

Fed. R. Evid. 2024 Amendments

Judge Jeff Brown
SDTX - Galveston

Rule 107

Illustrative Aids

New Rule

(a) Permitted Uses. The court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.

(b) Use in Jury Deliberations. An illustrative aid is not evidence and must not be provided to the jury during deliberations unless:

- (1) all parties consent; or
- (2) the court, for good cause, orders otherwise.

(c) Record. When practicable, an illustrative aid used at trial must be entered into the record.

(d) Summaries of Voluminous Materials Admitted as Evidence. A summary, chart, or calculation admitted as evidence to prove the content of voluminous admissible evidence is governed by Rule 1006.

Texas Corollary



None!

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court.

The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Rule 1006

Summaries to Prove Content

Old Rule

(a) Summaries of Voluminous Materials Admissible as Evidence. **The court may admit as evidence** a summary, chart, or calculation offered to prove the content of voluminous admissible writings, recordings, or photographs that cannot be conveniently examined in court, **whether or not they have been introduced into evidence.**

(b) Procedures. The proponent must make the underlying originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

(c) Illustrative Aids Not Covered. **A summary, chart, or calculation that functions only as an illustrative aid is governed by Rule 107.**

Rule 1006

Summaries to Prove Content

Amended Rule

Texas Corollary



Tex. R. Evid. 1006 reflects Fed. R. Evid. 1006 prior to the 2024 amendment.

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

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

Rule 613

Witness's Prior Statement

Old Rule

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) Extrinsic Evidence of a Prior Inconsistent Statement. **Unless the court orders otherwise, extrinsic evidence of a witness's prior inconsistent statement may not be admitted until after the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it.** This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

Rule 613

Witness's Prior Statement

Amended Rule

Texas Corollary



This amendment brings the federal rule closer in line with the Texas rule.

Texas has long required counsel lay a proper predicate **before** introducing extrinsic evidence of a prior inconsistent statement. *See* Tex. R. Evid. 613.

(3) Opportunity to Explain or Deny. A witness must be given the opportunity to explain or deny the prior inconsistent statement.

(4) Extrinsic Evidence. Extrinsic evidence of a witness's prior inconsistent statement is not admissible unless the witness is **first** examined about the statement and fails to unequivocally admit making the statement.

Texas expressly requires the proponent of the prior inconsistent statement to first tell the witness the contents, time, and place of the statement, along with to whom the statement was made.

Like the federal rule, opposing party statements are excepted from the Texas rule.

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

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

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

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

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

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

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

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

Rule 801(d)(2)

Party-Opponent Hearsay
Exclusion

Old Rule

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

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

If a party's claim, defense, or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party.

Rule 801(d)(2)

Party-Opponent Hearsay
Exclusion

Amended Rule

Texas Corollary



The Texas rules do not contain this specific exclusion from the rule against hearsay.

See Tex. R. Evid. 801 (excluding party-opponent statements without specifying the admissibility of predecessor's statements offered against the successor).

Rule 804(b)(3)

Statement Against Interest
Hearsay Exception

Old Rule

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

(3) Statement Against Interest. A statement that:

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

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

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(B) if offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate its trustworthiness **after considering the totality of circumstances under which it was made and any evidence that supports or undermines it.**

Rule 804(b)(3)

Statement Against Interest
Hearsay Exception

Amended Rule

Texas Corollary



The Texas rules do not contain this exception from the rule against hearsay.

See Tex. R. Evid. 804 (excepting former testimony, dying declarations, and statements of personal or family history by unavailable declarants from the rule).

Other Rule Changes

FRAP 35 & 40 – En Banc Determination & Panel Rehearing

Amended Rule: Clarifies the criteria for rehearing en banc and panel rehearing. Also, portions of Rules 35 and 40 about brief and appendices formatting were transferred to Rule 32 and the Appendix of Length Limits.

FRCP 12 – Time to Serve Responsive Pleadings

Amended Rule: Clarifies that statutes providing times to serve responsive pleadings supersede the times set by Fed. R. Civ. P. 12(1), (2), and (3) where the two conflict.