

COURTROOM HANDBOOK ON

# FEDERAL EVIDENCE

2010

Steven Goode  
Olin Guy Wellborn III

WEST®

# COURTROOM HANDBOOK ON FEDERAL EVIDENCE

2010

By

STEVEN GOODE

W. James Kronzer Chair in Trial and Appellate Advocacy  
and  
University Distinguished Teaching Professor  
University of Texas School of Law

OLIN GUY WELLBORN III

William C. Liedtke, Sr. Professor of Law  
University of Texas School of Law

**WEST®**

A Thomson Reuters business

*For Customer Assistance Call 1-800-328-4880*

© 2010 Thomson Reuters

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

**ISBN 978-0-314-92769-9**

**Objections to Form of Question**

1. Ambiguous question (Rule 611(a))
2. Argumentative question (Rule 611(a))
3. Asked and answered (Rules 403 and 611(a))
4. Assumes facts not in evidence (Rule 611(a))
5. Compound question (Rule 611(a))
6. Confusing (Rule 611(a))
7. Harassing the witness (Rule 611(a))
8. Leading question (direct examination) (Rule 611(c))
9. Leading question (cross-examination) (Rule 611(c))
10. Narrative testimony, calls for (Rule 611(a))
11. Repetitious question (Rules 403 and 611(a))
12. Unintelligible question (Rule 611(a))

**Objections to Admissibility**

13. Authentication insufficient (Rules 901 and 902)
14. Best evidence not being offered (Rules 1001 and 1002)
15. Bolstering (Rules 607, 608 and 801(d)(1)(b))
16. Chain of custody not established (real evidence) (Rule 901)
17. Character evidence in form of opinion testimony (Rule 405)
18. Character evidence inadmissible (Rule 404(a))
19. Character evidence, specific acts inadmissible (Rule 405)
20. Character witness, improper cross-examination as to specific acts (Rule 405)
21. Character witness not qualified to testify in the form of reputation or opinion (Rule 405)
22. Compromise of or offer to compromise a civil claim (Rule 408)
23. Conclusion of law, expert witness (Rules 702 and 704)
24. Conclusion of law, lay witness (Rules 701 and 704)
25. Confusion of the issues (Rule 403)
26. Cross-examination, beyond scope of direct (Rule 611(b))
27. Cumulative (Rule 403)
28. Dead man's act renders witness incompetent (Rule 601)
29. Exclusion of witness, violation of (Rule 615)
30. Expert lacks sufficient basis for opinion (Rules 702, 703 and 705)
31. Expert may not relate hearsay basis for opinion (Rule 703)
32. Expert not qualified (Rule 702)
33. Expert opinion based solely on hearsay not reasonably relied upon (Rule 703)
34. Expert opinion is speculative, conjectural (Rule 702)
35. Expert opinion not helpful (Rule 702)
36. Habit evidence not admissible (Rule 406)
37. Hearsay (Rules 801 and 802)
38. Hypothetical question includes facts not in evidence (Rule 705)
39. Hypothetical question not helpful (Rule 705)
40. Identification insufficient (Rules 901 and 902)
41. Impeachment, bias (Rules 607 and 611)
42. Impeachment, extrinsic evidence of prior conduct inadmissible (Rule 608)
43. Impeachment of own witness (Rule 607)
44. Impeachment of own witness with prior inconsistent statement (Rules 403 and 607)
45. Impeachment on collateral matter (Rules 403 and 607)
46. Impeachment, prior conviction inadmissible (Rule 609)

# Federal Rules of Evidence Summary

## • *General Provisions*

Rules **apply in all court proceedings** except as provided in Rule 1101 (Rule 101).  
Rules construed to achieve **fairness** and **avoid expense** or **delay** (Rule 102).  
Timely and specific **objection** or **motion to strike** required to preserve error in admission of evidence, **offer of proof** required to preserve error in exclusion (Rule 103).  
Judge determines most **preliminary questions** of admissibility and in doing so is not bound by rules of evidence except privileges (Rule 104).  
Judge upon request shall instruct jury as to **limited admissibility** of evidence (Rule 105).  
When a **writing or part of a writing** is offered, judge may require immediate admission of **other part or other writing** if fairness requires (Rule 106).

## • *Judicial Notice*

Notice may be taken of **indisputable fact generally known** in jurisdiction or **established from accurate, unquestionable sources** whether or not requested (Rule 201).  
Judge **must** take notice of fact if supplied with necessary information (Rule 201(d)).  
Party opposing notice should have **opportunity to be heard** upon request (Rule 201(e)).  
In **civil cases**, judicial notice is **conclusive**; in **criminal cases**, judicial notice results in **permissive instruction** (Rule 201(g)).

## • *Presumption in Civil Cases*

In **federal law** civil cases, presumptions **shift burdens of going forward only**; no shift in burden of persuasion, unless otherwise provided by statute or court rule (Rule 301).  
In cases governed by **state law**, effect of presumption is governed by state law.

## • *Relevancy*

Evidence is **relevant** if it tends to make a consequential fact more or less likely (Rule 401).  
Relevant evidence is admissible unless excluded by other rule, statute or constitution: **irrelevant evidence is not admissible** (Rule 402).  
Even relevant evidence is excluded if probative value **substantially outweighed by danger of prejudice, confusion of issues, misleading, or repetition** (Rule 403).  
**Character** is not admissible to prove an act consistent with character except own character put in issue by accused, or character of victim in limited circumstances, or character for truthfulness of a witness as provided in impeachment rules (Rule 404(a)).  
**Other crimes/bad acts** are not admissible to show character but may be admissible for other purposes (e.g., to show motive, intent, plan, or identity) (Rule 404(b)).  
**Character** may be proven by **reputation or opinion**; **specific acts** admissible only on cross-examination or when character is essential element (directly in issue) (Rule 405).  
**Habit or routine practice** is admissible to prove conduct in conformity (Rule 406).  
**Subsequent remedial measures** are inadmissible to prove negligence, culpable conduct, or product defect, but may be admissible for another purpose such as to show ownership, feasibility, or impeachment (Rule 407).  
**Compromise, offer of compromise or statement in settlement discussions** of disputed claim is not admissible on validity of claim but may be admissible for another purpose such as to show bias of a witness (Rule 408).  
Payment of **medical expenses** is not admissible to prove liability (Rule 409).  
**Withdrawn plea of guilty, nolo plea, or statement in plea discussions with prosecutor** not normally admissible (Rule 410).  
**Liability insurance** not admissible to show fault but may be allowed for another purpose such as to show ownership or bias of a witness (Rule 411).  
**Prior sexual conduct or sexual character of sex offense or sexual misconduct victim** generally not admissible (Rule 412).

# Federal Rules of Evidence Summary

**Defendant's prior commission of sexual assault** may be shown in prosecution for sexual assault (Rule 413).

**Defendant's prior commission of child molestation** may be shown in prosecution for child molestation (Rule 414).

**Civil party's prior commission of sexual assault or child molestation** may be shown in civil action for sexual assault or child molestation (Rule 415).

## • Privileges

In **federal law** cases, privileges are determined by common law except as provided by Constitution, statute, or court rule; in cases governed by **state law**, privileges are determined by state law (Rule 501).

Rule 502 governs certain **waiver** questions regarding the **attorney-client privilege** and **work-product** protection.

## • Witnesses

All persons are **competent** to testify in **federal law** cases except as other rules provide; in cases governed by **state law**, witness competency is determined by state law (Rule 601).

**Personal knowledge** is required of all witnesses except experts (Rule 602).

An **oath** or affirmation is required of all witnesses (Rule 603).

**Interpreters** must qualify as experts and testify under oath (Rule 604).

The **presiding judge** may not testify (Rule 605).

**Jurors** may not testify at trial; to **impeach verdict** jurors may testify only as to extraneous prejudicial information or outside influence (Rule 606).

**Any party may impeach** a witness's credibility, even party calling witness (Rule 607).

A **witness's character for truthfulness** can be challenged by **cross-examination about specific acts** prohibitive of untruthfulness or through **opinion or reputation witnesses** (Rule 608).

**Conviction of crime** is admissible if (1) felony and prohibitive value outweighs prejudice, or involved false statement and (2) if less than ten years conviction or release (Rule 609).

**Religious beliefs** are inadmissible to impeach or enhance credibility (Rule 610).

Court controls examination. **Cross is limited** to scope of direct; **leading** normally prohibited on direct, except when party calls hostile witness, adverse party, or witness identified with adverse party (Rule 611).

**Writing used to refresh** witness's recollection on stand must be produced, adverse party may introduce relevant parts (Rule 612).

**Prior statements** may be used without disclosing to witness extrinsic proof of prior statements not admissible unless witness given chance to explain (Rule 613).

**Court may call witnesses** (Rule 614).

Court shall exclude (**sequester**) witnesses upon request, except party or person whose presence is shown to be essential or authorized by statute (Rule 615).

## • Opinions and Experts

**Lay opinion** admissible if based on first-hand knowledge and helpful to trier of fact (Rule 701).

**Expert opinion** admissible if **reliable and helpful** to trier of fact and witness **qualified** (Rule 702).

Expert opinion may be **based on admissible evidence or facts reasonably relied on** by experts in field (Rule 703).

Opinion may be offered on **ultimate issue**, if otherwise proper (Rule 704).

Expert may state opinion without first giving **underlying facts** unless court requires; underlying facts may be required on cross examination (Rule 705).

**Court may appoint experts** and direct their compensation (Rule 706).

# Federal Rules of Evidence Summary

## • 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 (Rule 801). Statements include **acts** only if **intended as assertions** by declarant (Rule 801).

Certain **prior statements by a witness** are not hearsay: a prior **inconsistent** statement made under oath as a prior proceeding; a prior **consistent** statement that rebuts a charge of fabrication or improper motive; or a prior **identification of a person** (Rule 801(d)(1)).

**Party admissions** are not hearsay including **party's own statement**, **adopted** statement of another, **authorized** statement by agent, agent or **employee's** statement concerning matter in scope of employment, or **coconspirator** statement (Rule 801(d)(2)).

**Hearsay is inadmissible unless an exception** exists (by rule or statute) (Rule 802).

**Hearsay exceptions that apply whether the declarant is available or not** (Rule 803):

1. **Present sense impression** describing an event made while observing the event or immediately thereafter.
2. **Excited utterance** relating to a startling event and made under the stress of the event.
3. **Present mental, emotional, or physical condition**, including intent or plan, but not memory or belief except in will cases.
4. **Statements for medical diagnosis or treatment** including history, and cause of conditions if medically pertinent.
5. **Recorded recollection**: document made with fresh memory of matter witness now cannot completely remember; if admitted, document is real but not received as exhibit unless at behest of adverse party.
6. **Business records** regularly made and kept and based upon personal knowledge of some member of the entity. Custodian or other qualified witness must provide foundation.
7. **Absence of entry** in business records to show nonoccurrence or nonexistence of a matter.
8. **Public records or reports** showing activities of agency, or matters observed pursuant to duty (except by police or other law enforcement personnel in criminal cases), or factual findings resulting from investigation pursuant to legal authority (except against criminal defendant).
9. **Records of vital statistics** such as births, marriages, or deaths.
10. **Absence of public record or entry** to show nonoccurrence of nonexistence of a matter.
11. **Records of religious organizations** to show birth, death, marriage, etc.
12. **Marriage and baptismal certificates**.
13. **Family records** such as Bibles, genealogies, or tombstones.
14. **Recorded document affecting property interests** as proof of content, execution and delivery of original.
15. **Statements in recorded document affecting property interests** if germane.
16. Statements in **ancient documents** (20 years or older and authenticated).
17. **Market reports, commercial publications** of types relied upon by public or professionals.
18. **Learned treatises** if relied on during direct or called to an expert's attention on cross, shown by testimony or judicial notice to be reliable authority may be read into evidence but not received as exhibits.
19. **Reputation concerning personal or family history** to show birth, marriage, death, relationship, etc.
20. **Reputation as to boundaries or historical matters** established before dispute arose.
21. **Reputation as to character**.
22. **Judgment of conviction** of felony to prove a fact essential to the judgment.
23. **Judgment as to personal, family, or general history, or boundaries**.

**Hearsay exceptions that apply only if declarant is unavailable** (Rule 804):

1. **Former testimony** if party against whom now offered (or in civil case a party with similar interest) had opportunity and similar motive to develop testimony.

# Federal Rules of Evidence Summary

2. **Dying declaration** if declarant believed death imminent and statement concerns cause of death (only in homicide and civil cases).
3. **Statement against interest** (pecuniary, proprietary or penal).
4. Statement of **personal or family history**.
5. **Forfeiture by wrongdoing**: a statement offered against a party who has wrongfully caused the declarant's unavailability.

**Declarant is unavailable** if dead or too ill to testify, outside subpoena power, disobeys subpoena, cannot remember, refuses to testify or is exempt due to privilege (Rule 804(a)). Witness may be available, however, if deposition can be taken.

**Hearsay within hearsay** may be admitted if exception applies as each level (Rule 805). If hearsay is admitted, **credibility of declarant may be attacked** and then supported (Rule 806).

**Residual exception**: a statement not specifically covered in Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, if pretrial notice is given by proponent (Rule 807).

## • Authentication

Requires **evidence sufficient to support a finding** (prima facie case) that offered evidence is what proponent claims (Rule 901).

**Self-authenticating documents** need no further proof to authenticate (Rule 902).

These include:

1. Domestic public documents under seal.
2. Certified domestic public documents not under seal.
3. Foreign public documents signed and certified by consular or diplomatic official.
4. Certified copies of public records.
5. Official publications.
6. Newspapers and periodicals.
7. Trade inscriptions (tags, labels).
8. Documents with certificates of acknowledgment.
9. Commercial paper.
10. Matters declared presumptively authentic by statute.
11. Certified domestic business records.
12. Certified foreign business records.

**Subscribing witness** not required to testify (unless state law requires) (Rule 903).

## • Contents of Documents; Requirements of Original

**Original and duplicate** defined (Rule 1001).

**Original generally required** to prove contents of writing (Rule 1002).

**Duplicates admissible as original** unless (1) genuine question exists as to authenticity of original or (2) it would be unfair to receive duplicate (Rule 1003).

If original **lost or destroyed** (unless in bad faith), **not available**, in **possession of opponent**, or **collateral**, then original not required (Rule 1004).

**Public records** may be proven by certified copy if obtainable, otherwise by other methods (Rule 1005).

**Summaries** may be received of voluminous documents; original must be made available (Rule 1006).

Content of writing may be proven by **testimony or written admission** of a party (Rule 1007).

**Court decides** most preliminary facts, but jury determines (1) whether original ever existed, (2) which of two exhibits is an original, and (3) whether secondary evidence of the contents reflects the contents (Rule 1008).

## • Applicability of Rules

**Rules apply generally to all court proceedings except**: as provided by statute; preliminary questions of facts; grand jury; miscellaneous proceedings including extradition, sentencing, and probation, warrant, and bail proceedings. **Privileges** apply at all stages of **all proceedings** (Rule 1101).



## OBJECTIONS FROM A TO Z—Continued From Inside Front Cover

47. Incompetent; witness is incompetent (Rules 601 and 403)
48. Insurance (Rule 411)
49. Irrelevant (immaterial, not probative) (Rules 401 and 402)
50. Judge as witness (Rule 605)
51. Juror as witness at trial (Rule 606(a))
52. Juror as witness to impeach verdict (Rule 606(b))
53. Lay opinion testimony (Rule 701)
54. Lay witness testifying as expert (Rule 701)
55. Medical, hospital, or similar expenses, payment of (Rule 409)
56. Mental state or condition of accused (Rule 704(b))
57. Misleading the jury (Rule 403)
58. Nonresponsive answer (Rule 611)
59. Other accidents (Rules 401-403)
60. Other claims by plaintiff (Rules 401-403)
61. Other contracts or transactions involving a party (Rules 401-403)
62. Other crimes evidence; insufficient notice of intent to offer (Rules 404(b), 413-415)
63. Other crimes evidence not adequately proven (Rules 104(b), 404(b), 413-415)
64. Other crimes evidence not admissible to prove character (Rules 404(b), 413-415)
65. Other crimes evidence offered for an undisputed point (Rules 403, 404(b), 413-415)
66. Personal knowledge lacking (Rule 602)
67. Photographs inflammatory and unfairly prejudicial (Rule 403)
68. Photograph, motion picture, videotape, or sound recording not authenticated (Rule 901)
69. Pleas and plea bargaining (Rule 410)
70. Prejudicial effect outweighs probative value (Rule 403)
71. Prior consistent statement not admissible to rehabilitate (Rule 613)
72. Prior inconsistent statement; extrinsic evidence inadmissible (Rule 613(b))
73. Prior inconsistent statement; must disclose content of writing (Rule 613)
74. Privilege, comment on or adverse inference from invocation (Proposed Rule 513)
75. Privileged (Rules 501-502; Proposed Rules 502-513)
76. Privileged attorney-client communication (Rule 502; Proposed Rule 503)
77. Privileged; clergy-communicant privilege (Proposed Rule 506)
78. Privileged marital communication (Proposed Rule 505)
79. Privileged; marital testimonial privilege (Proposed Rule 505)
80. Privileged physician-patient communication (Proposed Rule 504)
81. Privileged psychotherapist-patient communication (Proposed Rule 504)
82. Privileged required report (Proposed Rule 502)
83. Religious belief or opinion (Rule 610)
84. Scientific evidence not admissible (Rule 702)
85. Sexual conduct or predisposition of alleged victim of sexual misconduct; civil case (Rule 412)
86. Sexual conduct or predisposition of alleged victim of sexual misconduct; criminal case (Rule 412)
87. Speculation, question calls for (Rules 602, 701 and 702)
88. Subsequent remedial measure (Rule 407)
89. Summary not admissible (Rule 1006)
90. Truthfulness of another's testimony (Rules 608, 701 and 702)
91. Ultimate issue (Rule 704)

# PREFACE

---

Our purpose in writing this Handbook has been to produce a book that trial lawyers and judges could use in the courtroom. This meant first, that we had to limit the size of the book; no one is going to use it in court if they can't carry it to court. Second, it meant that the material had to be presented in a way that can comfortably be used in the heat of a trial. As a result, our efforts in putting this Handbook together were guided by two overriding questions: What information are lawyers likely to want available to them in court at a moment's notice? And, what is the most accessible manner of presenting this information?

The answers to these questions led us to adopt what is essentially a four part format. The first part of the book contains the Federal Rules of Evidence, selected constitutional and statutory provisions, and excerpts from other court rules, such as the rules of civil and criminal procedure. The rules of evidence, which are found in Chapter 1, are printed in large type for easier use. In Chapters 2, 3 and 4 respectively can be found the text of those constitutional provisions, statutes, and other court rules that affect admissibility or relate to the rules of evidence. Although space constraints dictated some amount of editorial discretion, we tried only to weed out those provisions that purport to address admissibility questions but merely replicate the rules of evidence and those that are so specialized as to be of no general interest.

The second part of the book (Chapter 5) consists of our commentary on each rule of evidence. We succinctly discuss the scope and limitations of each rule, making liberal use of illustrations and supplying pertinent citations. We have tried, through formatting and use of bold face type, to make it as easy as possible for you to find the information you need. The commentary on each rule ends with cross-references to material presented in other parts of the Handbook. In addition, so that you may use this Handbook as your first reference source, we provide bibliographic references to several treatises that contain more comprehensive treatments of the topic.

An array of trial-oriented material comprises the third part of the book. Chapter 6 details ninety-one different objections to evidence. Each objection is presented in the form of a model objection, complete with relevant supporting authority. Then, for opposing counsel, we provide a range of possible responses, likewise supplemented with relevant authority. Chapter 7 consists of a variety of checklists and

other practical guides, ranging from how to lay a foundation for introducing a business record to a quick guide to the test for admissibility of expert testimony.

The fourth part of this book is designed to facilitate access to the first three parts. It is composed of tables of cases, statutes, and rules, and a detailed index. For ease of reference, a list of the 91 objections can be found on the inside front and back covers. Finally, you will find a fold-out FEDERAL EVIDENCE RULES SUMMARY inside the back cover. This may either be kept as is or easily removed from the Handbook for independent reference.

We want this book to be as useful as possible. To that end, we welcome your comments and suggestions. If there is something that you would like to see added or deleted, something that you think we got wrong, or a way that you think the book could be improved, we would like to hear from you. You may write us at the University of Texas School of Law, 727 East Dean Keeton Street, Austin, Texas 78705-3299; call us at 512-471-5151; fax us at 512-471-6988; or e-mail us at: [sgoode@law.utexas.edu](mailto:sgoode@law.utexas.edu) or [gwellborn@law.utexas.edu](mailto:gwellborn@law.utexas.edu).

Finally we wish to express our appreciation and thanks to Matt Harding and Kathryn Hutchinson for their research assistance.

The research in this Handbook is complete through 584 F.3d 313. The statutory materials include all legislation enacted and rules promulgated to December 1, 2009.

STEVEN GOODE  
OLIN GUY WELLBORN III

December 2009

# RELATED PRODUCTS FROM WEST

---

## **COURTROOM HANDBOOK ON FEDERAL EVIDENCE**

Steven Goode and Olin Guy Wellborn III

## **MODERN SCIENTIFIC EVIDENCE**

David L. Faigman, David H. Kaye, Michael J. Saks and Joseph Sanders

## **FEDERAL JURY PRACTICE AND INSTRUCTIONS**

Kevin F. O'Malley, Jay E. Grenig and William C. Lee  
*[Instructions available in CD-ROM]*

## **FEDERAL TRIAL OBJECTIONS**

Charles B. Gibbons

## **FEDERAL PRACTICE AND PROCEDURE**

Charles Alan Wright, Arthur R. Miller, Mary Kay Kane,  
Edward H. Cooper, Richard L. Marcus, Kenneth W. Graham,  
Victor James Gold, Richard D. Freer, Vikram David Amar,  
Joan E. Steinman, Nancy J. King, Susan R. Klein,  
Andrew D. Leipold, Peter J. Henning, Sarah N. Welling,  
Charles H. Koch, Jr., Catherine T. Struve and Michael H. Graham  
*[Also available in CD-ROM]*

## **MULTIDISTRICT LITIGATION MANUAL**

David F. Herr

## **LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY**

Ronald D. Rotunda and John S. Dzienkowski  
*[In joint venture with the American Bar Association]*

## **WEST'S FEDERAL ADMINISTRATIVE PRACTICE**

Federal Practice Experts

## **WEST'S FEDERAL FORMS**

Federal Practice Experts  
*[Also available in CD-ROM]*

## **FEDERAL COURT OF APPEALS MANUAL**

David G. Knibb

## **FEDERAL PRACTICE DESKBOOK**

Charles Alan Wright and Mary Kay Kane

## **HANDBOOK OF FEDERAL EVIDENCE**

Michael H. Graham

## **TREATISE ON CONSTITUTIONAL LAW**

Ronald D. Rotunda and John E. Nowak

## **HANDBOOK OF FEDERAL CIVIL DISCOVERY AND DISCLOSURE**

Jay E. Grenig and Jeffrey S. Kinsler  
*[Includes Forms on Disk]*

COURTROOM HANDBOOK ON FEDERAL EVIDENCE

**ANNOTATED MANUAL FOR COMPLEX LITIGATION**

David F. Herr

**FEDERAL SENTENCING LAW AND PRACTICE**

Thomas W. Hutchison, Peter B. Hoffman, Deborah Young, and Sigmund G. Popko

**ADMINISTRATIVE LAW AND PRACTICE**

Charles H. Koch, Jr.

Federal Case News

Federal Civil Judicial Procedure and Rules

Federal Sentencing Guidelines Manual

Manual for Complex Litigation

Reference Manual on Scientific Evidence

USCA

US Code Congressional and Administrative News

---

**Westlaw®**

---

West Books, CD-ROM Libraries, Disk Products and Westlaw  
*The Ultimate Research System*

If you would like to inquire about these West publications or place an order, please call 1-800-344-5009.

**WEST®**

A Thomson Reuters business

West  
610 Opperman Drive  
Eagan, MN 55123

Visit West on the Internet:  
<http://west.thomson.com>

# **Summary of Contents**

**CHAPTER 1 FEDERAL RULES OF EVIDENCE**

**CHAPTER 2 SELECTED CONSTITUTIONAL PROVISIONS**

**CHAPTER 3 SELECTED STATUTES**

**CHAPTER 4 SELECTED RULES OF COURT**

**CHAPTER 5 EVIDENCE RULES WITH AUTHORS'  
COMMENTARY**

**CHAPTER 6 COMMON OBJECTIONS AND RESPONSES**

**CHAPTER 7 CHECKLISTS AND OTHER PRACTICAL  
GUIDES**

**Table of Laws and Rules**

**Table of Cases**

**Index**

# Table of Contents

## CHAPTER 1 FEDERAL RULES OF EVIDENCE

### ARTICLE I. GENERAL PROVISIONS

Rule 101	Scope .....	3
Rule 102	Purpose and Construction.....	3
Rule 103	Rulings on Evidence .....	3
Rule 104	Preliminary Questions.....	4
Rule 105	Limited Admissibility.....	5
Rule 106	Remainder of or Related Writings or Recorded Statements .....	5

### ARTICLE II. JUDICIAL NOTICE

Rule 201	Judicial Notice of Adjudicative Facts .....	5
----------	---	---

### ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301	Presumptions in General in Civil Actions and Proceedings.....	6
Rule 302	Applicability of State Law in Civil Actions and Proceedings.....	6

### ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401	Definition of “Relevant Evidence” .....	6
Rule 402	Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible .....	6
Rule 403	Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time .....	7
Rule 404	Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes .....	7
Rule 405	Methods of Proving Character.....	8
Rule 406	Habit; Routine Practice .....	8
Rule 407	Subsequent Remedial Measures.....	8
Rule 408	Compromise and Offers to Compromise .....	8
Rule 409	Payment of Medical and Similar Expenses .....	9
Rule 410	Inadmissibility of Pleas, Plea Discussions, and Related Statements .....	9
Rule 411	Liability Insurance.....	10
Rule 412	Sex Offense Cases; Relevance of Alleged Victim’s Past Sexual Behavior or Alleged Sexual Predisposition .....	10
Rule 413	Evidence of Similar Crimes in Sexual Assault Cases.....	11
Rule 414	Evidence of Similar Crimes in Child Molestation Cases ...	12
Rule 415	Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation .....	13

### ARTICLE V. PRIVILEGES

Rule 501	General Rule .....	13
Rule 502	Attorney-Client Privilege and Work Product; Limitations on Waiver .....	13

## ARTICLE VI. WITNESSES

Rule 601	General Rule of Competency.....	15
Rule 602	Lack of Personal Knowledge.....	15
Rule 603	Oath or Affirmation.....	15
Rule 604	Interpreters.....	15
Rule 605	Competency of Judge as Witness.....	16
Rule 606	Competency of Juror as Witness .....	16
Rule 607	Who May Impeach .....	16
Rule 608	Evidence of Character and Conduct of Witness .....	16
Rule 609	Impeachment by Evidence of Conviction of Crime .....	17
Rule 610	Religious Beliefs or Opinions .....	18
Rule 611	Mode and Order of Interrogation and Presentation.....	18
Rule 612	Writing Used to Refresh Memory .....	19
Rule 613	Prior Statements of Witnesses .....	19
Rule 614	Calling and Interrogation of Witnesses by Court .....	20
Rule 615	Exclusion of Witnesses .....	20

## ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701	Opinion Testimony by Lay Witnesses .....	20
Rule 702	Testimony by Experts .....	21
Rule 703	Bases of Opinion Testimony by Experts.....	21
Rule 704	Opinion on Ultimate Issue.....	21
Rule 705	Disclosure of Facts or Data Underlying Expert Opinion ...	21
Rule 706	Court Appointed Experts.....	22

## ARTICLE VIII. HEARSAY

Rule 801	Definitions .....	22
Rule 802	Hearsay Rule .....	23
Rule 803	Hearsay Exceptions; Availability of Declarant Immaterial .....	24
Rule 804	Hearsay Exceptions; Declarant Unavailable.....	27
Rule 805	Hearsay Within Hearsay.....	29
Rule 806	Attacking and Supporting Credibility of Declarant.....	29
Rule 807	Residual Exception .....	29

## ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 901	Requirement of Authentication or Identification .....	30
Rule 902	Self-Authentication .....	31
Rule 903	Subscribing Witness' Testimony Unnecessary .....	34

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

Rule 1001	Definitions.....	34
Rule 1002	Requirement of Original .....	34
Rule 1003	Admissibility of Duplicates .....	34



## TABLE OF CONTENTS

Rule 1004	Admissibility of Other Evidence of Contents .....	35
Rule 1005	Public Records .....	35
Rule 1006	Summaries .....	35
Rule 1007	Testimony or Written Admission of Party .....	35
Rule 1008	Functions of Court and Jury .....	36

### **ARTICLE XI. MISCELLANEOUS RULES**

Rule 1101	Applicability of Rules .....	36
Rule 1102	Amendments .....	38
Rule 1103	Title .....	38

## **CHAPTER 2 SELECTED CONSTITUTIONAL PROVISIONS**

### **CONSTITUTION OF THE UNITED STATES**

Amendment IV	Searches and Seizures.....	39
Amendment V	Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property .....	39
Amendment VI	Jury Trials for Crimes, and Procedural Rights.....	39

## **CHAPTER 3 SELECTED STATUTES**

### **UNITED STATES CODE**

### **TITLE 5 GOVERNMENT ORGANIZATION AND EMPLOYEES**

#### **CHAPTER 5 ADMINISTRATIVE PROCEDURE**

§ 552	Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings.....	48
§ 574	Confidentiality .....	49

#### **CHAPTER 12 MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION**

§ 1214	Investigation of Prohibited Personnel Practices; Corrective Action .....	52
--------	---	----

### **TITLE 8 ALIENS AND NATIONALITY**

#### **CHAPTER 12 IMMIGRATION AND NATIONALITY**

§ 1202	Application for Visas .....	52
§ 1324	Bringing in and Harboring Certain Aliens.....	53
§ 1328	Importation of Alien for Immoral Purpose.....	54

### **TITLE 10 ARMED FORCES**