X
Elizabeth F. Griffin	X	
Judge Marcelo Kopcow	X	
Professor Shelia Hyatt	X	
Chief Judge Alan Loeb		X
Professor Christopher Mueller	X	
Norman Mueller	X	
Henry R. Reeve	X	
Robert M. Russel	X	

I. Attachments & Handouts

May 8, 2015 agenda packet

II. Announcements from the Chair

The October 24, 2014 minutes were passed with no corrections.

Judge Miller announced that the amendments to FRE 801 and 803 were adopted on Dec. 1, 2014 and were included in the agenda packet.

III. Business

a. FRE 502

Professor Mueller explained that the supreme court adopted an amendment to CRCP 26 that sets forth a procedure to use when a party learns it has produced information in disclosure or discovery that is subject to a claim of privilege or the work-product rule. CRCP 26 sets forth a procedure to bring disclosure to the court but does not provide the

court with a standard in making its determination. The subcommittee studied the issue and reported that 13 states adopted a rule similar to FRE 502, and the subcommittee's recommendation was that Colorado should adopt a rule similar to FRE 502. There were two versions of CRE 502 in the agenda packet, one with an arbitration clause and one without. The committee favored the version of CRE 502 without an arbitration clause. A motion was made to adopt the version of CRE 502 without an arbitration clause. The motion was adopted unanimously. Judge Miller will prepare the transmittal letter and submit the letter and CRE 502 to the supreme court.

b. FRE 801(d)(1)(B)

At the last meeting it was decided a subcommittee would study CRE 801 and recommend if it needed an amendment similar to FRE 801(d)(1)(B). After studying the issue, the subcommittee recommended not to amend CRE 801. A motion was made to adopt the subcommittee's recommendation. The motion passed with two dissenting votes.

c. Restyling

Whether or not the Colorado Rules of Evidence should be restyled similar to the federal rules was discussed at the last meeting, and Professor Hyatt offered to create a document comparing the Colorado and Federal Rules of Evidence side by side. Professor Hyatt presented the document, and Judge Miller asked if the committee was interested in restyling the Colorado Rules of Evidence. With only two yes votes, the project will not be pursued. However, Judge Miller asked the committee to review Professor Hyatt's comparison document in anticipation of the October 30, 2015 meeting and identify individual rules that would benefit from restyling.

d. New Form

Judges Berger and Miller received a submission suggesting the creation of a new business records authentication form. Under CRE 803(6), a party may admit business records under the hearsay exception if the records are accompanied by an affidavit by the records custodian certifying the records fall within the hearsay exception; the certification must comply with CRE 902(11) or (12). Professor Hyatt had found a sample form from Michigan for the committee to review. While the committee thought the form was a good idea, the Rules of Evidence don't have any forms, and a motion was made to pass this issue to the Civil Rules Committee. The motion passed unanimously.

e. HB 15-1216

David DeMuro said that during the last legislative session, House Bill 15-1216, Basis for Expert Opinion Testimony, was introduced and it essentially codified FRE 702. With this bill it seemed as though the legislature was overstepping its boundaries and legislating in an area that is reserved for the courts. The bill was opposed by many parties, and was assigned to the House Judiciary Committee where it was postponed indefinitely. Previously, the committee had proposed a change to CRE 702 making it more like FRE 702, and the court rejected it. Currently, the committee has no plans to submit an amendment making CRE 702 similar to FRE 702. The committee will see if this comes up again at the next legislative session.

IV. Future Meetings

October 30, 2015

The committee adjourned at 3:15pm.

*Respectfully submitted,
Jenny A. Moore*

Court of Appeals

STATE OF COLORADO
Ralph L. Carr Judicial Center
2 East 14th Avenue
DENVER, COLORADO 80203
(720) 625-5000

GALE T. MILLER
Judge

August 29, 2015

The Honorable Nathan B. Coats
Justice of the Colorado Supreme Court
Ralph L. Carr Judicial Center
2 East 14th Avenue
Denver, Colorado 80203

Re: Report of Evidence Committee: Proposed CRE 502

Dear Justice Coats:

The Committee on the Rules of Evidence recommends that the Colorado Supreme Court adopt a new CRE 502 that would be similar to FRE 502.

Proposed CRE 502 addresses the issue of waiver of the attorney-client privilege and work-product protection in the context of documents and information disclosed in legal proceedings or investigations. Similar rules have been adopted in thirteen other states. Copies of the proposed CRE 502, FRE 502, and a memorandum by Professor Christopher Mueller regarding the legislation in the other states are attached.

This proposal is prompted in part by the Court's adoption last year, on the recommendation of the Civil Rules Committee, of C.R.C.P. 26(b)(5)(B), often referred to as the "claw-back" provision. That provision, like its federal counterpart, sets forth procedures for addressing disputes that arise when allegedly privileged or work-product protected documents or information (for convenience, I will

refer to this material collectively as protected information) are produced in litigation. Proposed CRE 502 essentially provides a structure for resolving such disputes.

The proposed rule addresses waivers applicable to intentional and inadvertent disclosures:

- Subsection (a) provides that an *intentional* disclosure of protected information in the course of a Colorado proceeding or to state and local governmental agencies results in a waiver extending to other undisclosed protected information that concerns the same subject matter and ought in fairness to be considered with the disclosed information.
- Subsection (b) provides that protected information that is *inadvertently* disclosed in the course of a Colorado proceeding or to state and local governmental agencies will not operate as a waiver if the holder of the privilege or protection (1) took reasonable steps to prevent disclosure and (2) promptly took reasonable steps to rectify the error, including (where appropriate) following C.R.C.P. 26(b)(5)(B).

The proposal also contains provisions dealing with the effect in Colorado of a ruling on waiver by a federal court or another state court with respect to a disclosure made in that case (subsection (c)); the effect on other litigation of a Colorado court order holding that the privilege or protection was not waived by a disclosure in that case (subsection (d)); an agreement between parties concerning the effect of a disclosure, which has not been incorporated into a court order (subsection (e)); and defining “attorney-client privilege” and “work-product protection” (subsection (f)).

Three issues should be highlighted.

Coverage. Coverage comes up in two contexts — treatment in a Colorado proceeding of disclosures occurring in other settings within the state, and the effect of waiver rulings by Colorado courts and other courts.

In the first situation, the proposed rule is broad and authorizes Colorado courts to make waiver rulings with regard to disclosures occurring not only in court proceedings and but also to offices or agencies of a Colorado state, county, or local government. See subsection (a) and (b). (The rule does not address less formal disclosures, such as overheard conversations or casual sharing of privileged communications with third parties.) This follows the federal rule, and as indicated in Prof. Mueller's memorandum, a majority of the states who have adopted counterparts to FRE 502. Three of the other states appear to limit the scope of the rule to disclosures made in court proceedings. The remaining states appear to place no limit on where the disclosures are made.

The second situation involves the legal and practical limits on the binding effect of court rulings under the proposed rule. We concluded that it would be inappropriate to provide that such rulings would bind federal courts, courts in other states, or Colorado state and local administrative or other agencies. Therefore, the proposed rule does not include language as sweeping as that in FRE 502(f) that the controlling effect of the rule applies to state proceedings. Instead, subsection (d) merely provides that a Colorado court ruling that a disclosure in the course of litigation before that court is not a waiver results in the disclosure not being deemed a waiver in any other proceeding.

ADR. FRE 502(f) provides that the rule applies to "federal court-annexed and federal court-mandated arbitration proceedings." Twelve of the thirteen states discussed in Prof. Mueller's memorandum do not include such language. Two members of the committee thought that excluding such language might discourage some from using ADR processes. However, the Rules of Evidence normally do not apply in arbitration and other ADR settings, and forcing this rule on ADR as a single exception seems unnecessary and possibly problematic.

Appropriateness of a rule. In Colorado, of course, the attorney-client privilege is created by statute. § 13-90-107(1)(b), C.R.S. 2014. The statute, however, does not address waiver, apart

from the requirement that a disclosure may not be made without the consent of the client. The courts have therefore been left to develop the law on waiver in Colorado. See Sheila K. Hyatt, Colo. Evid. Law § 501.3.D. at 234-38 (2008) (discussing and citing Colorado cases on attorney-client privilege waiver); see also *Floyd v. Coors Brewing Co.*, 952 P.2d 797, 807-09 (Colo. App. 1997), *rev'd on other grounds*, 978 P.2d 663 (Colo. 1999) (setting forth test, substantially similar to that in proposed CRE 502(b), for determining whether production of privileged documents during discovery resulted from excusable inadvertence). The Committee therefore concluded that the proposed rule would not conflict in any way with section 13-90-107.

Many thanks to the subcommittee that worked so hard and well to put this proposal together. The Committee consisted of Prof. Mueller, Dave DeMuro and Dick Reeve and also Tina Habas and Lino Lipinsky who, although not members of the Committee, graciously agreed to add insights from their civil litigation practice.

Please let me know if I can provide additional information or respond to any questions.

Sincerely,



Gale T. Miller

Attachments (4)

cc: Hon. Harlan Bockman
Hon. Theresa Cisneros
Hon. Martin Egelhoff
Hon. Marcelo Kopcow
Hon. Alan Loeb
Catherine P. Adkisson
Phillip A. Cherner
David R. DeMuro
Elizabeth F. Griffin

Prof. Shelia Hyatt
Prof. Christopher B.
Mueller
Norman R. Mueller
Henry R. Reeve
Robert M. Russel
Christine M. Habas
Lino Lipinsky

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

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

(a) Disclosure Made in a Colorado Proceeding or to a Colorado Office or Agency; Scope of a Waiver. When the disclosure is made in a Colorado proceeding or to an office or agency of a Colorado state, county, or local government and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a Colorado proceeding only if:

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and
- (3) they ought in fairness to be considered together.

(b) Inadvertent Disclosure. When made in a Colorado proceeding or to an office or agency of a Colorado state, county, or local government, the disclosure does not operate as a waiver in a Colorado proceeding if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following C.R.C.P. 26(b)(5)(B).

(c) Disclosure Made in a Federal or other State Proceeding. When the disclosure is made in a proceeding in federal court or the court of another state and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in a Colorado proceeding if the disclosure:

- (1) would not be a waiver under this rule if it had been made in a Colorado proceeding; or
- (2) is not a waiver under the law governing the state or federal proceeding where the disclosure occurred.

(d) Controlling Effect of a Court Order. A Colorado court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court – in which event the disclosure is also not a waiver in any other proceeding.

(e) Controlling Effect of a Party Agreement. An agreement on the effect of disclosure in a Colorado proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) Definitions. In this rule:

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

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

CRE and Restyled Federal Rules Comparison

April 2015

Prepared by Prof. Sheila K. Hyatt
University of Denver Sturm College of Law

ARTICLE I. GENERAL PROVISIONS	ARTICLE I. GENERAL PROVISIONS
CRE Rule 101. Scope	FRE Rule 101. Scope; Definitions
<p>These rules govern proceedings in all courts in the State of Colorado, to the extent and with the exceptions stated in Rule 1101.</p>	<p>(a) Scope. These rules apply to proceedings before United States courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.</p> <p>(b) Definitions. In these rules:</p> <ul style="list-style-type: none"> (1) “civil case” means a civil action or proceeding; (2) “criminal case” includes a criminal proceeding; (3) “public office” includes a public agency; (4) “record” [in Rules 803, 901, 902, and 1005] includes a memorandum, report, or data compilation; (5) a “rule prescribed by the Supreme Court” means a rule adopted by the Supreme Court under statutory authority; and (6) a reference to any kind of written material includes electronically stored information.

CRE Rule 102. Purpose and Construction	FRE Rule 102. Purpose
<p>These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense 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>These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.</p>

<p>CRE Rule 103. Rulings on Evidence</p>	<p>FRE Rule 103. Rulings on Evidence</p>
<p>(a) Effect of erroneous ruling. 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) Objection. 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) Offer of Proof. 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.</p> <p>Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.</p>	<p>(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:</p> <p>(1) if the ruling admits evidence, the party, on the record:</p> <p>(A) timely objects or moves to strike; and</p> <p>(B) states the specific ground, unless it was apparent from the context; or</p> <p>(2) if the ruling excludes evidence, the party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.</p> <p>(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record — either before or at trial — a party need not renew an objection or offer of proof to preserve a claim of error for appeal.</p>
<p>(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.</p>	<p>(c) Court’s Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.</p>
<p>(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.</p>	<p>(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.</p>
<p>(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.</p>	<p>(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.</p>

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<p>Rule 104. Preliminary Questions</p>	<p>Rule 104. Preliminary Questions</p>
<p>(a) Questions of admissibility generally. 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>(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.</p>
<p>(b) Relevancy conditioned on fact. 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.</p>	<p>(b) Relevancy That Depends on a Fact. When the relevancy of evidence depends on fulfilling a factual condition, the court may admit it on, or subject to, the introduction of evidence sufficient to support a finding that the condition is fulfilled.</p>
<p>(c) Hearing of jury. 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 when an accused is a witness if he so requests.</p>	<p>(c) Matters That the Jury Must Not Hear. A hearing on a preliminary question must be conducted outside the jury’s hearing if:</p> <ol style="list-style-type: none"> (1) the hearing involves the admissibility of a confession; (2) a defendant in a criminal case is a witness and requests that the jury not be present; or (3) justice so requires.
<p>(d) Testimony by accused. The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.</p>	<p>(d) Testimony by a Defendant in a Criminal Case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.</p>
<p>(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.</p>	<p>(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party’s right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.</p>

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<p>Rule 105. Limited Admissibility</p>	<p>Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes</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, on request, must restrict the evidence to its proper scope and instruct the jury accordingly.</p>

<p>Rule 106. Remainder of or Related Writings or Recorded Statements</p>	<p>Rule 106. Rest of or Related Writings or Recorded Statements</p>
<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>

<p>ARTICLE II. JUDICIAL NOTICE Rule 201. Judicial Notice of Adjudicative Facts</p>	<p>ARTICLE II. JUDICIAL NOTICE Rule 201. Judicial Notice of Adjudicative Facts</p>
<p>(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.</p>	<p>(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.</p>
<p>(b) Kinds of facts. 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) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:</p> <ol style="list-style-type: none"> (1) is generally known within the court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
<p>(c) When discretionary. A court may take judicial notice, whether requested or not.</p> <p>(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.</p>	<p>(c) Taking Notice. The court:</p> <ol style="list-style-type: none"> (1) may take judicial notice on its own; or (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

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<p>(e) Opportunity to be heard. 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>(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.</p> <p>(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.</p>	<p>(d) Timing. The court may take judicial notice at any stage of the proceeding.</p> <p>(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the noticed fact. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.</p> <p>(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.</p>
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<p>ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS</p> <p>Rule 301. Presumptions in General in Civil Actions and Proceedings</p>	<p>ARTICLE III. PRESUMPTIONS IN CIVIL CASES</p> <p>Rule 301. Presumptions in a Civil Case Generally</p>
<p>In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes upon 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 federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of going forward with 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>

<p>Rule 302. Applicability of State Law in Civil Actions and Proceedings</p>	<p>Rule 302. Effect of State Law on Presumptions in a Civil Case</p>
<p>Reserved</p>	<p>In a civil case, state law governs the effect of a presumption regarding a claim or defense for which state law supplies the rule of decision.</p>

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<p align="center">ARTICLE IV. RELEVANCY AND ITS LIMITS</p> <p>Rule 401. Definition of “Relevant Evidence”</p>	<p align="center">ARTICLE IV. RELEVANCY AND ITS LIMITS</p> <p>Rule 401. Test for Relevant Evidence</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 action.</p>
<p>Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible</p>	<p>Rule 402. General Admissibility of Relevant Evidence</p>
<p>All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Colorado, by these rules, or by other rules prescribed by the Supreme Court, or by the statutes of the State of Colorado. 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"> • the United States Constitution; • a federal statute; • these rules; or • other rules prescribed by the Supreme Court. <p>Irrelevant evidence is not admissible.</p>
<p>Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time</p>	<p>Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons</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 considerations of undue delay, waste of time, or needless presentation of cumulative evidence..</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, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>

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<p>Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes</p>	<p>Rule 404. Character Evidence; Crimes or Other Acts</p>
<p>(a) Character evidence generally. 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>(1) Character of accused. In a criminal case, evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same or if evidence of the alleged victim's character for aggressiveness or violence is offered by an accused and admitted under Rule 404 (a) (2), evidence of the same trait of character of the accused offered by the prosecution;</p> <p>(2) Character of alleged victim. In a criminal case, evidence of a pertinent trait of character of the alleged 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 alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor;</p> <p>(3) Character of witness. Evidence of the character of a witness as provided in Rules 607, 608, and 13-90-101.</p>	<p>(a) Character Evidence.</p> <p>(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.</p> <p>(2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:</p> <p>(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;</p> <p>(B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged crime victim's pertinent trait, and if the evidence is admitted, the prosecutor may:</p> <p>(i) offer evidence to rebut it; and</p> <p>(ii) offer evidence of the defendant's same trait; and</p> <p>(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.</p> <p>(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.</p>
<p>404(b) Other Crimes, Wrongs, or Acts. 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, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.</p>	<p>404(b) Crimes, Wrongs or Other Acts.</p> <p>(1) Prohibited Uses. Evidence of a crime 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>(2) Permitted Uses; Notice. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:</p>

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	<p>(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and</p> <p>(B) do so before trial — or during trial if the court, for good cause, excuses lack of pretrial notice.</p>
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Rule 405. Methods of Proving Character	Rule 405. Methods of Proving Character
<p>(a) Reputation or Opinion. 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) Specific instances of conduct. Except as limited by §§ 16-10-301 and 18-3-407, 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 that person's conduct.</p>	<p>(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination, the court may allow an inquiry into relevant specific instances of the person's conduct.</p> <p>(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.</p>

Rule 406. Habit; Routine Practice	Rule 406. Habit; Routine Practice
<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>

Rule 407. Subsequent Remedial Measures	Rule 407. Subsequent Remedial Measures
<p>When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or 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"> • negligence; • culpable conduct; • a defect in a product or its design; or • a need for a warning or instruction. <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 align="center">Rule 408. Compromise and Offers to Compromise</p>	<p align="center">Rule 408. Compromise Offers and Negotiations</p>
<p>(a) Prohibited uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:</p> <p>(1) furnishing or offering or promising to furnish accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise the claim; and</p> <p>(2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.</p>	<p>(a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:</p> <p>(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and</p> <p>(2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.</p>
<p>(b) Permitted uses. This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness’s bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.</p>	<p>(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness’s bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.</p>

<p align="center">Rule 409. Payment of Medical and Similar Expenses</p>	<p align="center">Rule 409. Offers to Pay Medical and Similar Expenses</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>

<p align="center">Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements</p>	<p align="center">Rule 410. Pleas, Plea Discussions, and Related Statements</p>
<p>Except as otherwise provided by statutes of the State of Colorado, evidence of a plea of guilty, later withdrawn, or a plea of <i>nolo contendere</i>, or of an offer to plead guilty or <i>nolo contendere</i> to the crime charged or any other crime, or of statements made in any connection with any of the foregoing pleas or offers, is not admissible in any civil or</p>	<p>(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:</p> <p>(1) a guilty plea that was later withdrawn;</p>

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<p>410</p> <p>criminal action, case, or proceeding against the person who made the plea or offer. This rule shall not apply to the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas or offers where offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false statement.</p> <p>This rule shall be superseded by any amendment to the Colorado Rules of Criminal Procedure which is inconsistent with this rule, and which takes effect after the effective date of these Colorado Rules of Evidence.</p>	<p>410</p> <p>(2) a nolo contendere plea;</p> <p>(3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or</p> <p>(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.</p> <p>(b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4):</p> <p>(1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness both statements ought to be considered together; or</p> <p>(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.</p>
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Rule 411. Liability Insurance	Rule 411. Liability Insurance
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.	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.

Rule 412 RESERVED	Rule 412. Sex-Offense Cases: The Victim’s Sexual Behavior or Predisposition
See C.R.S. § 18-3-407 Prior Sexual History of Victim	Federal Rape Shield Rule *****

There are no Colorado Rules 413, 414 or 415	Rule 413. Similar Crimes in Sexual-Assault Cases*****
See C.R.S. § 16-10-301 Prior Sexual Offenses	Rule 414. Similar Crimes in Child-Molestation Cases*****
	Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation*****

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ARTICLE V. PRIVILEGES Rule 501. General Rule	ARTICLE V. PRIVILEGES Rule 501. Privilege in General
<p>Except as otherwise required by the Constitution of the United States, the Constitution of the State of Colorado, statutes of the State of Colorado, rules prescribed by the Supreme Court of the State of Colorado pursuant to constitutional authority, or by the principles of the common law as they may be interpreted by the courts of the State of Colorado in light of reason and experience, no person has a privilege to:</p> <p>(1) Refuse to be a witness; or</p> <p>(2) Refuse to disclose any matter; or</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>The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:</p> <ul style="list-style-type: none"> • the United States Constitution; • a federal statute; or • other rules prescribed by the Supreme Court. <p>But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.</p>

[Colorado has no Rule 502]	[Rule 502. Limitations on Waiver] *****
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ARTICLE VI. WITNESSES Rule 601. General Rule of Competency	ARTICLE VI. WITNESSES Rule 601. Competency to Testify in General
<p>Every person is competent to be a witness except as otherwise provided in these rules, or in any statute of the State of Colorado.</p>	<p>Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness's competency regarding a claim or defense for which state law supplies the rule of decision.</p>

Rule 602. Lack of Personal Knowledge	Rule 602. Need for Personal Knowledge
<p>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.</p>	<p>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.</p>

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

Rule 604. Interpreters	Rule 604. Interpreter
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.

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

Rule 606. Competency of Juror as Witness	Rule 606. Juror's Competency as a Witness
(a) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. No objection need be made in order to preserve the point.	(a) At the Trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

<p>606</p> <p>(b) Inquiry Into Validity of Verdict or Indictment. 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. But a juror may testify about (1) whether extraneous prejudicial information was improperly brought to the jurors' attention, (2) whether any outside influence was improperly brought to bear upon any juror, or (3) whether there was a mistake in entering the verdict onto the verdict form. A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying.</p>	<p>606</p> <p>(b) During an Inquiry into the Validity of a Verdict or Indictment.</p> <p>(1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.</p> <p>(2) Exceptions. A juror may testify about whether:</p> <p>(A) extraneous prejudicial information was improperly brought to the jury's attention;</p> <p>(B) an outside influence was improperly brought to bear on any juror; or</p> <p>(C) a mistake was made in entering the verdict on the verdict form.</p>
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<p>Rule 607. Who May Impeach</p>	<p>Rule 607. Who May Impeach a Witness</p>
<p>The credibility of a witness may be attacked by any party, including the party calling him. Leading questions may be used for the purpose of attacking such credibility.</p>	<p>Any party, including the party that called the witness, may attack the witness's credibility.</p>

<p>Rule 608. Evidence of Character and Conduct of Witness</p>	<p>Rule 608. A Witness's Character for Truthfulness or Untruthfulness</p>
<p>(a) Opinion and Reputation Evidence of Character. 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>(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.</p>

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<p>608</p> <p>(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness other than conviction of crime as provided in <u>§ 13-90-101</u>, may 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' 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.</p> <p>The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.</p>	<p>608</p> <p>(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:</p> <p>(1) the witness; or</p> <p>(2) another witness whose character the witness being cross-examined has testified about.</p> <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>Rule 609. Reserved</p> <p>There is no Colorado Rule 609. See C.R.S. §13-90-101</p>	<p>Rule 609. Impeachment by Evidence of a Criminal Conviction</p> <p>*****</p>
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<p>Rule 610. Religious Beliefs or Opinions</p> <p>Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purposes of showing that by reason of their nature his credibility is impaired or enhanced.</p>	<p>Rule 610. Religious Beliefs or Opinions</p> <p>Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility</p>
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<p>Rule 611. Mode and Order of Interrogation and Presentation</p> <p>(a) Control by Court. 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>Rule 611. Mode and Order of Questioning Witnesses and Presenting Evidence</p> <p>(a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of questioning witnesses and presenting evidence so as to:</p> <p>(1) make those procedures effective for determining the truth;</p> <p>(2) avoid wasting time; and</p> <p>(3) protect witnesses from harassment or undue embarrassment.</p>
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<p>611 (b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.</p>	<p>611 (b) Scope of Cross-Examination. Cross-examination should not go beyond the subject matter of the direct examination and matters affecting a witness’s credibility. The court may allow inquiry into additional matters as if on direct examination.</p>
<p>(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. 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>(c) Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness’s testimony. Ordinarily, the court should allow leading questions:</p> <ul style="list-style-type: none"> (1) on cross-examination; and (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

<p>Rule 612. Writing Used To Refresh Memory</p>	<p>Rule 612. Writing Used to Refresh a Witness’s Memory</p>
<p>If a witness uses a writing to refresh his memory for the purpose of testifying, either--</p> <ul style="list-style-type: none"> (1) while testifying, or (2) before testifying, if <p>the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing <i>in camera</i>, excise any portions not so 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 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 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>	<ul style="list-style-type: none"> (a) Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory: <ul style="list-style-type: none"> (1) while testifying; or (2) before testifying, if the court decides that justice requires a party to have those options. (b) Adverse Party’s Options; Deleting Unrelated Matter. Unless 18 U.S.C. § 3500 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness’s testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing <i>in camera</i>, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record. (c) Failure to Produce or Deliver. If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness’s testimony or — if justice so requires — declare a mistrial.

Rule 613. Prior Statements of Witnesses	Rule 613. Witness’s Prior Statement
<p>(a) Examining Witness Concerning Prior Inconsistent Statements for Impeachment Purposes. Before a witness may be examined for impeachment by prior inconsistent statement the examiner must call the attention of the witness to the particular time and occasion when, the place where, and the person to whom he made the statement. As a part of that foundation, the examiner may refer to the witness statement to bring to the attention of the witness any purported prior inconsistent statement. The exact language of the prior statement may be given.</p> <p>Where the witness denies or does not remember making the prior statement, extrinsic evidence, such as a deposition, proving the utterance of the prior evidence is admissible. However, if a witness admits making the prior statement, additional extrinsic evidence that the prior statement was made is inadmissible.</p> <p>Denial or failure to remember the prior statement is a prerequisite for the introduction of extrinsic evidence to prove that the prior inconsistent statement was made.</p>	<p>(a) Showing or Disclosing the Statement During Questioning. 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) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness’s prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to question 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>

Rule 614. Calling and Interrogation of Witnesses by Court	Rule 614. Court’s Calling or Questioning a Witness
<p>(a) Calling by court. 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>(a) Calling. The court may call a witness on its own or at a party’s suggestion. Each party is entitled to cross-examine the witness.</p>
<p>(b) Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party.</p>	<p>(b) Questioning. The court may question a witness regardless of who calls the witness.</p>
<p>(c) Objections. 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>(c) Objections. A party may object to the court’s calling or questioning a witness either at that time or at the next opportunity when the jury is not present.</p>

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Rule 615. Exclusion of Witnesses	Rule 615. Excluding Witnesses
<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> <ul style="list-style-type: none"> (a) a party who is a natural person; (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney; (c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or (d) a person authorized by statute to be present.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY Rule 701. Opinion Testimony by Lay Witnesses	ARTICLE VII. OPINIONS AND EXPERT TESTIMONY Rule 701. Opinion Testimony by Lay Witnesses
<p>If the witness is not testifying as an expert, the witness' 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 a clear understanding of the witness' 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"> (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Rule 702. Testimony by Experts	Rule 702. Testimony by Expert Witnesses
<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.</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"> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

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<p>Rule 703. Bases of Opinion Testimony by Experts</p>	<p>Rule 703. Bases of an Expert’s Opinion Testimony</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 the expert 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 in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.</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 for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.</p>
<p>Rule 704. Opinion on Ultimate Issue</p>	<p>Rule 704. Opinion on an Ultimate Issue</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>(a) In General — Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.</p>
	<p>(b) Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense.</p>
<p>Rule 705. Disclosure of Facts or Data Underlying Expert Opinion</p>	<p>Rule 705. Disclosing the Facts or Data Underlying an Expert’s Opinion</p>
<p>The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to 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>

<p>Rule 706. Court Appointed Experts</p>	<p>Rule 706. Court-Appointed Expert Witnesses</p>
<p>(a) Appointment. 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 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>(a) Appointment Process. On a party’s motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert witness 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) Expert’s Role. The court must inform the expert in writing of the expert’s duties and have a copy filed with the clerk. Or the court may so inform the expert at a conference in which the parties have an opportunity to participate. The expert:</p> <ul style="list-style-type: none"> (1) must advise the parties of any findings the expert makes; (2) may be deposed by any party; (3) may be called to testify by the court or any party; and (4) may be cross-examined by any party, including the party that called the expert.
<p>(b) Compensation. 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 and at such time as the court directs, and thereafter charged in like manner as other costs.</p>	<p>(c) Compensation. The expert is entitled to whatever reasonable compensation the court allows. The compensation is payable as follows:</p> <ul style="list-style-type: none"> (1) in a criminal case or in a civil case involving just compensation under the Fifth Amendment, from any funds that are provided by law; and (2) in any other civil case, by the parties in the proportion and at the time that the court directs — and the compensation is then charged like other costs.
<p>(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.</p>	<p>(d) Disclosing the Appointment. The court may authorize disclosure to the jury that the court appointed the expert.</p>
<p>(d) Parties’ experts of own selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.</p>	<p>(e) Parties’ Choice of Their Own Experts. This rule does not limit a party in calling its own experts.</p>

<p style="text-align: center;">ARTICLE VIII. HEARSAY</p> <p style="text-align: center;">Rule 801. Definitions</p>	<p style="text-align: center;">ARTICLE VIII. HEARSAY</p> <p style="text-align: center;">Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay</p>
<p>(a) Statement. A “statement” is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him to be communicative.</p>	<p>(a) Statement. “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.</p>
<p>(b) Declarant. A “declarant” is a person who makes a statement.</p>	<p>(b) Declarant. “Declarant” means the person who made the statement.</p>
<p>(c) Hearsay. “Hearsay” is a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.</p>	<p>(c) Hearsay. “Hearsay” means a statement that:</p> <ul style="list-style-type: none"> (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>(d) Statements Which Are Not Hearsay. A statement is not hearsay if—</p> <p>(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with his testimony, or (B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving him, or</p>	<p>(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:</p> <p>(1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or (ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or (C) identifies a person as someone the declarant perceived earlier.

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<p>801(d)</p> <p>(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 coconspirator 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).</p>	<p>801(d) . . .</p> <p>(2) <i>An Opposing Party’s Statement.</i> The statement is offered against an opposing party and:</p> <ul style="list-style-type: none"> (A) was made by the party in an individual or representative capacity; (B) is one that the party appeared to adopt or accept as 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 co-conspirator during and in furtherance of the conspiracy. <p>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).</p>
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<p>Rule 802. Hearsay Rule</p>	<p>Rule 802. The Rule Against Hearsay</p>
<p>Hearsay is not admissible except as provided by these rules or by the civil and criminal procedural rules applicable to the courts of Colorado or by any statutes of the State of Colorado.</p>	<p>Hearsay is not admissible unless any of the following provides otherwise:</p> <ul style="list-style-type: none"> • a federal statute; • these rules; or • other rules prescribed by the Supreme Court.

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<p>Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial</p>	<p>Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness</p>
<p>The following are not excluded by the hearsay rule, even though the declarant is available as a witness:</p> <p>(1) Spontaneous Present Sense Impression. A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition.</p>	<p>The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:</p> <p>(1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.</p>
<p>(2) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.</p>	<p>(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress or excitement that it caused.</p>
<p>(3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.</p>	<p>(3) Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.</p>
<p>(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.</p>	<p>(4) Statement Made for Medical Diagnosis or Treatment. A statement that:</p> <p style="padding-left: 40px;">(A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and</p> <p style="padding-left: 40px;">(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.</p>
<p>(5) Recorded Recollection. A past recollection recorded when it appears that the witness once had knowledge concerning the matter and: (A) can identify the memorandum or record, (B) adequately recalls the making of it at or near the time of the event, either as recorded by the witness or by another, and (C) can testify to its accuracy. The memorandum or record may be read into evidence but may not itself be received unless offered by an adverse party.</p>	<p>(5) Recorded Recollection. A record that:</p> <p style="padding-left: 40px;">(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;</p> <p style="padding-left: 40px;">(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and</p> <p style="padding-left: 40px;">(C) accurately reflects the witness's knowledge.</p> <p>If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.</p>

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<p>803</p> <p>(6) Records of regularly conducted activity. A memorandum, report, record, or data 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 by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, 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.</p>	<p>803</p> <p>(6) <i>Records of a Regularly Conducted Activity.</i> A record of an act, event, condition, opinion, or diagnosis if:</p> <ul style="list-style-type: none"> (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; and (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(b)(11) or (12) or with a statute permitting certification, and (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.
<p>(7) Absence of Entry in Records Kept in Accordance With the Provisions of Paragraph (6). Evidence that a matter is not included in the memoranda reports, records, or data compilations in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.</p>	<p>(7) <i>Absence of a Record of a Regularly Conducted Activity.</i> Evidence that a matter is not included in a record described in paragraph (6) if:</p> <ul style="list-style-type: none"> (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) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.
<p>(8) Public Records and Reports. Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law.</p>	<p>(8) <i>Public Records.</i> A record or statement of a public office if:</p> <ul style="list-style-type: none"> (A) it sets out: <ul style="list-style-type: none"> (i) the office's activities; (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and (B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

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<p>803 (9) Records of Vital Statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.</p>	<p>803 (9) <i>Public Records of Vital Statistics.</i> A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.</p>
<p>(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:</p> <p>(A) the testimony or certification is admitted to prove that</p> <p style="padding-left: 40px;">(i) the record or statement does not exist; or</p> <p style="padding-left: 40px;">(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind: and</p> <p>(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice--unless the court sets a different time for the notice or the objection.</p>	<p>(10) <i>Absence of a Public Record.</i> Testimony--or a certification under <u>Rule 902</u>--that a diligent search failed to disclose a public record or statement if:</p> <p>(A) the testimony or certification is admitted to prove that</p> <p style="padding-left: 40px;">(i) the record or statement does not exist; or</p> <p style="padding-left: 40px;">(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and</p> <p>(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice--unless the court sets a different time for the notice or the objection.</p>
<p>(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.</p>	<p>(11) <i>Records of Religious Organizations Concerning Personal or Family History.</i> 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.</p>
<p>(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.</p>	<p>(12) <i>Certificates of Marriage, Baptism, and Similar Ceremonies.</i> A statement of fact contained in a certificate:</p> <p>(A) made by a person who is authorized by a religious organization or by law to perform the act certified;</p> <p>(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and</p> <p>(C) purporting to have been issued at the time of the act or within a reasonable time after it.</p>
<p>(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.</p>	<p>(13) <i>Family Records.</i> 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.</p>

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<p>803</p> <p>(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.</p>	<p>803</p> <p>(14) <i>Records of Documents That Affect an Interest in Property.</i> The record of a document that purports to establish or affect an interest in property if:</p> <ul style="list-style-type: none"> (A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it; (B) the record is kept in a public office; and (C) a statute authorizes recording documents of that kind in that office.
<p>(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.</p>	<p>(15) <i>Statements in Documents That Affect an Interest in Property.</i> 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.</p>
<p>(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.</p>	<p>(16) <i>Statements in Ancient Documents.</i> A statement in a document that is at least 20 years old and whose authenticity is established.</p>
<p>(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.</p>	<p>(17) <i>Market Reports and Similar Commercial Publications.</i> Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.</p>
<p>(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness 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.</p>	<p>(18) <i>Statements in Learned Treatises, Periodicals, or Pamphlets.</i> A statement contained in a treatise, periodical, or pamphlet if:</p> <ul style="list-style-type: none"> (A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and (B) the publication is established as a reliable authority by the expert’s admission or testimony, by another expert’s testimony, or by judicial notice. <p>If admitted, the statement may be read into evidence but not received as an exhibit.</p>

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<p>803 (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.</p>	<p>803 (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.</p>
<p>(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.</p>	<p>(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.</p>
<p>(21) Reputation as to character. Reputation of a person's character among associates or in the community.</p>	<p>(21) Reputation Concerning Character. A reputation among a person's associates or in the community concerning the person's character.</p>
<p>(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 <i>nolo contendere</i>), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.</p>	<p>(22) Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:</p> <ul style="list-style-type: none"> (A) the judgment was entered after a trial or guilty plea, but not a <i>nolo contendere</i> plea; (B) the judgment was for a crime punishable by death or by imprisonment for more than a year; (C) the evidence is admitted to prove any fact essential to the judgment; and (D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant. <p>The pendency of an appeal may be shown but does not affect admissibility.</p>
<p>(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.</p>	<p>(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:</p> <ul style="list-style-type: none"> (A) was essential to the judgment; and (B) could be proved by evidence of reputation.
<p>(24) [Transferred to Rule 807]</p>	<p>(24) [Other exceptions.] [Transferred to Rule 807]</p>

<p>Rule 804. Hearsay Exceptions; Declarant Unavailable</p>	<p>Rule 804. Exceptions to the Rule Against Hearsay — When the Declarant Is Unavailable as a Witness</p>
<p>(a) Definition of unavailability. “Unavailability as a witness” includes situations in which the declarant—</p> <ul style="list-style-type: none"> (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or (2) persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or (3) testifies to a lack of memory of the subject matter of the declarant’s statement; or (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or (5) is absent from the hearing and the proponent of a statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b)(3), or (4), the declarant’s attendance or testimony) by process or other reasonable means. <p>A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.</p>	<p>(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:</p> <ul style="list-style-type: none"> (1) is exempted by a court ruling on the ground of having a privilege to not testify about the subject matter of the declarant’s statement; (2) refuses to testify about the subject matter despite a court order to do so; (3) testifies to not remembering the subject matter; (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or (5) is absent from the trial or hearing and the statement’s proponent has not been able, by process or other reasonable means, to procure: <ul style="list-style-type: none"> (A) the declarant’s attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or (B) the declarant’s attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4). <p>But this subdivision (a) does not apply if the statement’s proponent procured or wrongfully caused the declarant’s unavailability in order to prevent the declarant from attending or testifying.</p>

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<p>804</p> <p>(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:</p> <p>(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.</p>	<p>804</p> <p>(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:</p> <p>(1) Former Testimony. Testimony that:</p> <p>(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and</p> <p>(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.</p>
<p>(2) [There is no paragraph (b)(2)].</p> <p>See CRS § 13-25-119 Dying Declarations</p>	<p>(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.</p>
<p>(3) Statement against interest. A statement that:</p> <p>(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and</p> <p>(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.</p>	<p>(3) Statement Against Interest. A statement that:</p> <p>(A)a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or pecuniary interest or had so great a tendency to invalidate the declarant’s claim against someone else or to expose the declarant to civil or criminal liability; and</p> <p>(B)is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.</p>
<p>(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.</p>	<p>(4) Statement of Personal or Family History. A statement about:</p> <p>(A) the declarant’s own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood 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</p> <p>(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.</p>

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<p>804 (5) [Other exceptions.] [Transferred to Rule 807]</p>	<p>804 (5) [Other exceptions.] [Transferred to Rule 807]</p>
<p>[Colorado has no 804(b)(6)]</p>	<p>(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused--or acquiesced in wrongfully causing--the declarant's unavailability as a witness, and did so intending that result.</p>

<p>Rule 805. Hearsay Within Hearsay</p>	<p>Rule 805. Hearsay Within Hearsay</p>
<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>

<p>Rule 806. Attacking and Supporting Credibility of Declarant</p>	<p>Rule 806. Attacking and Supporting the Declarant's Credibility</p>
<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 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>

<p>Rule 807. Residual Exception</p>	<p>Rule 807. Residual Exception</p>
<p>A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.</p>	<p>(a) In General. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:</p> <ul style="list-style-type: none"> (1) the statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and (4) admitting it will best serve the purposes of these rules and the interests of justice. <p>(b) Notice. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.</p>

<p>ARTICLE IX. AUTHENTICATION AND IDENTIFICATION</p> <p>Rule 901. Requirement of Authentication or Identification</p>	<p>ARTICLE IX. AUTHENTICATION AND IDENTIFICATION</p> <p>Rule 901. Authenticating or Identifying Evidence</p>
<p>(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.</p>	<p>(a) In General. To authenticate or identify an item of evidence in order to have it admitted, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.</p>
<p>(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:</p>	<p>(b) Examples. The following are examples only — not a complete list — of evidence that satisfies the requirement:</p>
<p>(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.</p>	<p>(1) <i>Testimony of a Witness with Knowledge.</i> Testimony that an item is what it is claimed to be.</p>

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<p>901</p> <p>(2) Non-expert opinion on handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.</p>	<p>901</p> <p>(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>(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.</p>	<p>(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>(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.</p>	<p>(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>
<p>(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.</p>	<p>(5) <i>Opinion About a Voice.</i> 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.</p>
<p>(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.</p>	<p>(6) <i>Evidence About a Telephone Conversation.</i> For a telephone conversation, evidence that a call was made to the number assigned at the time to:</p> <p>(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or</p> <p>(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.</p>
<p>(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.</p>	<p>(7) <i>Evidence About Public Records.</i> Evidence that:</p> <p>(A) a document was recorded or filed in a public office as authorized by law; or</p> <p>(B) a purported public record or statement is from the office where items of this kind are kept.</p>

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<p>901</p> <p>(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.</p>	<p>901</p> <p>(8) Evidence About Ancient Documents or Data Compilations. For a document or data compilation, evidence that it:</p> <p>(A) is in a condition that creates no suspicion about its authenticity;</p> <p>(B) was in a place where, if authentic, it would likely be; and</p> <p>(C) is at least 20 years old when offered.</p>
<p>(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.</p>	<p>(9) Evidence About a Process or System. Evidence describing a process or system and showing that it produces an accurate result.</p>
<p>(10) Methods provided by statute or rule. Any method of authentication or identification provided by Colorado Rules of Procedure, or by statute of the State of Colorado.</p>	<p>(10) Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by a federal statute or a rule prescribed by the Supreme Court.</p>

<p>Rule 902. Self-authentication</p>	<p>Rule 902. Evidence That Is Self-Authenticating</p>
<p>Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:</p> <p>(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.</p>	<p>The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:</p> <p>(1) Domestic Public Documents That Are Signed and Sealed. A document that bears:</p> <p>(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above, and</p> <p>(B) a signature purporting to be an execution or attestation;</p>

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<p>902</p> <p>(2) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine</p>	<p>902</p> <p>(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified. A document that bears no seal if:</p> <ul style="list-style-type: none">(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.
<p>(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 signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.</p>	<p>(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:</p> <ul style="list-style-type: none">(A) order that it be treated as presumptively authentic without final certification; or(B) allow it to be evidenced by an attested summary with or without final certification.
<p>(4) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Federal or Colorado Rule of Procedure, or with any Act of the United States Congress, or any statute of the State of Colorado.</p>	<p>(4) Certified Copies of Public Records. A copy of an official record — or a copy of a document that was lawfully recorded or filed in a public office — if the copy is certified as correct by:</p> <ul style="list-style-type: none">(A) the custodian or another person authorized to make the certification; or(B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.

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<p>902</p> <p>(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.</p>	<p>902</p> <p>(5) <i>Official Publications.</i> A book, pamphlet, or other publication purporting to be issued by a public authority.</p>
<p>(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.</p>	<p>(6) <i>Newspapers and Periodicals.</i> Printed material purporting to be a newspaper or periodical.</p>
<p>(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.</p>	<p>(7) <i>Trade Inscriptions and the Like.</i> An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.</p>
<p>(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.</p>	<p>(8) <i>Acknowledged Documents.</i> A document accompanied by a certificate of acknowledgment that is lawfully signed by a notary public or another officer who is authorized to take acknowledgments.</p>
<p>(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.</p>	<p>(9) <i>Commercial Paper and Related Documents.</i> Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.</p>
<p>(10) Presumptions Under Legislative Act. Any signature, document, or other matter declared by Act of the Congress of the United States, or by any statute of the State of Colorado to be presumptively or <i>prima facie</i> genuine or authentic.</p>	<p>(10) <i>Presumptions Under a Federal Statute.</i> A signature, document, or anything else that a federal statute declares to be presumptively or <i>prima facie</i> genuine or authentic</p>
<p>(11) Certified domestic records of regularly conducted activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by an affidavit of its custodian or other qualified person, in a manner complying with any Colorado statute or rule prescribed by the Colorado Supreme Court, certifying that the record-</p> <ul style="list-style-type: none"> (a) was 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) was kept in the course of the regularly conducted activity; and (c) was made by the regularly conducted activity as a regular practice. <p>A party intending to offer a record into evidence under this</p>	<p>(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record--and must make the record and certification available for inspection--so that the party has a fair opportunity to challenge them.</p>

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<p>902 paragraph must provide written notice of that intention to all adverse parties, and must make the record and affidavit available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.</p>	
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<p>(12) Certified foreign records of regularly conducted activity. In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record-</p> <ul style="list-style-type: none"> (a) was 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) was kept in the course of the regularly conducted activity; and (c) was made by the regularly conducted activity as a regular practice. <p>The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.</p>	<p>(12) Certified Foreign Records of a Regularly Conducted Activity. In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a federal statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).</p>
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<p>Rule 903. Subscribing Witness' Testimony Unnecessary</p>	<p>Rule 903. Subscribing Witness's Testimony</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>

<p align="center">ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS</p> <p align="center">Rule 1001. Definitions</p>	<p align="center">ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS</p> <p align="center">Rule 1001. Definitions That Apply to This Article</p>
<p>For purposes of this article the following definitions are applicable:</p> <p>(1) Writings and recordings. “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>(2) Photographs. “Photographs” include still photographs, X-ray films, video tapes, and motion pictures.</p> <p>(3) Original. 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>(4) Duplicate. A “duplicate” is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.</p>	<p>In this article, the following definitions apply:</p> <p>(a) Writing. A “writing” consists of letters, words, numbers, or their equivalent set down in any form.</p> <p>(b) Recording. A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.</p> <p>(c) Photograph. “Photograph” means a photographic image or its equivalent stored in any form.</p> <p>(d) Original. 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>(e) Duplicate. “Duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.</p>

<p align="center">Rule 1002. Requirement of Original</p>	<p align="center">Rule 1002. Requirement of the Original</p>
<p>To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute of the State of Colorado or of the United States.</p>	<p>An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.</p>

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Rule 1003. Admissibility of Duplicates	Rule 1003. Admissibility of Duplicates
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.	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.

Rule 1004. Admissibility of Other Evidence of Contents	Rule 1004. Admissibility of Other Evidence of Content
<p>The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if—</p> <p>(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or</p> <p>(2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or</p> <p>(3) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or</p> <p>(4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.</p>	<p>An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:</p> <p>(a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;</p> <p>(b) an original cannot be obtained by any available judicial process;</p> <p>(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or</p> <p>(d) the writing, recording, or photograph is not closely related to a controlling issue.</p>

Rule 1005. Public Records	Rule 1005. Copies of Public Records to Prove Content
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.	The proponent may use a copy to prove the content of an official record — or of a document that was lawfully recorded or filed in a public office — 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.

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Rule 1006. Summaries	Rule 1006. Summaries to Prove Content
<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 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 or place. And the court may order the proponent to produce them in court.</p>

Rule 1007. Testimony or Written Admission of Party	Rule 1007. Testimony or Admission of a Party to Prove Content
<p>Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's 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 admission of the party against whom the evidence is offered. The proponent need not account for the original.</p>

Rule 1008. Functions of Court and Jury	Rule 1008. Functions of the Court and Jury
<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 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.</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> <ul style="list-style-type: none"> (a) an asserted writing, recording, or photograph ever existed; (b) another one produced at the trial or hearing is the original; or (c) other evidence of content accurately reflects the content.

<p>ARTICLE XI. MISCELLANEOUS RULES</p> <p>Rule 1101. Applicability of Rules</p>	<p>ARTICLE XI. MISCELLANEOUS RULES</p> <p>Rule 1101. Applicability of the Rules</p>
<p>(a) Courts. These rules apply to all courts in the State of Colorado.</p> <p>(b) Proceedings Generally. These rules apply generally to civil actions, to criminal proceedings, and to contempt proceedings, except those in which the court may act summarily.</p> <p>(c) Rule of Privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.</p> <p>(d) Rules Inapplicable. The rules (other than with respect to privileges) do not apply in the following situations:</p> <p>(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104</p> <p>(2) Grand Jury. Proceedings before grand juries.</p> <p>(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, or 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>(e) Rules Applicable in Part. In any special statutory proceedings, these rules apply to the extent that matters of evidence are not provided for in the statutes which govern procedure therein.</p>	<p>(a) To Courts and Judges. These rules apply to proceedings before:</p> <ul style="list-style-type: none"> • United States district courts; • United States bankruptcy and magistrate judges; • United States courts of appeals; • the United States Court of Federal Claims; and • the district courts of Guam, the Virgin Islands, and the Northern Mariana Islands. <p>(b) To Proceedings. These rules apply in:</p> <ul style="list-style-type: none"> • civil cases and proceedings, including admiralty and maritime cases; • criminal cases and proceedings; • contempt proceedings, except those in which the court may act summarily; and • cases and proceedings under 11 U.S.C. <p>(c) Rules on Privilege. The rules on privilege apply to all stages of a case or proceeding.</p> <p>(d) Exceptions. These rules — except for those on privilege — do not apply to the following:</p> <p>(1) the court’s determination, under Rule 104(a), on a preliminary question of fact governing admissibility;</p> <p>(2) grand-jury proceedings; and</p> <p>(3) miscellaneous proceedings such as:</p> <ul style="list-style-type: none"> • extradition or rendition; • issuing an arrest warrant, criminal summons, or search warrant; • a preliminary examination in a criminal case; • sentencing; • granting or revoking probation or supervised release; and • considering whether to release on bail or otherwise. <p>(e) Other Statutes and Rules. A federal statute or a rule prescribed by the Supreme Court may provide for admitting or excluding evidence independently from these rules.</p>

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Rule 1102. Amendments	Rule 1102. Amendments
[RESERVED]	These rules may be amended as provided in 28 U.S.C. § 2072.

Rule 1103. Title	Rule 1103. Title
These rules shall be known and cited as the Colorado Rules of Evidence, or CRE.	These rules may be cited as the Federal Rules of Evidence.

“*Federal Rule Identical*” appears in the following Colorado Rules of Evidence:

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COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
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JUDICIAL CONFERENCE OF THE UNITED STATES
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REENA RAGGI
CRIMINAL RULES

WILLIAM K. SESSIONS III
EVIDENCE RULES

MEMORANDUM

TO: Honorable Jeffrey S. Sutton, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable William K. Sessions, III, Chair
Advisory Committee on Evidence Rules

DATE: May 7, 2015

RE: Report of the Advisory Committee on Evidence Rules

I. Introduction

The Advisory Committee on Evidence Rules (the “Committee”) met on April 17, 2015 at Fordham University School of Law in New York City.

The Committee seeks approval of two proposed amendments for release for public comment:

1. Abrogation of Rule 803(16), the ancient documents exception to the hearsay rule; and
2. Amendment of Rule 902 to add two subdivisions that would allow authentication of certain electronic evidence by way of certification by a qualified person.

II. Action Items

A. Proposed Abrogation of Rule 803(16)

Rule 803(16) provides a hearsay exception for “ancient documents.” If a document is more than 20 years old and appears authentic, it is admissible for the truth of its contents. The Committee considered whether Rule 803(16) should be abrogated or amended because of the development of electronically stored information. The rationale for the exception has always been questionable, because a document does not become reliable just because it is old; and a document does not magically become reliable enough to escape the rule against hearsay on the day it turns 20. The Committee concluded that the exception has been tolerated because it has been used so infrequently, and usually because there is no other evidence on point. But because electronically stored information can be retained for more than 20 years, there is a strong likelihood that the ancient documents exception will be used much more frequently in the coming years. And it could be used to admit only unreliable hearsay, because if the hearsay is in fact reliable it will probably be admissible under other reliability-based exceptions, such as the business records exception or the residual exception. Moreover, the need for an ancient documents exception is questionable as applied to ESI, for the very reason that there may well be a great deal of reliable electronic data available to prove any dispute of fact.

The Committee considered four formal proposals for amending the rule. The proposals were: 1) abrogation; 2) limiting the exception to hardcopy; 3) adding the necessity requirement from the residual exception (Rule 807); and 4) adding the Rule 803(6) requirement that the document would be excluded if the opponent could show that the document was untrustworthy under the circumstances. It ultimately determined, unanimously, that Rule 803(16) should be abrogated. In support of that determination, the Committee drew the following conclusions:

- The exception, which is based on necessity, is in fact unnecessary because an ancient document that is reliable can be admitted under other hearsay exceptions, such as Rule 807 or Rule 803(6). In fact, the only case that the original Advisory Committee relied upon in support of the ancient documents exception was one in which the court found an old document admissible because it was reliable — an analysis which today would have rendered it admissible as residual hearsay. So the only real “use” for the exception is to admit unreliable hearsay — as has happened in several reported cases.
- The exception can be especially problematic in criminal cases where statutes of limitations are not applicable, such as cases involving sexual abuse and conspiracy.
- Many forms of ESI have just become or are about to become more than 20 years old, and there is a real risk that substantial amounts of unreliable ESI will be stockpiled and subject to essentially automatic admissibility under the existing exception.
- The ancient documents exception is not a venerated exception under the common law. While the common law has traditionally provided for authenticity of documents based on age, the hearsay exception is of relatively recent vintage. Moreover, it was originally intended to cover property-related cases to ease proof of title. It was

subsequently expanded, without significant consideration, to every kind of case in which an old document would be relevant. Thus, abrogating the exception would not present the kind of serious uprooting as might exist with other rules in the Federal Rules of Evidence.

- The ancient documents exception is based on necessity (lack of other proof), but where the document is necessary it will likely satisfy at least one of the admissibility requirements of the residual exception — i.e., that the hearsay is more probative than any other evidence reasonably available. So if the document is reliable it will be admissible as residual hearsay — and if it is unreliable it should be excluded no matter how “necessary” it is.

The Committee concluded that the problems presented by the ancient documents exception could not be fixed by tinkering with it — the appropriate remedy is to abrogate the exception and leave the field to other hearsay exceptions such as the residual exception and the business records exception. In particular, there was no support for the proposal that would limit the exception to hardcopy, as the distinction between ESI and hardcopy would be fraught with questions and would be difficult to draw. For example, is a scanned copy of an old document, or a digitized version of an old book, ESI or hardcopy? As to the proposals to import either necessity or reliability requirements into the rule, Committee members generally agreed that they would be problematic because they would draw the ancient documents exception closer to the residual exception, thus raising questions about how to distinguish those exceptions.

The Committee unanimously approved the proposal to abrogate Rule 803(16), together with the following Committee Note to explain that abrogation:

The ancient documents exception to the rule against hearsay has been abrogated. The exception was based on the flawed premise that the contents of a document are reliable merely because the document is old. While it is appropriate to conclude that a document is genuine when it is old and located in a place where it would likely be — see Rule 901(b)(8) — it simply does not follow that the contents of such a document are truthful.

The ancient documents exception could once have been thought tolerable out of necessity (unavailability of other proof for old disputes) and by the fact that the exception has been so rarely invoked. But given the development and growth of electronically stored information, the exception has become even less justifiable and more subject to abuse. The need for an ancient document that does not qualify under any other hearsay exception has been diminished by the fact that reliable electronic information is likely to be available and will likely satisfy a reliability-based hearsay exception — such as Rule 807 or Rule 803(6). Thus the ancient documents exception is not necessary to qualify dated information that is reliable. And abuse of the ancient document exception is possible because unreliable electronic information could be easily accessible, and would be admissible under the exception simply because it has been preserved electronically for 20 years.

Recommendation: The Committee recommends that the proposed abrogation of Evidence Rule 803(16) be issued for public comment.

B. Proposed Amendment to Evidence Rule 902

At its previous meeting, the Committee approved in principle changes that would allow certain electronic evidence to be authenticated by a certification of a qualified person — in lieu of that person’s testimony at trial. (Those changes were discussed as an information item at the January, 2015 Standing Committee meeting). At its Spring meeting, the Committee unanimously approved a proposal to add two new subdivisions to Rule 902, the rule on self-authentication. The first provision would allow self-authentication of machine-generated information, upon a submission of a certification prepared by a qualified person. The second proposal would provide a similar certification procedure for a copy of data taken from an electronic device, media or file. These proposals are analogous to Rules 902(11) and (12) of the Federal Rules of Evidence, which permit a foundation witness to establish the authenticity of business records by way of certification.

The proposals have a common goal of making authentication easier for certain kinds of electronic evidence that are, under current law, likely to be authenticated under Rule 901 but only by calling a witness to testify to authenticity. The Committee has concluded that the types of electronic evidence covered by the two proposed rules are rarely the subject of a legitimate authenticity dispute, but it is often the case that the proponent is nonetheless forced to produce an authentication witness, incurring expense and inconvenience — and often, at the last minute, opposing counsel ends up stipulating to authenticity in any event.

The self-authentication proposals, by following the approach taken in Rule 902(11) and (12) regarding business records, essentially leave the burden of going forward on authenticity questions to the opponent of the evidence. Under those rules a business record is authenticated by a certificate, but the opponent is given “a fair opportunity” to challenge both the certificate and the underlying record. The proposals for new Rules 902(13) and 902(14) would have the same effect of shifting to the opponent the burden of going forward (not the burden of proof) on authenticity disputes regarding the described electronic evidence.

The Committee has carefully considered whether the self-authentication proposals would raise a Confrontation Clause concern when the certificate of authenticity is offered against a criminal defendant. The Committee is satisfied that no constitutional issue is presented, because the Supreme Court has stated in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 322 (2009), that even when a certificate is prepared for litigation, the admission of that certificate litigation is consistent with the right to confrontation if it does nothing more than authenticate another document or item of evidence. That is all that these certificates would be doing under the Rule 902(13) and (14) proposals. The Committee also relied on the fact that the lower courts had uniformly held that certificates prepared under Rules 902(11) and (12) do not violate the right to confrontation; those courts have relied on the Supreme Court’s statement in *Melendez-Diaz*. The Committee determined that the problem with the affidavit found testimonial in *Melendez-Diaz* was that it certified the accuracy of a drug test that was itself prepared for purposes of litigation. The certificates that would be prepared under proposed Rules 902(13) and (14) would not be

certifying the accuracy of any contents or any factual assertions. They would only be certifying that the evidence to be introduced was generated by the machine (Rule 902(13)) or is data copied from the original (Rule 902(14)). In this regard, the Note approved by the Committee emphasizes that the goal of the amendments is narrow one: to allow electronic information that would otherwise be established by a witness instead to be established through a certification by that same witness.

Proposed Rule 902(13) — as unanimously approved by the Committee with the recommendation that it be released for public comment — provides as follows:

Rule 902. Evidence That Is Self-Authenticating

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

* * *

(13) Certified Records Generated by an Electronic Process or System. A record generated by an electronic process or system that produces an accurate result, as shown by a certification by a qualified person that complies with the certification requirements of Rule 902(11) or Rule 902(12). The proponent must meet the notice requirements of Rule 902(11).

The Proposed Committee Note to Rule 902(13) provides as follows:

The amendment sets forth a procedure by which parties can authenticate certain electronic evidence other than through the testimony of a foundation witness. As with the provisions on business records in Rules 902(11) and (12), the Committee has found that the expense and inconvenience of producing a witness to authenticate an item of electronic evidence is often unnecessary. It is often the case that a party goes to the expense of producing an authentication witness and then the adversary either stipulates authenticity before the witness is called or fails to challenge the authentication testimony once it is presented. The amendment provides a procedure under which the parties can determine in advance of trial whether a real challenge to authenticity will be made, and can then plan accordingly.

Nothing in the amendment is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including through judicial notice where appropriate.

A proponent establishing authenticity under this Rule must present a certification containing information that would be sufficient to establish authenticity were that information provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established under this Rule. The intent of the Rule is to allow the authenticity foundation that satisfies Rule 901(b)(9) to be established by a certification rather than the testimony of a live witness.

A certification under this Rule can only establish that the proffered item has satisfied the admissibility requirements for authenticity. The opponent remains free to object to admissibility of the item on other grounds. For example, if a webpage is authenticated by a certificate under this rule, that authentication does not mean that the assertions on the webpage are admissible for their truth. It means only that the item is what the proponent says it is, i.e., a particular web page that was posted at a particular time. Likewise, the certification of a process or system of testing means only that the system described in the certification produced the item that is being authenticated.

The reference to Rule 902(12) is intended to cover certifications that are made in a foreign country.

Proposed Rule 902(14) — as unanimously approved by the Committee with the recommendation that it be released for public comment — provides as follows:

Rule 902. Evidence That Is Self-Authenticating

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

* * *

(14) Certified Data Copied From an Electronic Device, Storage Media or File. Data copied from an electronic device, storage media, or electronic file, if authenticated by a process of digital identification, as shown by a certification by a qualified person that complies with the certification requirements of Rule 902(11) or Rule 902(12). The proponent must meet the notice requirements of Rule 902(11).

The Proposed Committee Note to Rule 902(14) provides as follows:

The amendment sets forth a procedure by which parties can authenticate data copied from an electronic device, storage medium, or an electronic file, other than through the testimony of a foundation witness. As with the provisions on business records in Rules 902(11) and (12), the Committee has found that the expense and inconvenience of producing an authenticating witness for this evidence is often unnecessary. It is often the case that a party goes to the expense of producing an authentication witness, and then the adversary either stipulates authenticity before the witness is called or fails to challenge the authentication testimony once it is presented. The amendment provides a procedure in which the parties can determine in advance of trial whether a real challenge to authenticity will be made, and can then plan accordingly.

Today, data copied from electronic devices, storage media, and electronic files are ordinarily authenticated by “hash value.” A hash value is a unique alpha-numeric sequence of approximately 30 characters that an algorithm determines based upon the digital contents of a drive, media, or file. Thus, identical hash values for the original and copy reliably attest to the fact that they are exact duplicates. This amendment allows self-

authentication by a certification of a qualified person that she checked the hash value of the proffered item and that it was identical to the original. The rule is flexible enough to allow certifications through processes other than comparison of hash value, including by other reliable means of identification provided by future technology.

Nothing in the amendment is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including through judicial notice where appropriate.

A proponent establishing authenticity under this Rule must present a certification containing information that would be sufficient to establish authenticity were that information provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established under this Rule.

A certification under this Rule can only establish that the proffered item is authentic. The opponent remains free to object to admissibility of the item on other grounds. For example, in a criminal case in which data copied from a hard drive is proffered, the defendant can still challenge hearsay found in the hard drive, and can still challenge whether the information on the hard drive was placed there by the defendant.

The reference to Rule 902(12) is intended to cover certifications that are made in a foreign country.

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

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

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

7 * * * * *

8 ~~(16) *Statements in Ancient Documents.*—A statement~~
9 ~~in a document that is at least 20 years old and~~
10 ~~whose authenticity is established.~~ **[Abrogated**
11 **(Effective Dec. 1, 2017).]**

12 * * * * *

Committee Note

The ancient documents exception to the rule against hearsay has been abrogated. The exception was based on the flawed premise that the contents of a document are reliable merely because the document is old. While it is appropriate to conclude that a document is *genuine* when it

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

is old and located in a place where it would likely be—*see* Rule 901(b)(8)—it simply does not follow that the contents of such a document are truthful.

The ancient documents exception could once have been thought tolerable out of necessity (unavailability of other proof for old disputes) and by the fact that the exception has been so rarely invoked. But given the development and growth of electronically stored information, the exception has become even less justifiable and more subject to abuse. The need for an ancient document that does not qualify under any other hearsay exception has been diminished by the fact that reliable electronic information is likely to be available and will likely satisfy a reliability-based hearsay exception—such as Rule 807 or Rule 803(6). Thus the ancient documents exception is not necessary to qualify dated information that is reliable. And abuse of the ancient document exception is possible because unreliable electronic information could be easily accessible, and would be admissible under the exception simply because it has been preserved electronically for 20 years.

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

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

5 * * * * *

6 **(13) Certified Records Generated by an Electronic**
7 **Process or System.² A record generated by an**
8 **electronic process or system that produces an**
9 **accurate result, as shown by a certification of a**
10 **qualified person that complies with the**
11 **certification requirements of Rule 902(11) or**
12 **(12). The proponent must also meet the notice**
13 **requirements of Rule 902(11).**

Committee Note

The amendment sets forth a procedure by which parties can authenticate certain electronic evidence other

² After discussion with the Standing Committee, the Committee Note was amended to provide examples of the Rule's application.

than through the testimony of a foundation witness. As with the provisions on business records in Rules 902(11) and (12), the Committee has found that the expense and inconvenience of producing a witness to authenticate an item of electronic evidence is often unnecessary. It is often the case that a party goes to the expense of producing an authentication witness and then the adversary either stipulates authenticity before the witness is called or fails to challenge the authentication testimony once it is presented. The amendment provides a procedure under which the parties can determine in advance of trial whether a real challenge to authenticity will be made, and can then plan accordingly.

Nothing in the amendment is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including through judicial notice where appropriate.

A proponent establishing authenticity under this Rule must present a certification containing information that would be sufficient to establish authenticity were that information provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established under this Rule. The intent of the Rule is to allow the authenticity foundation that satisfies Rule 901(b)(9) to be established by a certification rather than the testimony of a live witness.

A certification under this Rule can establish only that the proffered item has satisfied the admissibility requirements for authenticity. The opponent remains free to object to admissibility on other grounds. For example,

assume that a plaintiff in a defamation case offers what purports to be a printout of a webpage on which a defamatory statement was made. Plaintiff offers a certification under this Rule in which a qualified person describes the process by which the webpage was retrieved. Even if that certification sufficiently establishes that the webpage is authentic, defendant remains free to object that the statement on the webpage was not placed there by defendant. Similarly, a certification authenticating a computer output, such as a spreadsheet, does not preclude an objection that the information produced is unreliable—the authentication establishes only that the output came from the computer.

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3 authenticating; they require no extrinsic evidence of
4 authenticity in order to be admitted:

5 * * * * *

6 **(14) Certified Data Copied from an Electronic**
7 **Device, Storage Medium, or File.**³ Data copied
8 from an electronic device, storage medium, or
9 file, if authenticated by a process of digital
10 identification, as shown by a certification of a
11 qualified person that complies with the
12 certification requirements of Rule 902(11) or
13 (12). The proponent also must meet the notice
14 requirements of Rule 902(11).

³ After discussion with the Standing Committee, stylistic changes were made to the text of the proposed amendment.

Committee Note

The amendment sets forth a procedure by which parties can authenticate data copied from an electronic device, storage medium, or an electronic file, other than through the testimony of a foundation witness. As with the provisions on business records in Rules 902(11) and (12), the Committee has found that the expense and inconvenience of producing an authenticating witness for this evidence is often unnecessary. It is often the case that a party goes to the expense of producing an authentication witness, and then the adversary either stipulates authenticity before the witness is called or fails to challenge the authentication testimony once it is presented. The amendment provides a procedure in which the parties can determine in advance of trial whether a real challenge to authenticity will be made, and can then plan accordingly.

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The reference to Rule 902(12) is intended to cover certifications that are made in a foreign country.