Tab B

RESTYLED TEXAS RULES OF EVIDENCE

Note to Restyled Texas Rules of Evidence

These amendments comprise a general restyling of the Texas Rules of Evidence. They seek to make the rules more easily understood and to make style and terminology consistent throughout. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Restyling Project

Following a lengthy restyling process, the Federal Rules of Evidence were amended effective December 1, 2011. The Texas Rules of Evidence restyling project was initiated with the aim of keeping the Texas Rules as consistent as possible with Federal Rules, but without effecting any substantive change in Texas evidence law.

1. General Guidelines

Following the lead of the drafters of the restyled Federal Rules, the drafters of the restyled Texas Rules were guided in their drafting, usage, and style by Bryan Garner, *Guidelines for Drafting and Editing Court Rules,* Administrative Office of the United States Courts (1996) and Bryan Garner, *Dictionary of Modern Legal Usage* (2d ed. 1995).

2. Formatting Changes

Many of the changes in the restyled Evidence Rules result from using format to achieve clearer presentations. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. "Hanging indents" are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed. Rules 103, 404(b), 606(b), and 612 illustrate the benefits of formatting changes.

3. Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words

The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. For example, consistent expression is achieved by not switching between "accused" and "defendant" or between "party opponent" and "opposing party" or between the various formulations of civil and criminal action/case/proceeding.

The restyled rules minimize the use of inherently ambiguous words. For example, the word "shall" can mean "must," "may," or something else, depending on context. The potential for confusion is exacerbated by the fact the word "shall" is no longer generally used in spoken or clearly written English. The restyled rules replace "shall" with "must," "may," or "should," depending on which one the context and established interpretation make correct in each rule.

The restyled rules minimize the use of redundant "intensifiers." These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The absence of intensifiers in the restyled rules does not change their substantive meaning. *See, e.g.,* Rule 602 (omitting "but need not").

The restyled rules also remove words and concepts that are outdated or redundant.

4. Rule Numbers

The restyled rules keep the same numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity.

ARTICLE I.
GENERAL PROVISIONS

Rule 101. Title, Scope, and Applicability of the Rules; Definitions

(a) **Title.** These rules may be cited as the Texas Rules of Evidence.

(b) **Scope.** These rules apply to proceedings in Texas courts except as otherwise provided in subdivisions (d)–(f).

(c) **Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding.

(d) **Exception for Constitutional or Statutory Provisions or Other Rules.** Despite these rules, a court must admit or exclude evidence if required to do so by the United States or Texas Constitution, a federal or Texas statute, or a rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals. If possible, a court should resolve by reasonable construction any inconsistency between these rules and applicable constitutional or statutory provisions or other rules.

(e) **Exceptions.** These rules—except for those on privilege—do not apply to:

(1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;

(2) grand jury proceedings; and

(3) the following miscellaneous proceedings:

(A) an application for habeas corpus in extradition, rendition, or interstate detainer proceedings;

(B) an inquiry by the court under Code of Criminal Procedure article 46B.004 to determine whether evidence exists that would support a finding that the defendant may be incompetent to stand trial;

(C) bail proceedings other than hearings to deny, revoke, or increase bail;

(D) hearings on justification for pretrial detention not involving bail;

(E) proceedings to issue a search or arrest warrant; and

(F) direct contempt determination proceedings.

(f) **Exception for Justice Court Cases.** These rules do not apply to justice court cases except as authorized by Texas Rule of Civil Procedure 500.3.

(g) **Exception for Military Justice Hearings**. The Texas Code of Military Justice, Tex. Gov't Code §§ 432.001–432.195, governs the admissibility of evidence in hearings held under that Code.

(h) **Definitions.** In these rules:

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

(2) "criminal case" means a criminal action or proceeding, including an examining trial;

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

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

(5) a "rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals" means a rule adopted by any of those courts under statutory authority;

(6) "unsworn declaration" means an unsworn declaration made in accordance with Tex. Civ. Prac. & Rem. Code § 132.001; and

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

Comment to 2013 Restyling: The reference to "hierarchical governance" in former Rule 101(c) has been deleted as unnecessary. The textual limitation of former Rule 101(c) to criminal cases has been eliminated. Courts in civil cases must also admit or exclude evidence when required to do so by constitutional or statutory provisions or other rules that take precedence over these rules. Likewise, the title to former Rule 101(d) has been changed to more accurately indicate the purpose and scope of the subdivision.

Rule 102. Purpose

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

Rule 103. Rulings on Evidence

(a) **Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

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

(A) timely objects or moves to strike; and

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

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

(b) **Not Needing to Renew an Objection.** When the court hears a party's objections outside the presence of the jury and rules that evidence is admissible, a party need not renew an objection to preserve a claim of error for appeal.

(c) **Court's Statement About the Ruling; Directing an Offer of Proof.** The court must allow a party to make an offer of proof outside the jury's presence as soon as practicable—and before the court reads its charge to the jury. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. At a party's request, the court must direct that an offer of proof be made in question-and-answer form. Or the court may do so on its own.

(d) **Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) **Taking Notice of Fundamental Error in Criminal Cases.** In criminal cases, a court may take notice of a fundamental error affecting a substantial right, even if the claim of error was not properly preserved.

Rule 104. Preliminary Questions

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

(b) **Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) **Conducting a Hearing So That the Jury Cannot Hear It.** The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves the admissibility of a confession in a criminal case;

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

(3) justice so requires.

(d) Cross-Examining a Defendant in a Criminal Case. By testifying outside the jury's hearing on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

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

(a) Limiting Admitted Evidence. 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.

(b) Preserving a Claim of Error.

(1) ***Court Admits the Evidence Without Restriction*** A party may claim error in a ruling to admit evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — only if the party requests the court to restrict the evidence to its proper scope and instruct the jury accordingly.

(2) ***Court Excludes the Evidence.*** A party may claim error in a ruling to exclude evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — only if the party limits its offer to the party against whom or the purpose for which the evidence is admissible.

Rule 106. Remainder of or Related Writings or Recorded Statements

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

Rule 107. Rule of Optional Completeness

If a party introduces part of an act, declaration, conversation, writing, or recorded statement, an adverse party may inquire into any other part on the same subject. An adverse party may also introduce any other act, declaration, conversation, writing, or recorded statement that is necessary to explain or allow the trier of fact to fully understand the part offered by the opponent. "Writing or recorded statement" includes a deposition.

ARTICLE II.
JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

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

(b) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

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

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

(c) **Taking Notice.** The court:

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

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

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

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

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

Rule 202. Judicial Notice of Other States' Law

(a) **Scope.** This rule governs judicial notice of another state's, territory's, or federal jurisdiction's:

- Constitution;
- public statutes;
- rules;
- regulations;
- ordinances;
- court decisions; and
- common law.

(b) **Taking Notice.** The court:

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

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

(c) **Notice and Opportunity to Be Heard.**

(1) ***Notice.*** The court may require a party requesting judicial notice to notify all other parties of the request so they may respond to it.

(2) ***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 matter to be noticed. If the court takes judicial notice before a party has been notified, the party, on request, is still entitled to be heard.

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

(e) **Determination and Review.** The court—not the jury—must determine the law of another state, territory, or federal jurisdiction. The court's determination must be treated as a ruling on a question of law.

Rule 203. Determining Foreign Law

(a) **Raising a Foreign Law Issue.** A party who intends to raise an issue about a foreign country's law must:

(1) give reasonable notice by a pleading or other writing; and

(2) at least 30 days before trial, supply all parties a copy of any written materials or sources the party intends to use to prove the foreign law.

(b) **Translations.** If the materials or sources were originally written in a language other than English, the party intending to rely on them must, at least 30 days before trial, supply all parties both a copy of the foreign language text and an English translation.

(c) **Materials the Court May Consider; Notice.** In determining foreign law, the court may consider any material or source, whether or not admissible. If the court considers any material or source not submitted by a party, it must give all parties notice and a reasonable opportunity to comment and submit additional materials.

(d) **Determination and Review.** The court—not the jury—must determine foreign law. The court's determination must be treated as a ruling on a question of law.

Rule 204. Judicial Notice of Texas Municipal and County Ordinances, Texas Register Contents, and Published Agency Rules

(a) **Scope.** This rule governs judicial notice of Texas municipal and county ordinances, the contents of the Texas Register, and agency rules published in the Texas Administrative Code.

(b) **Taking Notice.** The court:

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

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

(c) **Notice and Opportunity to Be Heard.**

(1) ***Notice.*** The court may require a party requesting judicial notice to notify all other parties of the request so they may respond to it.

(2) ***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 matter to be noticed. If the court takes judicial notice before a party has been notified, the party, on request, is still entitled to be heard.

(d) **Determination and Review.** The court—not the jury—must determine municipal and county ordinances, the contents of the Texas Register, and published agency rules. The court's determination must be treated as a ruling on a question of law.

ARTICLE III.
PRESUMPTIONS

[No Rules Adopted at This Time]

ARTICLE IV.

RELEVANCY AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

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

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

Rule 402. General Admissibility of Relevant Evidence

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

- the United States or Texas Constitution;
- a statute;
- these rules; or
- other rules prescribed under statutory authority.

Irrelevant evidence is not admissible.

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, or Other Reasons

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

Rule 404. Character Evidence; Crimes or Other Acts

(a) Character Evidence.

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

(2) ***Exceptions for an Accused.***

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

(B) In a civil case, a party accused of conduct involving moral turpitude may offer evidence of the party's pertinent trait, and if the evidence is admitted, the accusing party may offer evidence to rebut it.

(3) ***Exceptions for a Victim.***

(A) In a criminal case, subject to the limitations in Rule 412, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

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

(C) In a civil case, a party accused of assaultive conduct may offer evidence of the victim's trait of violence to prove self-defense, and if the evidence is admitted, the accusing party may offer evidence of the victim's trait of peacefulness.

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

(5) ***Definition of "Victim."*** In this rule, "victim" includes an alleged victim.

(b) Crimes, Wrongs, or Other Acts.

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

(2) ***Permitted Uses; Notice in Criminal Case.*** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On timely request by a defendant in a criminal case, the prosecutor must provide reasonable notice before trial that the prosecution intends to introduce such evidence — other than that arising in the same transaction — in its case-in-chief.

Rule 405. Methods of Proving Character

(a) By Reputation or Opinion.

(1) ***In General.*** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, inquiry may be made into relevant specific instances of the person's conduct.

(2) ***Accused's Character in a Criminal Case.*** In the guilt stage of a criminal case, a witness may testify to the defendant's character or character trait only if, before the day of the offense, the witness was familiar with the defendant's reputation or the facts or information that form the basis of the witness's opinion.

(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.

Rule 406. Habit; Routine Practice

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

Rule 407. Subsequent Remedial Measures; Notification of Defect

(a) Subsequent Remedial Measures. When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

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

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

(b) Notification of Defect. A manufacturer's written notification to a purchaser of a defect in one of its products is admissible against the manufacturer to prove the defect.

Comment to 2013 Restyling: Rule 407 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

Rule 408. Compromise Offers and Negotiations

(a) **Prohibited Uses.** Evidence of the following is not admissible either to prove or disprove the validity or amount of a disputed claim:

(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

(2) conduct or statements made during compromise negotiations about the claim.

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

Comment to 2013 Restyling: Rule 408 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

The reference to "liability" has been deleted on the ground that the deletion makes the Rule flow better and easier to read, and because "liability" is covered by the broader term "validity." Courts have not made substantive decisions on the basis of any distinction between validity and liability. No change in current practice or in the coverage of the Rule is intended.

Finally, the sentence of the Rule referring to evidence "otherwise discoverable" has been deleted as superfluous. The intent of the sentence was to prevent a party from trying to immunize admissible information, such as a pre-existing document, through the pretense of disclosing it during compromise negotiations. But even without the sentence, the Rule cannot be read to protect pre-existing information simply because it was presented to the adversary in compromise negotiations.

Rule 409. Offers to Pay Medical and Similar Expenses

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

Rule 410. Pleas, Plea Discussions, and Related Statements

(a) **Prohibited Uses in Civil Cases.** In a civil case, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a guilty plea that was later withdrawn;

(2) a nolo contendere plea;

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

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

(b) **Prohibited Uses in Criminal Cases.** In a criminal case, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a guilty plea that was later withdrawn;

(2) a nolo contendere plea that was later withdrawn;

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

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

(c) **Exception.** In a civil case, the court may admit a statement described in paragraph (a)(3) or (4) and in a criminal case, the court may admit a statement described in paragraph (b)(3) or (4), when another statement made during the same plea or plea discussions has been introduced and in fairness the statements ought to be considered together.

Rule 411. Liability Insurance

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

Rule 412. Evidence of Previous Sexual Conduct in Criminal Cases

(a) **In General.** The following evidence is not admissible in a prosecution for sexual assault, aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault:

(1) reputation or opinion evidence of a victim's past sexual behavior; or

(2) specific instances of a victim's past sexual behavior.

(b) Exceptions for Specific Instances. Evidence of specific instances of a victim's past sexual behavior is admissible if:

(1) the court admits the evidence in accordance with subdivisions (c) and (d);

(2) the evidence:

(A) is necessary to rebut or explain scientific or medical evidence offered by the prosecutor;

(B) concerns past sexual behavior with the defendant and is offered by the defendant to prove consent;

(C) relates to the victim's motive or bias;

(D) is admissible under Rule 609; or

(E) is constitutionally required to be admitted; and

(3) the probative value of the evidence outweighs the danger of unfair prejudice.

(c) Procedure for Offering Evidence. Before offering any evidence of the victim's past sexual behavior, the defendant must inform the court outside the jury's presence. The court must then conduct an in camera hearing, recorded by a court reporter, and determine whether the proposed evidence is admissible. The defendant may not refer to any evidence ruled inadmissible without first requesting and gaining the court's approval outside the jury's presence.

(d) Record Sealed. The court must preserve the record of the in camera hearing, under seal, as part of the record.

(e) Definition of "Victim." In this rule, "victim" includes an alleged victim.

ARTICLE V.
PRIVILEGES

Rule 501. Privileges in General

Unless a Constitution, a statute, or these or other rules prescribed under statutory authority provide otherwise, no person has a privilege to:

(a) refuse to be a witness;

(b) refuse to disclose any matter;

(c) refuse to produce any object or writing; or

(d) prevent another from being a witness, disclosing any matter, or producing any object or writing.

Rule 502. Required Reports Privileged By Statute

(a) **In General.** If a law requiring a return or report to be made so provides:

(1) a person, corporation, association, or other organization or entity—whether public or private—that makes the required return or report has a privilege to refuse to disclose it and to prevent any other person from disclosing it; and

(2) a public officer or agency to whom the return or report must be made has a privilege to refuse to disclose it.

(b) **Exceptions.** This privilege does not apply in an action involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.

Rule 503. Lawyer–Client Privilege

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

(1) A "client" is a person, public officer, or corporation, association, or other organization or entity–whether public or private–that:

(A) is rendered professional legal services by a lawyer; or

(B) consults a lawyer with a view to obtaining professional legal services.

(2) A "client's representative" is:

(A) a person who has authority to obtain professional legal services for the client or to act for the client on the legal advice rendered; or

(B) any other person who, to facilitate the rendition of professional legal services to the client, makes or receives a confidential communication while acting in the scope of employment for the client.

(3) A "lawyer" is a person authorized, or who the client reasonably believes is authorized, to practice law in any state or nation.

(4) A "lawyer's representative" is:

(A) one employed by the lawyer to assist in the rendition of professional legal services; or

(B) an accountant who is reasonably necessary for the lawyer's rendition of professional legal services.

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those:

(A) to whom disclosure is made to further the rendition of professional legal services to the client; or

(B) reasonably necessary to transmit the communication.

(b) Rules of Privilege.

(1) ***General Rule.*** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

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

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

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

(2) ***Special Rule in a Criminal Case.*** In a criminal case, a client has a privilege to prevent a lawyer or lawyer's representative from disclosing any other fact that came

to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.

(c) Who May Claim. The privilege may be claimed by:

(1) the client;

(2) the client's guardian or conservator;

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

(4) the successor, trustee, or similar representative of a corporation, association, or other organization or entity — whether or not in existence.

The person who was the client's lawyer or the lawyer's representative when the communication was made may claim the privilege on the client's behalf – and is presumed to have authority to do so.

(d) Exceptions. This privilege does not apply:

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

(2) ***Claimants Through Same Deceased Client.*** If the communication is relevant to an issue between parties claiming through the same deceased client.

(3) ***Breach of Duty By a Lawyer or Client.*** If the communication is relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer.

(4) ***Document Attested By a Lawyer.*** If the communication is relevant to an issue concerning an attested document to which the lawyer is an attesting witness.

(5) ***Joint Clients.*** If the communication:

(A) is offered in an action between clients who retained or consulted a lawyer in common;

(B) was made by any of the clients to the lawyer; and

(C) is relevant to a matter of common interest between the clients.

Rule 504. Spousal Privileges

(a) Confidential Communication Privilege.

(1) ***Definition.*** A communication is "confidential" if a person makes it privately to the person's spouse and does not intend its disclosure to any other person.

(2) ***General Rule.*** A person has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made to the person's spouse while they were married. This privilege survives termination of the marriage.

(3) ***Who May Claim.*** The privilege may be claimed by:

(A) the communicating spouse;

(B) the guardian of an incompetent communicating spouse; or

(C) the personal representative of a deceased communicating spouse.

The other spouse may claim the privilege on the communicating spouse's behalf – and is presumed to have authority to do so.

(4) ***Exceptions.*** This privilege does not apply:

(A) ***Furtherance of Crime or Fraud.*** If the communication is made – wholly or partially – to enable or aid anyone to commit or plan to commit a crime or fraud.

(B) ***Proceeding Between Spouse and Other Spouse or Claimant Through Deceased Spouse.*** In a civil proceeding:

(i) brought by or on behalf of one spouse against the other; or

(ii) between a surviving spouse and a person claiming through the deceased spouse.

(C) ***Crime Against Family, Spouse, Household Member, or Minor Child.*** In a:

(i) proceeding in which a party is accused of conduct that, if proved, is a crime against the person of the other spouse, any member of the household of either spouse, or any minor child; or

(ii) criminal proceeding involving a charge of bigamy under Section 25.01 of the Penal Code.

(D) ***Commitment or Similar Proceeding.*** In a proceeding to commit either spouse or otherwise to place the spouse or the spouse's property under another's control because of a mental or physical condition.

(E) ***Proceeding to Establish Competence.*** In a proceeding brought by or on behalf of either spouse to establish competence.

(b) Privilege Not to Testify in a Criminal Case.

(1) ***General Rule.*** In a criminal case, an accused's spouse has a privilege not to be called to testify for the state. But this rule neither prohibits a spouse from testifying voluntarily for the state nor gives a spouse a privilege to refuse to be called to testify for the accused.

(2) ***Failure to Call Spouse.*** If other evidence indicates that the accused's spouse could testify to relevant matters, an accused's failure to call the spouse to testify is a proper subject of comment by counsel.

(3) ***Who May Claim.*** The privilege not to testify may be claimed by the accused's spouse or the spouse's guardian or representative, but not by the accused.

(4) ***Exceptions.*** This privilege does not apply:

(A) ***Certain Criminal Proceedings.*** In a criminal proceeding in which a spouse is charged with:

(i) a crime against the other spouse, any member of the household of either spouse, or any minor child; or

(ii) bigamy under Section 25.01 of the Penal Code.

(B) ***Matters That Occurred Before the Marriage.*** If the spouse is called to testify about matters that occurred before the marriage.

Comment to 2013 Restyling: Previously, Rule 504(b)(1) provided that, "A spouse who testifies on behalf of an accused is subject to cross-examination as provided in Rule 611(b)." That sentence was included in the original version of Rule 504 when the Texas Rules of Criminal Evidence were promulgated in 1986 and changed the rule to a testimonial privilege held by the witness spouse. Until then, a spouse was deemed incompetent to testify against his or her defendant spouse, and when a spouse testified on behalf of a defendant spouse, the state was limited to cross-examining the spouse about matters relating to the spouse's direct testimony. The quoted sentence from the original Criminal Rule 504(b) was designed to overturn this limitation and allow the state to cross-examine a testifying spouse in the same manner as any other witness. More than twenty-five years later, it is clear that a spouse who testifies either for or against a defendant spouse may be cross-examined in the same manner as any other witness. Therefore, the continued inclusion in the rule of a provision that refers only to the cross-examination of a spouse who testifies on behalf of the accused is more confusing than helpful. Its deletion is designed to clarify the rule and does not change existing law.

Rule 505. Privilege For Communications to a Clergy Member

(a) Definitions. In this rule:

(1) A "clergy member" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or someone whom a communicant reasonably believes is a clergy member.

(2) A "communicant" is a person who consults a clergy member in the clergy member's professional capacity as a spiritual adviser.

(3) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present to further the purpose of the communication.

(b) General Rule. A communicant has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication by the communicant to a clergy member in the clergy member's professional capacity as spiritual adviser.

(c) Who May Claim. The privilege may be claimed by:

(1) the communicant;

(2) the communicant's guardian or conservator; or

(3) a deceased communicant's personal representative.

The clergy member to whom the communication was made may claim the privilege on the communicant's behalf – and is presumed to have authority to do so.

Rule 506. Political Vote Privilege

A person has a privilege to refuse to disclose the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

Rule 507. Trade Secrets Privilege

(a) General Rule. A person has a privilege to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, unless the court finds that nondisclosure will tend to conceal fraud or otherwise work injustice.

(b) Who May Claim. The privilege may be claimed by the person who owns the trade secret or the person's agent or employee.

(c) **Protective Measure.** If a court orders a person to disclose a trade secret, it must take any protective measure required by the interests of the privilege holder and the parties and to further justice.

Rule 508. Informer's Identity Privilege

(a) **General Rule.** The United States, a state, or a subdivision of either has a privilege to refuse to disclose a person's identity if:

(1) the person has furnished information to a law enforcement officer or a member of a legislative committee or its staff conducting an investigation of a possible violation of law; and

(2) the information relates to or assists in the investigation.

(b) **Who May Claim.** The privilege may be claimed by an appropriate representative of the public entity to which the informer furnished the information. The court in a criminal case must reject the privilege claim if the state objects.

(c) **Exceptions.**

(1) ***Voluntary Disclosure; Informer a Witness.*** This privilege does not apply if:

(A) the informer's identity or the informer's interest in the communication's subject matter has been disclosed – by a privilege holder or the informer's own action – to a person who would have cause to resent the communication; or

(B) the informer appears as a witness for the public entity.

(2) ***Testimony About the Merits.***

(A) ***Criminal Case.*** In a criminal case, this privilege does not apply if the court finds a reasonable probability exists that the informer can give testimony necessary to a fair determination of guilt or innocence. If the court so finds and the public entity elects not to disclose the informer's identity:

(i) on the defendant's motion, the court must dismiss the charges to which the testimony would relate; or

(ii) on its own motion, the court may dismiss the charges to which the testimony would relate.

(B) ***Certain Civil Cases.*** In a civil case in which the public entity is a party, this privilege does not apply if the court finds a reasonable probability exists that the informer can give testimony necessary to a fair determination of a material issue on the merits. If the court so finds and the public entity elects not to disclose the informer's identity, the court may make any order that justice requires.

(C) ***Procedures.***

(i) If it appears that an informer may be able to give the testimony required to invoke this exception and the public entity claims the privilege, the court must give the public entity an opportunity to show in camera facts relevant to determining whether this exception is met. The showing should ordinarily be made by affidavits, but the court may take testimony if it finds the matter cannot be satisfactorily resolved by affidavits.

(ii) No counsel or party may attend the in camera showing.

(iii) The court must seal and preserve for appeal evidence submitted under this subparagraph (2)(C). The evidence must not otherwise be revealed without the public entity's consent.

(3) ***Legality of Obtaining Evidence.***

(A) ***Court May Order Disclosure.*** The court may order the public entity to disclose an informer's identity if:

(i) information from an informer is relied on to establish the legality of the means by which evidence was obtained; and

(ii) the court is not satisfied that the information was received from an informer reasonably believed to be reliable or credible.

(B) ***Procedures.***

(i) On the public entity's request, the court must order the disclosure be made in camera.

(ii) No counsel or party may attend the in camera disclosure.

(iii) If the informer's identity is disclosed in camera, the court must seal and preserve for appeal the record of the in camera proceeding. The record of the in camera proceeding must not otherwise be revealed without the public entity's consent.

Rule 509. Physician–Patient Privilege

(a) Definitions. In this rule:

(1) A "patient" is a person who consults or is seen by a physician for medical care.

(2) A "physician" is a person licensed, or who the patient reasonably believes is licensed, to practice medicine in any state or nation.

(3) A communication is "confidential" if not intended to be disclosed to third persons other than those:

(A) present to further the patient's interest in the consultation, examination, or interview;

(B) reasonably necessary to transmit the communication; or

(C) participating in the diagnosis and treatment under the physician's direction, including members of the patient's family.

(b) Limited Privilege in a Criminal Case. There is no physician-patient privilege in a criminal case. But a confidential communication is not admissible in a criminal case if made:

(1) to a person involved in the treatment of or examination for alcohol or drug abuse; and

(2) by a person being treated voluntarily or being examined for admission to treatment for alcohol or drug abuse.

Comment [sg1]: First version. Expressed as a rule of inadmissibility.

(b) Limited Privilege in a Criminal Case. There is no physician-patient privilege in a criminal case. But in a criminal case, a person has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication that was made by the person to anyone involved in the treatment of or examination for alcohol or drug abuse if the person was being:

(1) treated voluntarily for alcohol or drug abuse; or

(2) examined for admission to treatment for alcohol or drug abuse.

Comment [sg2]: Second alternative. Expressed as a privilege.

(c) General Rule in a Civil Case. In a civil case, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing:

(1) a confidential communication between a physician and the patient that relates to or was made in connection with any professional services the physician rendered the patient; and

(2) a record of the patient's identity, diagnosis, evaluation, or treatment created or maintained by a physician.

(d) Who May Claim in a Civil Case. The privilege may be claimed by:

(1) the patient; or

(2) the patient's representative on the patient's behalf.

The physician may claim the privilege on the patient's behalf — and is presumed to have authority to do so.

(e) Exceptions in a Civil Case. This privilege does not apply:

(1) ***Proceeding Against Physician.*** If the communication or record is relevant to a physician's claim or defense in:

(A) a proceeding the patient brings against a physician; or

(B) a license revocation proceeding in which the patient is a complaining witness.

(2) ***Consent.*** If the patient or a person authorized to act on the patient's behalf consents in writing to the release of any privileged information, as provided in subdivision (f).

(3) ***Action to Collect.*** In an action to collect a claim for medical services rendered to the patient.

(4) ***Party Relies on Patient's Condition.*** If any party relies on the patient's physical, mental, or emotional condition as a part of the party's claim or defense and the communication or record is relevant to that condition.

(5) ***Disciplinary Investigation or Proceeding.*** In a disciplinary investigation of or proceeding against a physician under the Medical Practice Act, Tex. Occ. Code § 164.001 et seq., or a registered nurse under Tex. Occ. Code § 301.451 et seq. But the board conducting the investigation or proceeding must protect the identity of any patient whose medical records are examined unless:

(A) the patient's records would be subject to disclosure under paragraph (e)(1); or

(B) the patient has consented in writing to the release of medical records, as provided in subdivision (f).

(6) ***Involuntary Civil Commitment or Similar Proceeding.*** In a proceeding for involuntary civil commitment or court-ordered treatment, or a probable cause hearing under Tex. Health & Safety Code:

(A) chapter 464 (Facilities Treating Alcoholics and Drug-Dependent Persons);

(B) title 7, subtitle C (Texas Mental Health Code); or

(C) title 7, subtitle D (Persons With Mental Retardation Act).

(7) ***Abuse or Neglect of "Institution" Resident.*** In a proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of a resident of an "institution" as defined in Tex. Health & Safety Code § 242.002.

(f) Consent For Release of Privileged Information.

(1) Consent for the release of privileged information must be in writing and signed by:

(A) the patient;

(B) a parent or legal guardian if the patient is a minor;

(C) a legal guardian if the patient has been adjudicated incompetent to manage personal affairs;

(D) an attorney appointed for the patient under Tex. Health & Safety Code title 7, subtitles C and D;

(E) an attorney ad litem appointed for the patient under Tex. Prob. Code chapter XIII ;

(F) an attorney ad litem or guardian ad litem appointed for a minor under Tex. Fam. Code chapter 107, subchapter B; or

(G) a personal representative if the patient is deceased.

(2) The consent must specify:

(A) the information or medical records covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released.

Comment [SG3]: See Appendix B for accompanying background information about the accuracy of the statutory references in the current rule and AREC's approach to making necessary changes.

Comment [sg4]: NOTE: The Probate Code is scheduled to be replaced by the Texas Estates Code on 1/1/2014. The corresponding citation will be Tex. Estates Code title 3, subtitle E.

(3) The patient, or other person authorized to consent, may withdraw consent to the release of any information. But a withdrawal of consent does not affect any information disclosed before the patient or authorized person gave written notice of the withdrawal.

(4) Any person who receives information privileged under this rule may disclose the information only to the extent consistent with the purposes specified in the consent.

Comment to 2013 Restyling: The physician-patient privilege in a civil case was first enacted in Texas in 1981 as part of the Medical Practice Act, formerly codified in Tex. Rev. Civ. Stat. art. 4495b. That statute provided that the privilege applied even if a patient had received a physician's services before the statute's enactment. Because more than thirty years have now passed, it is no longer necessary to burden the text of the rule with a statement regarding the privilege's retroactive application. But deleting this statement from the rule's text is not intended as a substantive change in the law.

The former rule's reference to "confidentiality or" and "administrative proceedings" in subdivision (e) [Exceptions in a Civil Case] has been deleted. First, this rule is a privilege rule only. Tex. Occ. Code § 159.004 sets forth exceptions to a physician's duty to maintain confidentiality of patient information outside court and administrative proceedings. Second, by their own terms the rules of evidence govern only proceedings in Texas courts. See Rule 101(b). To the extent the rules apply in administrative proceedings, it is because the Administrative Procedure Act mandates their applicability. Tex. Gov't Code § 2001.083 provides that "In a contested case, a state agency shall give effect to the rules of privilege recognized by law." Section 2001.091 excludes privileged material from discovery in contested administrative cases.

Statutory references in the former rule that are no longer up-to-date have been revised.

Rule 510. Mental Health Information Privilege in Civil Cases

(a) Definitions. In this rule:

(1) A "professional" is a person:

(A) authorized to practice medicine in any state or nation;

(B) licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional disorder;

(C) involved in the treatment or examination of drug abusers; or

(D) who the patient reasonably believes to be a professional under this rule.

(2) A "patient" is a person who:

(A) consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and drug addiction; or

(B) is being treated voluntarily or being examined for admission to voluntary treatment for drug abuse.

(3) A "patient's representative" is:

(A) any person who has the patient's written consent;

(B) the parent of a minor patient;

(C) the guardian of a patient who has been adjudicated incompetent to manage personal affairs; or

(D) the personal representative of a deceased patient.

(4) A communication is "confidential" if not intended to be disclosed to third persons other than those:

(A) present to further the patient's interest in the diagnosis, examination, evaluation, or treatment;

(B) reasonably necessary to transmit the communication; or

(C) participating in the diagnosis, examination, evaluation, or treatment under the professional's direction, including members of the patient's family.

(b) General Rule; Disclosure.

(1) In a civil case, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing:

(A) a confidential communication between the patient and a professional; and

(B) a record of the patient's identity, diagnosis, evaluation, or treatment that is created or maintained by a professional.

(2) In a civil case, any person — other than a patient's representative acting on the patient's behalf — who receives information privileged under this rule may disclose the information only to the extent consistent with the purposes for which it was obtained.

(c) Who May Claim. The privilege may be claimed by:

(1) the patient; or

(2) the patient's representative on the patient's behalf.

The professional may claim the privilege on the patient's behalf — and is presumed to have authority to do so.

(d) Exceptions. This privilege does not apply:

(1) ***Proceeding Against Professional.*** If the communication or record is relevant to a professional's claim or defense in:

(A) a proceeding the patient brings against a professional; or

(B) a license revocation proceeding in which the patient is a complaining witness.

(2) ***Written Waiver.*** If the patient or a person authorized to act on the patient's behalf waives the privilege in writing.

(3) ***Action to Collect.*** In an action to collect a claim for mental or emotional health services rendered to the patient.

(4) ***Communication Made in Court-Ordered Examination.*** To a communication the patient made to a professional during a court-ordered examination relating to the patient's mental or emotional condition or disorder if:

(A) the patient made the communication after being informed that it would not be privileged;

(B) the communication is offered to prove an issue involving the patient's mental or emotional health; and

(C) the court imposes appropriate safeguards against unauthorized disclosure.

(5) ***Party Relies on Patient's Condition.*** If any party relies on the patient's physical, mental, or emotional condition as a part of the party's claim or defense and the communication or record is relevant to that condition.

(6) ***Abuse or Neglect of "Institution" Resident.*** In a proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of a resident of an "institution" as defined in Tex. Health & Safety Code § 242.002.

Comment to 2013 Restyling: The mental health information privilege in civil cases was enacted in Texas in 1979. Tex. Rev. Civ. Stat. art. 5561h (later codified at Tex. Health & Safety Code §

611.001 et seq.) provided that the privilege applied even if the patient had received the professional's services before the statute's enactment. Because more than thirty years have now passed, it is no longer necessary to burden the text of the rule with a statement regarding the privilege's retroactive application. But deleting this statement from the rule's text is not intended as a substantive change in the law.

Rule 511. [PROPOSED AREC AND SCAC VERSIONS OF RULE 511 ALREADY PENDING BEFORE SUPREME COURT; SEE APPENDIX A]

Rule 512. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege

A privilege claim is not defeated by a disclosure that was:

(a) compelled erroneously; or

(b) made without opportunity to claim the privilege.

Rule 513. Comment On or Inference From a Privilege Claim; Instruction

(a) **Comment or Inference Not Permitted.** Except as permitted in Rule 504(b)(2), neither the court nor counsel may comment on a privilege claim – whether made in the present proceeding or previously – and the factfinder may not draw an inference from the claim.

(b) **Claiming Privilege Without the Jury's Knowledge.** To the extent practicable, the court must conduct a jury trial so that the making of a privilege claim is not suggested to the jury by any means.

(c) **Claim of Privilege Against Self–Incrimination in a Civil Case.** Subdivisions (a) and (b) do not apply to a party's claim, in the present civil case, of the privilege against self-incrimination.

(d) **Jury Instruction.** When this rule forbids a jury from drawing an inference from a privilege claim, the court must, on request of a party against whom the jury might draw the inference, instruct the jury accordingly.

ARTICLE VI.
WITNESSES

Rule 601. Competency to Testify in General; "Dead Man's Rule"

(a) In General. Every person is competent to be a witness unless these rules provide otherwise. The following witnesses are incompetent:

(1) ***Insane Persons.*** A person who is now insane or was insane at the time of the events about which the person is called to testify.

(2) ***Persons Lacking Sufficient Intellect.*** A child—or any other person—who the court examines and finds lacks sufficient intellect to testify.

(b) The "Dead Man's Rule."

(1) ***Applicability*.** The "Dead Man's Rule" applies only in a civil case:

(A) by or against a party in the party's capacity as an executor, administrator, or guardian; or

(B) by or against a decedent's heirs or legal representatives and based in whole or in part on the decedent's oral statement.

(2) ***General Rule.*** In cases described in subparagraph (b)(1)(A), a party may not testify against another party about an oral statement by the testator, intestate, or ward. In cases described in subparagraph (b)(1)(B), a party may not testify against another party about an oral statement by the decedent.

(3) ***Exceptions.*** A party may testify against another party about an oral statement by the testator, intestate, ward, or decedent if:

(A) the party's testimony about the statement is corroborated; or

(B) the opposing party calls the party to testify at the trial about the statement.

(4) ***Instructions*.** If a court excludes evidence under paragraph (b)(2), the court must instruct the jury that the law prohibits a party from testifying about an oral statement by the testator, intestate, ward, or decedent unless the oral statement is corroborated or the opposing party calls the party to testify at the trial about the statement.

Comment to 2013 Restyling: The text of the "Dead Man's Rule" has been streamlined to clarify its meaning without making any substantive changes. The text of former Rule 601(b) (as well as its statutory predecessor, Vernon's Ann.Civ.St. art. 3716) prohibits only a "party" from testifying about the dead man's statements. Despite this, the last sentence of former Rule 601(b) requires the court to instruct the jury when the rule "prohibits an interested party or witness" from testifying. Because the rule prohibits only a "party" from testifying, restyled Rule 601(b)(4) references only "a party," and not "an interested party or witness." To be sure, courts have indicated that the rule (or its statutory predecessor) may be applicable to a witness who is not nominally a party and inapplicable to a witness who is only nominally a party. See, e.g.,

Chandler v. Welborn, 156 Tex. 312, 294 S.W.2d 801, 809 (1956); Ragsdale v. Ragsdale, 142 Tex. 476, 179 S.W.2d 291, 295 (1944). But these decisions are based on an interpretation of the meaning of "party." Therefore, limiting the court's instruction under restyled Rule 601(b)(4) to "a party" does not change Texas practice. In addition, restyled Rule 601(b) deletes the sentence in former Rule 601(b) that states "Except for the foregoing, a witness is not precluded from giving evidence . . . because the witness is a party to the action . . ." This sentence is surplusage. Rule 601(b) is a rule of exclusion. If the testimony falls outside the rule of exclusion, its admissibility will be determined by other applicable rules of evidence.

Rule 602. Need for Personal Knowledge

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

Rule 603. Oath or Affirmation to Testify Truthfully

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

Rule 604. Interpreter

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

Rule 605. Judge's Competency as a Witness

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

Rule 606. Juror's Competency as a Witness

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

(b) During an Inquiry into the Validity of a Verdict or Indictment.

(1) ***Prohibited Testimony or Other Evidence.*** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's

or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

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

(A) about whether an outside influence was improperly brought to bear on any juror; or

(B) to rebut a claim that the juror was not qualified to serve.

Rule 607. Who May Impeach a Witness

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

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

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

(b) **Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, a party may not inquire into or offer extrinsic evidence to prove specific instances of the witness's conduct in order to attack or support the witness's character for truthfulness.

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) **In General.** Evidence of a criminal conviction offered to attack a witness's character for truthfulness must be admitted if:

(1) the crime was a felony or involved moral turpitude, regardless of punishment;

(2) the probative value of the evidence outweighs its prejudicial effect to a party; and

(3) it is elicited from the witness or established by public record.

(b) **Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.

(c) **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime that was classified as a felony or involved moral turpitude, regardless of punishment;

(2) probation has been satisfactorily completed for the conviction, and the person has not been convicted of a later crime that was classified as a felony or involved moral turpitude, regardless of punishment; or

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

(d) **Juvenile Adjudications**. Evidence of a juvenile adjudication is admissible under this rule only if:

(1) the witness is a party in a proceeding conducted under title 3 of the Texas Family Code; or

(2) the United States or Texas Constitution requires it be admitted.

(e) **Pendency of an Appeal.** A conviction for which an appeal is pending is not admissible under this rule.

(f) **Notice.** Evidence of a witness's conviction is not admissible under this rule if, after receiving from the adverse party a timely written request specifying the witness, the proponent of the conviction fails to provide sufficient written notice of intent to use the conviction. Notice is sufficient if it provides a fair opportunity to contest the use of such evidence.

Rule 610. Religious Beliefs or Opinions

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

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

(a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

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

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) **Scope of Cross-Examination.** A witness may be cross-examined on any relevant matter, including credibility.

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

(1) on cross-examination; and

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

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

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

(1) while testifying;

(2) before testifying, in civil cases, if the court decides that justice requires the party to have those options; or

(3) before testifying, in criminal cases.

(b) **Adverse Party's Options; Deleting Unrelated Matter.** An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) **Failure to Produce or Deliver the Writing.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

VERSION 1:

Comment [sg5]: PRACTICE-ORIENTED VERSION

Rule 613. Witness's Prior Statement and Bias or Interest

(a) Witness's Prior Inconsistent Statement.

(1) ***Foundation Requirement.*** When examining a witness about the witness's prior inconsistent statement—whether oral or written—a party must first tell the witness:

(A) the contents of the statement;

(B) the time and place of the statement; and

(C) the person to whom the witness made the statement.

(2) ***Need Not Show Written Statement.*** If the witness's prior inconsistent statement is written, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel.

(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.

(5) ***Opposing Party's Statement.*** This subdivision (a) does not apply to an opposing party's statement under Rule 801(e)(2).

(b) Witness's Bias or Interest.

(1) ***Foundation Requirement.*** When examining a witness about the witness's bias or interest, a party must first tell the witness the circumstances or statements that tend to show the witness's bias or interest. If examining a witness about a statement—whether oral or written—to prove the witness's bias or interest, a party must tell the witness:

(A) the contents of the statement;

(B) the time and place of the statement; and

(C) the person to whom the statement was made.

(2) ***Need Not Show Written Statement.*** If a party uses a written statement to prove the witness's bias or interest, a party need not show the statement to the witness before inquiring about it, but must, upon request, show it to opposing counsel.

(3) ***Opportunity to Explain or Deny.*** A witness must be given the opportunity to explain or deny the circumstances or statements that tend to show the witness's bias

or interest. And the witness's proponent may present evidence to rebut the charge of bias or interest.

(4) ***Extrinsic Evidence.*** Extrinsic evidence of a witness's bias or interest is not admissible unless the witness is first examined about the bias or interest and fails to unequivocally admit it.

(c) Witness's Prior Consistent Statement. Unless Rule 801(e)(1)(B) provides otherwise, a witness's prior consistent statement is not admissible if offered solely to enhance the witness's credibility.

VERSION 2:

Comment [sg6]: TEXT-ORIENTED VERSION

Rule 613. Witness's Prior Statement and Bias or Interest

(a) Witness's Prior Inconsistent Statement.

(1) ***Foundation Requirement.*** When examining a witness about the witness's prior inconsistent statement—whether oral or written—and before offering extrinsic evidence of the statement, a party must provide the witness:

(A) the contents of the statement;

(B) the time and place of the statement;

(C) the person to whom the witness made the statement; and

(D) an opportunity to explain or deny the statement.

(2) ***Need Not Show Written Statement.*** If the witness's prior inconsistent statement is written, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel.

(3) ***Extrinsic Evidence.*** Extrinsic evidence of a witness's prior inconsistent statement is not admissible if the witness unequivocally admits making the statement.

(4) ***Opposing Party's Statement.*** This subdivision (a) does not apply to an opposing party's statement under Rule 801(e)(2).

(b) Witness's Bias or Interest.

(1) ***Foundation Requirement.*** When examining a witness about and before offering extrinsic evidence of the witness's bias or interest, a party must first tell the witness the circumstances or statements that tend to show the witness's bias or interest and give the witness an opportunity to explain or deny the circumstances or statements.

If examining a witness about a statement—whether oral or written—to prove the witness's bias or interest, a party must tell the witness:

(A) the contents of the statement;

(B) the time and place of the statement; and

(C) the person to whom the statement was made.

(2) ***Need Not Show Written Statement.*** If a party uses a written statement to prove the witness's bias or interest, a party need not show the statement to the witness before inquiring about it, but must, upon request, show it to opposing counsel.

(3) ***Proponent May Rebut.*** A witness's proponent may present evidence to rebut the charge of bias or interest.

(4) ***Extrinsic Evidence.*** Extrinsic evidence of a witness's bias or interest is not admissible if the witness unequivocally admits the bias or interest.

(c) **Witness's Prior Consistent Statement.** Unless Rule 801(e)(1)(B) provides otherwise, a witness's prior consistent statement is not admissible if offered solely to enhance the witness's credibility.

Rule 614. Excluding Witnesses

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

(a) a party who is a natural person and, in civil cases, that person's spouse;

(b) after being designated as the party's representative by its attorney:

(1) in a civil case, an officer or employee of a party that is not a natural person; or

(2) in a criminal case, a defendant that is not a natural person;

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

(d) the victim in a criminal case, unless the court determines that the victim's testimony would be materially affected by hearing other testimony at the trial.

Rule 615. Producing a Witness's Statement in Criminal Cases

(a) **Motion to Produce.** After a witness other than the defendant testifies on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the state or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony.

(b) **Producing the Entire Statement.** If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.

(c) **Producing a Redacted Statement.** If the party who called the witness claims that the statement contains information that does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any unrelated portions, the court must order delivery of the redacted statement to the moving party. If a party objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

(d) **Recess to Examine a Statement.** On the moving party's request, the court must recess the proceedings to allow time for a party to examine the statement and prepare for its use.

(e) **Sanction for Failure to Produce or Deliver a Statement.** If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the state disobeys the order, the court must declare a mistrial if justice so requires.

(f) **"Statement" Defined.** As used in this rule, a witness's "statement'' means:

(1) a written statement that the witness makes and signs, or otherwise adopts or approves;

(2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or

(3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

ARTICLE VII.
OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses

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

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

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

Comment to 2013 Restyling: All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 702. Testimony by Expert Witnesses

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

Rule 703. Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, 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.

Comment to 2013 Restyling: All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 704. Opinion on an Ultimate Issue

An opinion is not objectionable just because it embraces an ultimate issue.

Rule 705. Disclosing the Underlying Facts or Data and Examining an Expert About Them

(a) **Stating an Opinion Without Disclosing the Underlying Facts or Data.** 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.

(b) Voir Dire Examination of an Expert About the Underlying Facts or Data. Before an expert states an opinion or discloses the underlying facts or data, an adverse party in a civil case may — or in a criminal case must — be permitted to examine the expert about the underlying facts or data. This examination must take place outside the jury's hearing.

(c) Admissibility of Opinion. An expert's opinion is inadmissible if the underlying facts or data do not provide a sufficient basis for the opinion.

(d) When Otherwise Inadmissible Underlying Facts or Data May Be Disclosed; Instructing the Jury. If the underlying facts or data would otherwise be inadmissible, the proponent of the opinion may not disclose them to the jury if their probative value in helping the jury evaluate the opinion is outweighed by their prejudicial effect. If the court allows the proponent to disclose those facts or data the court must, upon timely request, restrict the evidence to its proper scope and instruct the jury accordingly.

Comment to 2013 Restyling: All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 706. Audit in Civil Cases

Notwithstanding any other evidence rule, the court must admit an auditor's verified report prepared under Rule of Civil Procedure 172 and offered by a party. If a party files exceptions to the report, a party may offer evidence supporting the exceptions to contradict the report.

ARTICLE VIII.
HEARSAY

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

(a) Statement. "Statement" means a person's oral or written verbal expression, or nonverbal conduct that a person intended as a substitute for verbal expression.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Matter Asserted. "Matter asserted" means:

(1) any matter a declarant explicitly asserts; and

(2) any matter implied by a statement, if the probative value of the statement as offered flows from the declarant's belief about the matter.

(d) **Hearsay.** "Hearsay" means a statement that:

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

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

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

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

(A) is inconsistent with the declarant's testimony and:

(i) when offered in a civil case, was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition; or

(ii) when offered in a criminal case, was given under penalty of perjury at a trial, hearing, or other proceeding—except a grand jury proceeding—or in a deposition;

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

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

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

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

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

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

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

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

(3) ***A Deponent's Statement.*** In a civil case, the statement was made in a deposition taken in the same proceeding. "Same proceeding" is defined in Rule of Civil

Procedure 203.6(b). The deponent's unavailability as a witness is not a requirement for admissibility.

Comment to 2013 Restyling: Statements falling under the hearsay exclusion provided by Rule 801(e)(2) are no longer referred to as "admissions" in the title to the subdivision. The term "admissions" is confusing because not all statements covered by the exclusion are admissions in the colloquial sense — a statement can be within the exclusion even if it "admitted" nothing and was not against the party's interest when made. The term "admissions" also raises confusion in comparison with the Rule 803(24) exception for declarations against interest. No change in application of the exclusion is intended.

The deletion of former Rule 801(e)(1)(D), which cross-references Code of Criminal Procedure art. 38.071, is not intended as a substantive change. Including this cross-reference made sense when the Texas Rules of Criminal Evidence were first promulgated, but with subsequent changes to the statutory provision, its inclusion is no longer appropriate. The version of article 38.071 that was initially cross-referenced in the Rules of Criminal Evidence required the declarant-victim to be available to testify at the trial. That requirement has since been deleted from the statute, and the statute no longer requires either the availability or testimony of the declarant-victim. Thus, cross-referencing the statute in Rule 801(e)(1), which applies only when the declarant testifies at trial about the prior statement, no longer makes sense. Moreover, article 38.071 is but one of a number of statutes that mandate the admission of certain hearsay statements in particular circumstances. See, e.g., Code of Criminal Procedure art. 38.072; Family Code §§ 54.031, 104.002, 104.006. These statutory provisions take precedence over the general rule excluding hearsay, see Rules 101(c) and 802, and there is no apparent justification for cross-referencing article 38.071 and not all other such provisions.

Rule 802. The Rule Against Hearsay

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

- a statute;
- these rules; or
- other rules prescribed under statutory authority.

Inadmissible hearsay admitted without objection may not be denied probative value merely because it is hearsay.

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

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

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

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

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

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

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

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

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

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

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

(C) accurately reflects the witness's knowledge, unless the circumstances of the record's preparation cast doubt on its trustworthiness.

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

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

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

(B) the record was kept in the course of a regularly conducted business activity;

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

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by an affidavit or unsworn declaration that complies with Rule 902(10); and

(E) the opponent fails to show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

"Business" as used in this paragraph includes every kind of regular organized activity whether conducted for profit or not.

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

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

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

(C) the opponent fails to show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

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

(A) it sets out:

(i) the office's activities;

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

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

(B) the opponent fails to show that the source of information or other circumstances indicate a lack of trustworthiness.

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

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

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

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

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

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

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

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

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

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

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

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

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

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

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

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

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

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

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

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

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

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

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

(A) it is offered in a civil case and:

(i) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(ii) the conviction was for a felony;

(iii) the evidence is admitted to prove any fact essential to the judgment; and

(iv) an appeal of the conviction is not pending; or

(B) it is offered in a criminal case and:

(i) the judgment was entered after a trial or a guilty or nolo contendere plea;

(ii) the conviction was for a criminal offense;

(iii) the evidence is admitted to prove any fact essential to the judgment;

(iv) when offered by the prosecutor for a purpose other than impeachment, the judgment was against the defendant; and

(v) an appeal of the conviction is not pending.

(23) ***Judgments Involving Personal, Family, or General History or a Boundary.*** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

(24) ***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 or to make the declarant an object of hatred, ridicule, or disgrace; 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.

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

(a) **Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

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

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

(3) testifies to not remembering the subject matter;

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

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

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

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

(1) ***Former Testimony.*** Testimony that:

(A) when offered in a civil case:

(i) was given as a witness at a trial or hearing of the current or a different proceeding or was given as a witness in a deposition in a different proceeding; and

(ii) is now offered against a party and the party—or a person with similar interest—had an opportunity and similar motive to develop the testimony by direct, cross-, or redirect examination.

(B) when offered in a criminal case:

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

(ii) is now offered against a party who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination; or

(iii) was taken in a deposition under—and is now offered in accordance with—chapter 39 of the Code of Criminal Procedure.

(2) ***Statement Under the Belief of Imminent Death.*** A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

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

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

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

Rule 805. Hearsay Within Hearsay

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

Rule 806. Attacking and Supporting the Declarant's Credibility

When a hearsay statement — or a statement described in Rule 801(e)(2)(C), (D), or (E), or, in a civil case, a statement described in Rule 801(e)(3)— 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 statement or conduct, offered to impeach the declarant, 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.

ARTICLE IX.
AUTHENTICATION AND IDENTIFCATION

Rule 901. Authenticating or Identifying Evidence

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

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

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

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

(3) ***Comparison by an Expert Witness or the Trier of Fact.*** A comparison by an expert witness or the trier of fact with a specimen that the court has found is genuine.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) ***Methods Provided by a Statute or Rule.*** Any method of authentication or identification allowed by a statute or other rule prescribed under statutory authority.

Rule 902. Evidence That Is Self-Authenticating

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

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

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

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

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

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

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

(3) ***Foreign Public Documents.*** A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so.

(A) ***In General.*** 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.

(B) ***If Parties Have Reasonable Opportunity to Investigate.*** If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

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

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

(C) ***If a Treaty Abolishes or Displaces the Final Certification Requirement.*** If the United States and the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces the final certification requirement, the record and attestation must be certified under the terms of the treaty or convention.

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

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

(B) a certificate that complies with Rule 902(1), (2), or (3), a statute, or a rule prescribed under statutory authority.

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

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

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

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

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

(10) ***Records of a Regularly Conducted Activity.***

(A) ***Requirements.*** The original or a copy of a record that meets the requirements of Rule 803(6)(A)-(C) or 803(7)(A)-(B), as shown by the

custodian's or another qualified person's affidavit or unsworn declaration. The proponent of the record must:

(i) file the affidavit or unsworn declaration and the record with the court at least 14 days before trial;

(ii) make the record available to the other parties for inspection and copying, but the party seeking the copy must bear the cost of copying; and

(iii) give the other parties prompt notice of the filing, including the name and employer, if any, of the person making the affidavit or unsworn declaration. If the proponent gives notice at least 14 days before trial in a manner acceptable under Rule of Civil Procedure 21a, the court must find the notice is prompt.

(B) ***Form for Business Records.*** A properly-executed affidavit or unsworn declaration that includes the following language meets the requirements of Rule 803(6)(A)-(C), although other language may also meet the requirements:

"1. I am the custodian of these records, or I am an employee familiar with the manner in which these records are created and maintained by virtue of my duties and responsibilities.
2. Attached are _____ pages of records. These are the original records or exact duplicates of the original records.
3. The records were made at or near the time of the occurrence of the matters set forth.
4. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth.
5. The records were kept in the course of regularly conducted business activity.
6. It was the regular practice of the business activity to make the records."

(C) ***Form for Medical Expenses.*** A properly-executed affidavit or unsworn declaration that includes the following language constitutes prima facie proof of medical expenses:

"1. I am the custodian of these records, or I am an employee familiar with the manner in which these records are created and maintained by virtue of my duties and responsibilities.
2. Attached are _____ pages of records. These are the original records or exact duplicates of the original records and are a part of this [affidavit *or* unsworn declaration].
3. The attached records provide an itemized statement of the services and charge for the services that _____ provided to _____ on _____.

4. The records were made at or near the time the service was provided.
5. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth.
6. The records were kept in the course of regularly conducted business activity.
7. It was the regular practice of the business activity to make the records.
8. The services provided were necessary, and the amount charged for the services was reasonable at the time and place the services were provided.
9. The total amount paid for the services was $____, and the amount currently unpaid but which _____ has a right to be paid after any adjustments or credits is $_____."

(11) ***Presumptions Under a Statute or Rule.*** A signature, document, or anything else that a statute or rule prescribed under statutory authority declares to be presumptively or prima facie genuine or authentic.

Comment to 2013 Restyling: The forms provided in Rules 902(10)(B) and (C) respectively include only the language designed to meet the requirements of the business record exception and medical expense form. They omit language for introductory material and the jurat because these may differ between an affidavit and an unsworn declaration. For example, an unsworn declaration will not include language typically found in an affidavit (e.g., "Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows"). Similarly, Tex. Civ. Prac. & Rem. Code § 132.001 prescribes a jurat for unsworn declarations that differs from the jurat typically used in affidavits. Because Rules 902(10)(B) and (C) require that an affidavit or unsworn declaration be "properly-executed," a party must be sure to include introductory material and a jurat appropriate to the type of document filed.

Rule 903. Subscribing Witness's Testimony

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

ARTICLE X.
CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions That Apply to This Article

In this article:

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

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

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

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

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

Rule 1002. Requirement of the Original

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

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a 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 Content

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

(a) all the originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith;

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

(c) an original is not located in Texas;

(d) 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

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

Rule 1005. Copies of Public Records to Prove Content

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

Rule 1006. Summaries to Prove Content

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

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

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

Rule 1008. Functions of the Court and Jury

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

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

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

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

Rule 1009. Translating a Foreign Language Document

(a) **Submitting a Translation.** A translation of a foreign language document is admissible if, at least 45 days before trial, the proponent serves on all parties:

(1) the translation and the underlying foreign language document; and

(2) a qualified translator's affidavit or unsworn declaration that sets forth the translator's qualifications and certifies that the translation is accurate.

(b) Objection. When objecting to a translation's accuracy, a party should specifically indicate its inaccuracies and offer an accurate translation. A party must serve the objection on all parties at least 15 days before trial.

(c) Effect of Failing to Object or Submit a Conflicting Translation. If the underlying foreign language document is otherwise admissible, the court must admit — and may not allow a party to attack the accuracy of — a translation submitted under subdivision (a) unless the party has:

(1) submitted a conflicting translation under subdivision (a); or

(2) objected to the translation under subdivision (b).

(d) Effect of Objecting or Submitting a Conflicting Translation. If conflicting translations are submitted under subdivision (a) or an objection is made under subdivision (b), the court must determine whether there is a genuine issue about the accuracy of a material part of the translation. If so, the trier of fact must resolve the issue.

(e) Qualified Translator May Testify. Except for subdivision (c), this rule does not preclude a party from offering the testimony of a qualified translator to translate a foreign language document.

(f) Time Limits. On a party's motion and for good cause, the court may alter this rule's time limits.

(g) Court-Appointed Translator. If necessary, the court may appoint a qualified translator. The reasonable value of the translator's services must be taxed as court costs.

ARTICLE I.
GENERAL PROVISIONS

CURRENT TEXAS	RESTYLED TEXAS
RULE 101. TITLE AND SCOPE	**Rule 101. Title, Scope, and Applicability of the Rules; Definitions**
(a) Title. These rules shall be known and cited as the Texas Rules of Evidence.	**(a) Title.** These rules may be cited as the Texas Rules of Evidence.
(b) Scope. Except as otherwise provided by statute, these rules govern civil and criminal proceedings (including examining trials before magistrates) in all courts of Texas, except small claims courts.	**(b) Scope.** These rules apply to proceedings in Texas courts except as otherwise provided in subdivisions (d)–(f). **(c) Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding.
(c) Hierarchical Governance in Criminal Proceedings. Hierarchical governance shall be in the following order: the Constitution of the United States, those federal statutes that control states under the supremacy clause, the Constitution of Texas, the Code of Criminal Procedure and the Penal Code, civil statutes, these rules, and the common law. Where possible, inconsistency is to be removed by reasonable construction.	**(d) Exception for Constitutional or Statutory Provisions or Other Rules.** Despite these rules, a court must admit or exclude evidence if required to do so by the United States or Texas Constitution, a federal or Texas statute, or a rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals. If possible, a court should resolve by reasonable construction any inconsistency between these rules and applicable constitutional or statutory provisions or other rules.
(d) Special Rules of Applicability in Criminal Proceedings. (1) *Rules not applicable in certain proceedings.* These rules, except with respect to privileges, do not apply in the following situations: (A) the determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104; (B) proceedings before grand juries; (C) proceedings in an application for habeas corpus in extradition, rendition, or interstate detainer;	**(e) Exceptions.** These rules—except for those on privilege—do not apply to: **(1)** the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility; **(2)** grand jury proceedings; and **(3)** the following miscellaneous proceedings: **(A)** an application for habeas corpus in extradition, rendition, or interstate detainer proceedings; **(B)** an inquiry by the court under Code of Criminal Procedure article

(D) a hearing under Code of Criminal Procedure article 46.02, by the court out of the presence of a jury, to determine whether there is sufficient evidence of incompetency to require a jury determination of the question of incompetency;

(E) proceedings regarding bail except hearings to deny, revoke or increase bail;

(F) a hearing on justification for pretrial detention not involving bail;

(G) proceedings for the issuance of a search or arrest warrant; or

(H) proceedings in a direct contempt determination.

(2) *Applicability of privileges.* These rules with respect to privileges apply at all stages of all actions, cases, and proceedings.

(3) *Military justice hearings.* Evidence in hearings under the Texas Code of Military Justice, TEX. GOV'T CODE § 432.001–432.195, shall be governed by that Code.

Notes and Comments

Comment to 1998 change: "Criminal proceedings" rather than "criminal cases" is used since that was the terminology used in the prior Rules of Criminal Evidence. In subpart (b), the reference to "trials before magistrates" comes from prior Criminal Rule 1101(a). In the prior Criminal Rules, both Rule 101 and Rule 1101 dealt with the same thing—the applicability of the rules. Thus, Rules 101(c) and (d) have been written to incorporate the provisions of former Criminal Rule 1101 and that rule is omitted.

46B.004 to determine whether evidence exists that would support a finding that the defendant may be incompetent to stand trial;

(C) bail proceedings other than hearings to deny, revoke, or increase bail;

(D) hearings on justification for pretrial detention not involving bail;

(E) proceedings to issue a search or arrest warrant; and

(F) direct contempt determination proceedings.

(f) Exception for Justice Court Cases. These rules do not apply to justice court cases except as authorized by Texas Rule of Civil Procedure 500.3.

(g) Exception for Military Justice Hearings. The Texas Code of Military Justice, Tex. Gov't Code §§ 432.001–432.195, governs the admissibility of evidence in hearings held under that Code.

(h) Definitions. In these rules:

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

(2) "criminal case" means a criminal action or proceeding, including an examining trial;

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

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

(5) a "rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals" means a rule adopted by any of those courts under statutory authority;

(6) "unsworn declaration" means an unsworn declaration made in

	accordance with Tex. Civ. Prac. & Rem. Code § 132.001; and **(7)** a reference to any kind of written material or any other medium includes electronically stored information. **Comment to 2013 Restyling:** The reference to "hierarchical governance" in former Rule 101(c) has been deleted as unnecessary. The textual limitation of former Rule 101(c) to criminal cases has been eliminated. Courts in civil cases must also admit or exclude evidence when required to do so by constitutional or statutory provisions or other rules that take precedence over these rules. Likewise, the title to former Rule 101(d) has been changed to more accurately indicate the purpose and scope of the subdivision.

CURRENT TEXAS	RESTYLED TEXAS
RULE 102. PURPOSE AND CONSTRUCTION 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.	**Rule 102. Purpose** These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

CURRENT TEXAS	RESTYLED TEXAS
RULE 103. RULINGS ON EVIDENCE	**Rule 103. Rulings on Evidence**
(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 (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. When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence be admitted, such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of repeating those objections. (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.	**(a) Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and: **(1)** if the ruling admits evidence, a party, on the record: **(A)** timely objects or moves to strike; and **(B)** states the specific ground, unless it was apparent from the context; or **(2)** if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.
	(b) Not Needing to Renew an Objection. When the court hears a party's objections outside the presence of the jury and rules that evidence is admissible, a party need not renew an objection to preserve a claim of error for appeal.
(b) Record of Offer and Ruling. The offering party shall, as soon as practicable, but before the court's charge is read to the jury, be allowed to make, in the absence of the jury, its offer of proof. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The court may, or at the request of a party shall, direct the making of an offer in question and answer form.	**(c) Court's Statement About the Ruling; Directing an Offer of Proof.** The court must allow a party to make an offer of proof outside the jury's presence as soon as practicable—and before the court reads its charge to the jury. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. At a party's request, the court must direct that an offer of proof be made in question-and-answer form. Or the court may do so on its own.
(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.	**(d) 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.

(d) Fundamental Error in Criminal Cases. In a criminal case, nothing in these rules precludes taking notice of fundamental errors affecting substantial rights although they were not brought to the attention of the court.	**(e) Taking Notice of Fundamental Error in Criminal Cases.** In criminal cases, a court may take notice of a fundamental error affecting a substantial right, even if the claim of error was not properly preserved.

CURRENT TEXAS	RESTYLED TEXAS
RULE 104. PRELIMINARY QUESTIONS	**Rule 104. Preliminary Questions**
(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 the court is not bound by the rules of evidence except those with respect to privileges.	**(a) In General.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.
(b) 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.	**(b) Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.
(c) Hearing of Jury. In a criminal case, a hearing on the admissibility of a confession shall be conducted out of the hearing of the jury. All other civil or criminal hearings on preliminary matters shall be conducted out of the hearing of the jury when the interests of justice so require or in a criminal case when an accused is a witness and so requests.	**(c) Conducting a Hearing So That the Jury Cannot Hear It.** The court must conduct any hearing on a preliminary question so that the jury cannot hear it if: **(1)** the hearing involves the admissibility of a confession in a criminal case; **(2)** a defendant in a criminal case is a witness and so requests; or **(3)** justice so requires.
(d) Testimony by Accused Out of the Hearing of the Jury. The accused in a criminal case does not, by testifying upon a preliminary matter out of the hearing of the jury, become subject to cross-examination as to other issues in the case.	**(d) Cross-Examining a Defendant in a Criminal Case.** By testifying outside the jury's hearing on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.
(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.	**(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.

CURRENT TEXAS	RESTYLED TEXAS
RULE 105. LIMITED ADMISSIBILITY **(a) Limiting Instruction.** 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; but, in the absence of such request the court's action in admitting such evidence without limitation shall not be a ground for complaint on appeal. **(b) Offering Evidence for Limited Purpose.** When evidence referred to in paragraph (a) is excluded, such exclusion shall not be a ground for complaint on appeal unless the proponent expressly offers the evidence for its limited, admissible purpose or limits its offer to the party against whom it is admissible.	**Rule 105. Evidence That Is Not Admissible Against Other Parties or for Other Purposes** **(a) Limiting Admitted Evidence.** 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. **(b) Preserving a Claim of Error.** **(1)** ***Court Admits the Evidence Without Restriction*** A party may claim error in a ruling to admit evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — only if the party requests the court to restrict the evidence to its proper scope and instruct the jury accordingly. **(2)** ***Court Excludes the Evidence.*** A party may claim error in a ruling to exclude evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — only if the party limits its offer to the party against whom or the purpose for which the evidence is admissible.

CURRENT TEXAS	RESTYLED TEXAS
RULE 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS When a writing or recorded statement or part thereof is introduced by a party, an adverse party may at that time introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. "Writing or recorded statement" includes depositions.	**Rule 106. Remainder of or Related Writings or Recorded Statements** If a party introduces all or part of a writing or recorded statement, an adverse party may introduce, at that time, any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time. "Writing or recorded statement" includes depositions.

CURRENT TEXAS	RESTYLED TEXAS
RULE 107. RULE OF OPTIONAL COMPLETENESS When part of an act, declaration, conversation, writing or recorded statement is given in evidence by one party, the whole on the same subject may be inquired into by the other, and any other act, declaration, writing or recorded statement which is necessary to make it fully understood or to explain the same may also be given in evidence, as when a letter is read, all letters on the same subject between the same parties may be given. "Writing or recorded statement" includes depositions.	**Rule 107. Rule of Optional Completeness** If a party introduces part of an act, declaration, conversation, writing, or recorded statement, an adverse party may inquire into any other part on the same subject. An adverse party may also introduce any other act, declaration, conversation, writing, or recorded statement that is necessary to explain or allow the trier of fact to fully understand the part offered by the opponent. "Writing or recorded statement" includes a deposition.

ARTICLE II.
JUDICIAL NOTICE

CURRENT TEXAS	RESTYLED TEXAS
RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS	**Rule 201. Judicial Notice of Adjudicative Facts**
(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.	**(a) Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
(b) Kinds of Facts. 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.	**(b) Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it: **(1)** is generally known within the trial court's territorial jurisdiction; or **(2)** can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
(c) When Discretionary. A court may take judicial notice, whether requested or not. **(d) When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.	**(c) Taking Notice.** The court: **(1)** may take judicial notice on its own; or **(2)** must take judicial notice if a party requests it and the court is supplied with the necessary information.
(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. **(f) Time of Taking Notice.** Judicial notice may be taken at any stage of the proceeding.	**(d) Timing.** The court may take judicial notice at any stage of the proceeding. **(e) Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
(g) Instructing Jury. In civil cases, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In criminal cases, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.	**(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.

CURRENT TEXAS	RESTYLED TEXAS
RULE 202. DETERMINATION OF LAW OF OTHER STATES A court upon its own motion may, or upon the motion of a party shall, take judicial notice of the constitutions, public statutes, rules, regulations, ordinances, court decisions, and common law of every other state, territory, or jurisdiction of the United States. A party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court may deem necessary, to enable all parties fairly to prepare to meet the request. 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. Judicial notice of such matters may be taken at any stage of the proceeding. The court's determination shall be subject to review as a ruling on a question of law.	**Rule 202. Judicial Notice of Other States' Law** **(a) Scope.** This rule governs judicial notice of another state's, territory's, or federal jurisdiction's: • Constitution; • public statutes; • rules; • regulations; • ordinances; • court decisions; and • common law. **(b) Taking Notice.** The court: **(1)** may take judicial notice on its own; or **(2)** must take judicial notice if a party requests it and the court is supplied with the necessary information. **(c) Notice and Opportunity to Be Heard.** **(1)** ***Notice.*** The court may require a party requesting judicial notice to notify all other parties of the request so they may respond to it. **(2)** ***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 matter to be noticed. If the court takes judicial notice before a party has been notified, the party, on request, is still entitled to be heard. **(d) Timing.** The court may take judicial notice at any stage of the proceeding. **(e) Determination and Review.** The court—not the jury—must determine the law of another state, territory, or federal jurisdiction. The court's determination must be treated as a ruling on a question of law.

CURRENT TEXAS	RESTYLED TEXAS
RULE 203. DETERMINATION OF THE LAWS OF FOREIGN COUNTRIES A party who intends to raise an issue concerning the law of a foreign country shall give notice in the pleadings or other reasonable written notice, and at least 30 days prior to the date of trial such party shall furnish all parties copies of any written materials or sources that the party intends to use as proof of the foreign law. If the materials or sources were originally written in a language other than English, the party intending to rely upon them shall furnish all parties both a copy of the foreign language text and an English translation. The court, in determining the law of a foreign nation, may consider any material or source, whether or not submitted by a party or admissible under the rules of evidence, including but not limited to affidavits, testimony, briefs, and treatises. If the court considers sources other than those submitted by a party, it shall give all parties notice and a reasonable opportunity to comment on the sources and to submit further materials for review by the court. The court, and not a jury, shall determine the laws of foreign countries. The court's determination shall be subject to review as a ruling on a question of law.	**Rule 203. Determining Foreign Law** **(a) Raising a Foreign Law Issue.** A party who intends to raise an issue about a foreign country's law must: **(1)** give reasonable notice by a pleading or other writing; and **(2)** at least 30 days before trial, supply all parties a copy of any written materials or sources the party intends to use to prove the foreign law. **(b) Translations.** If the materials or sources were originally written in a language other than English, the party intending to rely on them must, at least 30 days before trial, supply all parties both a copy of the foreign language text and an English translation. **(c) Materials the Court May Consider; Notice.** In determining foreign law, the court may consider any material or source, whether or not admissible. If the court considers any material or source not submitted by a party, it must give all parties notice and a reasonable opportunity to comment and submit additional materials. **(d) Determination and Review.** The court—not the jury—must determine foreign law. The court's determination must be treated as a ruling on a question of law.

CURRENT TEXAS	RESTYLED TEXAS
RULE 204. DETERMINATION OF TEXAS CITY AND COUNTY ORDINANCES, THE CONTENTS OF THE TEXAS REGISTER, AND THE RULES OF AGENCIES PUBLISHED IN THE ADMINISTRATIVE CODE A court upon its own motion may, or upon the motion of a party shall, take judicial notice of the ordinances of municipalities and counties of Texas, of the contents of the Texas Register, and of the codified rules of the agencies published in the Administrative Code. Any party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court may deem necessary, to enable all parties fairly to prepare to meet the request. 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. The court's determination shall be subject to review as a ruling on a question of law.	**Rule 204. Judicial Notice of Texas Municipal and County Ordinances, Texas Register Contents, and Published Agency Rules** **(a) Scope.** This rule governs judicial notice of Texas municipal and county ordinances, the contents of the Texas Register, and agency rules published in the Texas Administrative Code. **(b) Taking Notice.** The court: **(1)** may take judicial notice on its own; or **(2)** must take judicial notice if a party requests it and the court is supplied with the necessary information. **(c) Notice and Opportunity to Be Heard.** **(1)** ***Notice.*** The court may require a party requesting judicial notice to notify all other parties of the request so they may respond to it. **(2)** ***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 matter to be noticed. If the court takes judicial notice before a party has been notified, the party, on request, is still entitled to be heard. **(d) Determination and Review.** The court—not the jury—must determine municipal and county ordinances, the contents of the Texas Register, and published agency rules. The court's determination must be treated as a ruling on a question of law.

ARTICLE III.
PRESUMPTIONS

CURRENT TEXAS	RESTYLED TEXAS
NO RULES ADOPTED AT THIS TIME	**NO RULES ADOPTED AT THIS TIME**

ARTICLE IV.
RELEVANCY AND ITS LIMITS

CURRENT TEXAS	RESTYLED TEXAS
RULE 401. DEFINITION OF "RELEVANT EVIDENCE" "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.	**Rule 401. Test for Relevant Evidence** Evidence is relevant if: **(a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and **(b)** the fact is of consequence in determining the action.

CURRENT TEXAS	RESTYLED TEXAS
RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority. Evidence which is not relevant is inadmissible.	**Rule 402. General Admissibility of Relevant Evidence** Relevant evidence is admissible unless any of the following provides otherwise: • the United States or Texas Constitution; • a statute; • these rules; or • other rules prescribed under statutory authority. Irrelevant evidence is not admissible.

CURRENT TEXAS	RESTYLED TEXAS
RULE 403. EXCLUSION OF RELEVANT EVIDENCE ON SPECIAL GROUNDS 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, or needless presentation of cumulative evidence.	**Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, or Other Reasons** The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.

CURRENT TEXAS	RESTYLED TEXAS
RULE 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES	**Rule 404. Character Evidence; Crimes or Other Acts**
(a) Character Evidence Generally. Evidence of a person's character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:	**(a) Character Evidence.**
	(1) ***Prohibited Uses.*** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
(1) *Character of accused*. Evidence of a pertinent character trait offered:	**(2)** ***Exceptions for an Accused.***
(A) by an accused in a criminal case, or by the prosecution to rebut the same, or	**(A)** In a criminal case, a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.
(B) by a party accused in a civil case of conduct involving moral turpitude, or by the accusing party to rebut the same;	**(B)** In a civil case, a party accused of conduct involving moral turpitude may offer evidence of the party's pertinent trait, and if the evidence is admitted, the accusing party may offer evidence to rebut it.
(2) *Character of victim*. In a criminal case and subject to Rule 412, evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of peaceable character of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or in a civil case, evidence of character for violence of the alleged victim of assaultive conduct offered on the issue of self-defense by a party accused of the assaultive conduct, or evidence of peaceable character to rebut the same;	**(3)** ***Exceptions for a Victim.***
	(A) In a criminal case, subject to the limitations in Rule 412, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.
	(B) In a homicide case, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.
	(C) In a civil case, a party accused of assaultive conduct may offer evidence of the victim's trait of violence to prove self-defense, and if the evidence is admitted, the accusing party may offer evidence

	of the victim's trait of peacefulness.
(3) *Character of witness*. Evidence of the character of a witness, as provided in rules 607, 608 and 609.	**(4)** ***Exceptions for a Witness.*** Evidence of a witness's character may be admitted under Rules 607, 608, and 609.
	(5) ***Definition of "Victim."*** In this rule, "victim" includes an alleged victim.
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 action 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 timely request by the accused in a criminal case, reasonable notice is given in advance of trial of intent to introduce in the State's case-in-chief such evidence other than that arising in the same transaction.	**(b) Crimes, Wrongs, or Other Acts.**
	(1) ***Prohibited Uses.*** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
	(2) ***Permitted Uses; Notice in Criminal Case.*** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On timely request by a defendant in a criminal case, the prosecutor must provide reasonable notice before trial that the prosecution intends to introduce such evidence — other than that arising in the same transaction — in its case-in-chief.

CURRENT TEXAS	RESTYLED TEXAS
RULE 405. METHODS OF PROVING CHARACTER	**Rule 405. Methods of Proving Character**
(a) Reputation or Opinion. In all cases in which evidence of a person's character or character trait is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. In a criminal case, to be qualified to testify at the guilt stage of trial concerning the character or character trait of an accused, a witness must have been familiar with the reputation, or with the underlying facts or information upon which the opinion is based, prior to the day of the offense. In all cases where testimony is admitted under this rule, on cross-examination inquiry is allowable into relevant specific instances of conduct.	**(a) By Reputation or Opinion.** **(1)** ***In General.*** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, inquiry may be made into relevant specific instances of the person's conduct. **(2)** ***Accused's Character in a Criminal Case.*** In the guilt stage of a criminal case, a witness may testify to the defendant's character or character trait only if, before the day of the offense, the witness was familiar with the defendant's reputation or the facts or information that form the basis of the witness's opinion.
(b) Specific Instances of Conduct. In cases in which a person's character or character trait is an essential element of a charge, claim or defense, proof may also be made of specific instances of that person's conduct.	**(b) By Specific Instances of Conduct.** When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

CURRENT TEXAS	RESTYLED TEXAS
RULE 406. HABIT; ROUTINE PRACTICE 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.	**Rule 406. Habit; Routine Practice** Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

CURRENT TEXAS	RESTYLED TEXAS
RULE 407. SUBSEQUENT REMEDIAL MEASURES; NOTIFICATION OF DEFECT	**Rule 407. Subsequent Remedial Measures; Notification of Defect**
(a) Subsequent Remedial Meaures. When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent remedial measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.	**(a) Subsequent Remedial Measures.** When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove: • negligence; • culpable conduct; • a defect in a product or its design; or • a need for a warning or instruction. But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.
(b) Notification of Defect. A written notification by a manufacturer of any defect in a product produced by such manufacturer to purchasers thereof is admissible against the manufacturer on the issue of existence of the defect to the extent that it is relevant.	**(b) Notification of Defect.** A manufacturer's written notification to a purchaser of a defect in one of its products is admissible against the manufacturer to prove the defect. **Comment to 2013 Restyling:** Rule 407 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

CURRENT TEXAS	RESTYLED TEXAS
RULE 408. COMPROMISE AND OFFERS TO COMPROMISE Evidence of (1) furnishing or offering or promising to furnish or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice or interest of a witness or a party, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.	**Rule 408. Compromise Offers and Negotiations** **(a) Prohibited Uses.** Evidence of the following is not admissible either to prove or disprove the validity or amount of a disputed claim: **(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 **(2)** conduct or statements made during compromise negotiations about the claim. **(b) Permissible Uses.** The court may admit this evidence for another purpose, such as proving a party's or witness's bias, prejudice, or interest, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. **Comment to 2013 Restyling:** Rule 408 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc. The reference to "liability" has been deleted on the ground that the deletion makes the Rule flow better and easier to read, and because "liability" is covered by the broader term "validity." Courts have not made substantive decisions on the basis of any distinction between validity and liability. No change in

	current practice or in the coverage of the Rule is intended. Finally, the sentence of the Rule referring to evidence "otherwise discoverable" has been deleted as superfluous. The intent of the sentence was to prevent a party from trying to immunize admissible information, such as a pre-existing document, through the pretense of disclosing it during compromise negotiations. But even without the sentence, the Rule cannot be read to protect pre-existing information simply because it was presented to the adversary in compromise negotiations.

CURRENT TEXAS	RESTYLED TEXAS
RULE 409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES 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.	**Rule 409. Offers to Pay Medical and Similar Expenses** Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

CURRENT TEXAS	RESTYLED TEXAS
RULE 410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS AND RELATED STATEMENTS Except as otherwise provided in this rule, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions: (1) a plea of guilty that was later withdrawn; (2) in civil cases, a plea of *nolo contendere,* and in criminal cases, a plea of *nolo contendere* that was later withdrawn; (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding, in a civil case, either a plea of guilty that was later withdrawn or a plea of *nolo contendere*, or in a criminal case, either a plea of guilty that was later withdrawn or a plea of *nolo contendere* that was later withdrawn; or (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority, in a civil case, that do not result in a plea of guilty or that result in a plea of guilty later withdrawn, or in a criminal case, that do not result in a plea of guilty or a plea of *nolo contendere* or that results in a plea, later withdrawn, of guilty or *nolo contendere.* However, such a statement is admissible in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.	**Rule 410. Pleas, Plea Discussions, and Related Statements** **(a) Prohibited Uses in Civil Cases.** In a civil case, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions: **(1)** a guilty plea that was later withdrawn; **(2)** a nolo contendere plea; **(3)** a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or **(4)** a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea. **(b) Prohibited Uses in Criminal Cases.** In a criminal case, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions: **(1)** a guilty plea that was later withdrawn; **(2)** a nolo contendere plea that was later withdrawn; **(3)** a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or **(4)** a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty or nolo contendere plea or they resulted in a later-withdrawn guilty or nolo contendere plea.

	(c) Exception. In a civil case, the court may admit a statement described in paragraph (a)(3) or (4) and in a criminal case, the court may admit a statement described in paragraph (b)(3) or (4), when another statement made during the same plea or plea discussions has been introduced and in fairness the statements ought to be considered together.

CURRENT TEXAS	RESTYLED TEXAS
RULE 411. LIABILITY INSURANCE Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another issue, such as proof of agency, ownership, or control, if disputed, or bias or prejudice of a witness.	**Rule 411. Liability Insurance** Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or, if disputed, proving agency, ownership, or control.

CURRENT TEXAS	RESTYLED TEXAS
RULE 412. EVIDENCE OF PREVIOUS SEXUAL CONDUCT IN CRIMINAL CASES	**Rule 412. Evidence of Previous Sexual Conduct in Criminal Cases**
(a) Reputation or Opinion Evidence. In a prosecution for sexual assault or aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault, reputation or opinion evidence of the past sexual behavior of an alleged victim of such crime is not admissible.	**(a) In General.** The following evidence is not admissible in a prosecution for sexual assault, aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault: **(1)** reputation or opinion evidence of a victim's past sexual behavior; or **(2)** specific instances of a victim's past sexual behavior.
(b) Evidence of Specific Instances. In a prosecution for sexual assault or aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault, evidence of specific instances of an alleged victim's past sexual behavior is also not admissible, unless: (1) such evidence is admitted in accordance with paragraphs (c) and (d) of this rule; (2) it is evidence: (A) that is necessary to rebut or explain scientific or medical evidence offered by the State; (B) of past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior which is the basis of the offense charged; (C) that relates to the motive or bias of the alleged victim; (D) is admissible under Rule 609; or (E) that is constitutionally required to be admitted; and (3) its probative value outweighs the danger of unfair prejudice.	**(b) Exceptions for Specific Instances.** Evidence of specific instances of a victim's past sexual behavior is admissible if: **(1)** the court admits the evidence in accordance with subdivisions (c) and (d); **(2)** the evidence: **(A)** is necessary to rebut or explain scientific or medical evidence offered by the prosecutor; **(B)** concerns past sexual behavior with the defendant and is offered by the defendant to prove consent; **(C)** relates to the victim's motive or bias; **(D)** is admissible under Rule 609; or **(E)** is constitutionally required to be admitted; and **(3)** the probative value of the evidence outweighs the danger of unfair prejudice. **(c) Procedure for Offering Evidence.** Before offering any evidence of the victim's past sexual behavior, the defendant must inform the court outside the jury's presence. The

(c) Procedure for Offering Evidence. If the defendant proposes to introduce any documentary evidence or to ask any question, either by direct examination or cross-examination of any witness, concerning specific instances of the alleged victim's past sexual behavior, the defendant must inform the court out of the hearing of the jury prior to introducing any such evidence or asking any such question. After this notice, the court shall conduct an in camera hearing, recorded by the court reporter, to determine whether the proposed evidence is admissible under paragraph (b) of this rule. The court shall determine what evidence is admissible and shall accordingly limit the questioning. The defendant shall not go outside these limits or refer to any evidence ruled inadmissible in camera without prior approval of the court without the presence of the jury. **(d) Record Sealed.** The court shall seal the record of the in camera hearing required in paragraph (c) of this rule for delivery to the appellate court in the event of an appeal.	court must then conduct an in camera hearing, recorded by a court reporter, and determine whether the proposed evidence is admissible. The defendant may not refer to any evidence ruled inadmissible without first requesting and gaining the court's approval outside the jury's presence. **(d) Record Sealed.** The court must preserve the record of the in camera hearing, under seal, as part of the record. **(e) Definition of "Victim."** In this rule, "victim" includes an alleged victim.

ARTICLE V.
PRIVILEGES

CURRENT TEXAS	**RESTYLED TEXAS**
RULE 501. PRIVILEGES RECOGNIZED ONLY AS PROVIDED Except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority, no person has a privilege to: (1) refuse to be a witness; (2) refuse to disclose any matter; (3) refuse to produce any object or writing; or (4) prevent another from being a witness or disclosing any matter or producing any object or writing.	**Rule 501. Privileges in General** Unless a Constitution, a statute, or these or other rules prescribed under statutory authority provide otherwise, no person has a privilege to: **(a)** refuse to be a witness; **(b)** refuse to disclose any matter; **(c)** refuse to produce any object or writing; or **(d)** prevent another from being a witness, disclosing any matter, or producing any object or writing.

CURRENT TEXAS	RESTYLED TEXAS
RULE 502. REQUIRED REPORTS PRIVILEGED BY STATUTE A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring it to be made so provides. A public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if the law requiring it to be made so provides. No privilege exists under this rule in actions involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.	**Rule 502. Required Reports Privileged By Statute** **(a) In General.** If a law requiring a return or report to be made so provides: **(1)** a person, corporation, association, or other organization or entity—whether public or private—that makes the required return or report has a privilege to refuse to disclose it and to prevent any other person from disclosing it; and **(2)** a public officer or agency to whom the return or report must be made has a privilege to refuse to disclose it. **(b) Exceptions.** This privilege does not apply in an action involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.

CURRENT TEXAS	RESTYLED TEXAS
RULE 503. LAWYER-CLIENT PRIVILEGE	**Rule 503. Lawyer–Client Privilege**
(a) Definitions. As used in this rule:	**(a) Definitions.** In this rule:
(1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from that lawyer.	**(1)** A "client" is a person, public officer, or corporation, association, or other organization or entity–whether public or private–that: **(A)** is rendered professional legal services by a lawyer; or **(B)** consults a lawyer with a view to obtaining professional legal services.
(2) A "representative of the client" is: (A) a person having authority to obtain professional legal services, or to act on advice thereby rendered, on behalf of the client, or (B) any other person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the scope of employment for the client.	**(2)** A "client's representative" is: **(A)** a person who has authority to obtain professional legal services for the client or to act for the client on the legal advice rendered; or **(B)** any other person who, to facilitate the rendition of professional legal services to the client, makes or receives a confidential communication while acting in the scope of employment for the client.
(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation.	**(3)** A "lawyer" is a person authorized, or who the client reasonably believes is authorized, to practice law in any state or nation.
(4) A "representative of the lawyer" is: (A) one employed by the lawyer to assist the lawyer in the rendition of professional legal services; or (B) an accountant who is reasonably necessary for the lawyer's rendition of professional legal services.	**(4)** A "lawyer's representative" is: **(A)** one employed by the lawyer to assist in the rendition of professional legal services; or **(B)** an accountant who is reasonably necessary for the lawyer's rendition of professional legal services.
(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the	**(5)** A communication is "confidential" if not intended to be disclosed to third persons other than those:

rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.	**(A)** to whom disclosure is made to further the rendition of professional legal services to the client; or **(B)** reasonably necessary to transmit the communication.
(b) Rules of Privilege.	**(b) Rules of Privilege.**
(1) *General rule of privilege*. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:	**(1)** ***General Rule.*** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:
(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;	**(A)** between the client or the client's representative and the client's lawyer or the lawyer's representative;
(B) between the lawyer and the lawyer's representative;	**(B)** between the client's lawyer and the lawyer's representative;
(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;	**(C)** by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;
(D) between representatives of the client or between the client and a representative of the client; or	**(D)** between the client's representatives or between the client and the client's representative; or
(E) among lawyers and their representatives representing the same client.	**(E)** among lawyers and their representatives representing the same client.
(2) *Special rule of privilege in criminal cases*. In criminal cases, a client has a privilege to prevent the lawyer or lawyer's representative from disclosing any other fact which came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.	**(2)** ***Special Rule in a Criminal Case.*** In a criminal case, a client has a privilege to prevent a lawyer or lawyer's representative from disclosing any other fact that came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.

(c) Who May Claim the Privilege. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.	**(c) Who May Claim.** The privilege may be claimed by: **(1)** the client; **(2)** the client's guardian or conservator; **(3)** a deceased client's personal representative; or **(4)** the successor, trustee, or similar representative of a corporation, association, or other organization or entity — whether or not in existence. The person who was the client's lawyer or the lawyer's representative when the communication was made may claim the privilege on the client's behalf – and is presumed to have authority to do so.
(d) Exceptions. There is no privilege under this rule: (1) *Furtherance of crime or fraud*. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; (2) *Claimants through same deceased client*. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by *inter vivos* transactions; (3) *Breach of duty by a lawyer or client*. As to a communication relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer; (4) *Document attested by a lawyer*. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or (5) *Joint clients*. As to a communication relevant to a matter of common interest	**(d) Exceptions.** This privilege does not apply: **(1)** ***Furtherance of Crime or Fraud.*** If the lawyer's services were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud. **(2)** ***Claimants Through Same Deceased Client.*** If the communication is relevant to an issue between parties claiming through the same deceased client. **(3)** ***Breach of Duty By a Lawyer or Client.*** If the communication is relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer. **(4)** ***Document Attested By a Lawyer.*** If the communication is relevant to an issue concerning an attested document to which the lawyer is an attesting witness. **(5)** ***Joint Clients.*** If the communication: **(A)** is offered in an action between clients who retained or consulted a lawyer in common;

between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.	**(B)** was made by any of the clients to the lawyer; and **(C)** is relevant to a matter of common interest between the clients.

CURRENT TEXAS	RESTYLED TEXAS
RULE 504. HUSBAND–WIFE PRIVILEGES	**Rule 504. Spousal Privileges**
(a) Confidential Communication Privilege.	**(a) Confidential Communication Privilege.**
(1) *Definition*. A communication is confidential if it is made privately by any person to the person's spouse and it is not intended for disclosure to any other person.	**(1)** ***Definition*****.** A communication is "confidential" if a person makes it privately to the person's spouse and does not intend its disclosure to any other person.
(2) *Rule of privilege*. A person, whether or not a party, or the guardian or representative of an incompetent or deceased person, has a privilege during marriage and afterwards to refuse to disclose and to prevent another from disclosing a confidential communication made to the person's spouse while they were married.	**(2)** ***General Rule.*** A person has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made to the person's spouse while they were married. This privilege survives termination of the marriage.
(3) *Who may claim the privilege*. The confidential communication privilege may be claimed by the person or the person's guardian or representative, or by the spouse on the person's behalf. The authority of the spouse to do so is presumed.	**(3)** ***Who May Claim*****.** The privilege may be claimed by: **(A)** the communicating spouse; **(B)** the guardian of an incompetent communicating spouse; or **(C)** the personal representative of a deceased communicating spouse. The other spouse may claim the privilege on the communicating spouse's behalf – and is presumed to have authority to do so.
(4) *Exceptions*. There is no confidential communication privilege:	**(4)** ***Exceptions.*** This privilege does not apply:
(A) *Furtherance of crime or fraud*. If the communication was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or fraud.	**(A)** ***Furtherance of Crime or Fraud.*** If the communication is made – wholly or partially – to enable or aid anyone to commit or plan to commit a crime or fraud.
(B) *Proceeding between spouses in civil cases*. In (A) a proceeding brought by or on behalf of one spouse against the other spouse, or (B) a proceeding between a surviving spouse and a person who claims through the	**(B)** ***Proceeding Between Spouse and Other Spouse or Claimant Through Deceased Spouse.*** In a civil proceeding: **(i)** brought by or on behalf of one

deceased spouse, regardless of whether the claim is by testate or intestate succession or by *inter vivos* transaction.	spouse against the other; or **(ii)** between a surviving spouse and a person claiming through the deceased spouse.
(C) *Crime against spouse or minor child*. In a proceeding in which the party is accused of conduct which, if proved, is a crime against the person of the spouse, any minor child, or any member of the household of either spouse, or, in a criminal proceeding, when the offense charged is under Section 25.01, Penal Code (Bigamy).	**(C)** ***Crime Against Family, Spouse, Household Member, or Minor Child.*** In a: **(i)** proceeding in which a party is accused of conduct that, if proved, is a crime against the person of the other spouse, any member of the household of either spouse, or any minor child; or **(ii)** criminal proceeding involving a charge of bigamy under Section 25.01 of the Penal Code.
(D) *Commitment or similar proceeding*. In a proceeding to commit either spouse or otherwise to place that person or that person's property, or both, under the control of another because of an alleged mental or physical condition.	**(D)** ***Commitment or Similar Proceeding.*** In a proceeding to commit either spouse or otherwise to place the spouse or the spouse's property under another's control because of a mental or physical condition.
(E) *Proceeding to establish competence*. In a proceeding brought by or on behalf of either spouse to establish competence.	**(E)** ***Proceeding to Establish Competence.*** In a proceeding brought by or on behalf of either spouse to establish competence.
(b) Privilege not to Testify in Criminal Case. (1) *Rule of privilege*. In a criminal case, the spouse of the accused has a privilege not to be called as a witness for the state. This rule does not prohibit the spouse from testifying voluntarily for the state, even over objection by the accused. A spouse who testifies on behalf of an accused is subject to cross-examination as provided in rule 611(b).	**(b) Privilege Not to Testify in a Criminal Case.** **(1)** ***General Rule.*** In a criminal case, an accused's spouse has a privilege not to be called to testify for the state. But this rule neither prohibits a spouse from testifying voluntarily for the state nor gives a spouse a privilege to refuse to be called to testify for the accused.
(2) *Failure to call as witness*. Failure by an accused to call the accused's spouse as a witness, where other evidence indicates that the spouse could testify to relevant	**(2)** ***Failure to Call Spouse.*** If other evidence indicates that the accused's spouse could testify to relevant matters, an accused's failure to call the spouse to testify is a proper subject of comment

matters, is a proper subject of comment by counsel. (3) *Who may claim the privilege*. The privilege not to testify may be claimed by the person or the person's guardian or representative but not by that person's spouse. (4) *Exceptions*. The privilege of a person's spouse not to be called as a witness for the state does not apply: (A) *Certain criminal proceedings.* In any proceeding in which the person is charged with a crime against the person's spouse, a member of the household of either spouse, or any minor, or, in an offense charged under Section 25.01, Penal Code (Bigamy). (B) *Matters occurring prior to marriage*. As to matters occurring prior to the marriage.	by counsel. **(3)** ***Who May Claim*.** The privilege not to testify may be claimed by the accused's spouse or the spouse's guardian or representative, but not by the accused. **(4)** ***Exceptions*.** This privilege does not apply: **(A)** ***Certain Criminal Proceedings.*** In a criminal proceeding in which a spouse is charged with: **(i)** a crime against the other spouse, any member of the household of either spouse, or any minor child; or **(ii)** bigamy under Section 25.01 of the Penal Code. **(B)** ***Matters That Occurred Before the Marriage.*** If the spouse is called to testify about matters that occurred before the marriage. **Comment to 2013 Restyling**: Previously, Rule 504(b)(1) provided that, "A spouse who testifies on behalf of an accused is subject to cross-examination as provided in Rule 611(b)." That sentence was included in the original version of Rule 504 when the Texas Rules of Criminal Evidence were promulgated in 1986 and changed the rule to a testimonial privilege held by the witness spouse. Until then, a spouse was deemed incompetent to testify against his or her defendant spouse, and when a spouse testified on behalf of a defendant spouse, the state was limited to cross-examining the spouse about matters relating to the spouse's direct testimony. The quoted sentence from the original Criminal Rule 504(b) was designed to overturn this limitation and allow the state to cross-examine a testifying spouse in the same manner as any other witness. More than twenty-five years later, it is clear that a spouse who testifies either for or against a defendant spouse may be cross-examined in the same manner as any other witness. Therefore, the continued inclusion in the rule of a provision that refers only to the

	cross-examination of a spouse who testifies on behalf of the accused is more confusing than helpful. Its deletion is designed to clarify the rule and does not change existing law.

CURRENT TEXAS	RESTYLED TEXAS
RULE 505. COMMUNICATIONS TO MEMBERS OF THE CLERGY	**Rule 505. Privilege For Communications to a Clergy Member**
(a) Definitions. As used in this rule: (1) A "member of the clergy" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or an individual reasonably believed so to be by the person consulting with such individual. (2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.	**(a) Definitions.** In this rule: **(1)** A "clergy member" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or someone whom a communicant reasonably believes is a clergy member. **(2)** A "communicant" is a person who consults a clergy member in the clergy member's professional capacity as a spiritual adviser. **(3)** A communication is "confidential" if made privately and not intended for further disclosure except to other persons present to further the purpose of the communication.
(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the member's professional character as spiritual adviser.	**(b) General Rule.** A communicant has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication by the communicant to a clergy member in the clergy member's professional capacity as spiritual adviser.
(c) Who May Claim the Privilege. The privilege may be claimed by the person, by the person's guardian or conservator, or by the personal representative of the person if the person is deceased. The member of the clergy to whom the communication was made is presumed to have authority to claim the privilege but only on behalf of the communicant.	**(c) Who May Claim.** The privilege may be claimed by: **(1)** the communicant; **(2)** the communicant's guardian or conservator; or **(3)** a deceased communicant's personal representative. The clergy member to whom the communication was made may claim the privilege on the communicant's behalf – and is presumed to have authority to do so.

CURRENT TEXAS	RESTYLED TEXAS
RULE 506. POLITICAL VOTE Every person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.	**Rule 506. Political Vote Privilege** A person has a privilege to refuse to disclose the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

CURRENT TEXAS	RESTYLED TEXAS
RULE 507. TRADE SECRETS A person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.	**Rule 507. Trade Secrets Privilege** **(a) General Rule.** A person has a privilege to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, unless the court finds that nondisclosure will tend to conceal fraud or otherwise work injustice. **(b) Who May Claim.** The privilege may be claimed by the person who owns the trade secret or the person's agent or employee. **(c) Protective Measure.** If a court orders a person to disclose a trade secret, it must take any protective measure required by the interests of the privilege holder and the parties and to further justice.

CURRENT TEXAS	RESTYLED TEXAS
RULE 508. IDENTITY OF INFORMER	**Rule 508. Informer's Identity Privilege**
(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.	**(a) General Rule.** The United States, a state, or a subdivision of either has a privilege to refuse to disclose a person's identity if: **(1)** the person has furnished information to a law enforcement officer or a member of a legislative committee or its staff conducting an investigation of a possible violation of law; and **(2)** the information relates to or assists in the investigation.
(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.	**(b) Who May Claim.** The privilege may be claimed by an appropriate representative of the public entity to which the informer furnished the information. The court in a criminal case must reject the privilege claim if the state objects.
(c) Exceptions.	**(c) Exceptions.**
(1) *Voluntary disclosure; informer a witness*. No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the public entity.	**(1)** ***Voluntary Disclosure; Informer a Witness.*** This privilege does not apply if: **(A)** the informer's identity or the informer's interest in the communication's subject matter has been disclosed – by a privilege holder or the informer's own action – to a person who would have cause to resent the communication; or **(B)** the informer appears as a witness for the public entity.
(2) *Testimony on merits*. If it appears from the evidence in the case or from other showing by a party that an informer may be able to give testimony necessary to a fair determination of a material issue on the merits in a civil case to which the public entity is a party, or on guilt or innocence in a criminal case, and the public entity invokes the privilege, the court shall give the public entity an opportunity to show in camera	**(2)** ***Testimony About the Merits.*** **(A)** ***Criminal Case.*** In a criminal case, this privilege does not apply if the court finds a reasonable probability exists that the informer can give testimony necessary to a fair determination of guilt or innocence. If the court so finds and the public entity elects not to disclose the

facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds that there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose the informer's identity, the court in a civil case may make any order that justice requires, and in a criminal case shall, on motion of the defendant, and may, on the court's own motion, dismiss the charges as to which the testimony would relate. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the public entity. All counsel and parties shall be permitted to be present at every stage of proceedings under this subdivision except a showing in camera, at which no counsel or party shall be permitted to be present.	informer's identity: **(i)** on the defendant's motion, the court must dismiss the charges to which the testimony would relate; or **(ii)** on its own motion, the court may dismiss the charges to which the testimony would relate. **(B)** ***Certain Civil Cases.*** In a civil case in which the public entity is a party, this privilege does not apply if the court finds a reasonable probability exists that the informer can give testimony necessary to a fair determination of a material issue on the merits. If the court so finds and the public entity elects not to disclose the informer's identity, the court may make any order that justice requires. **(C)** ***Procedures.*** **(i)** If it appears that an informer may be able to give the testimony required to invoke this exception and the public entity claims the privilege, the court must give the public entity an opportunity to show in camera facts relevant to determining whether this exception is met. The showing should ordinarily be made by affidavits, but the court may take testimony if it finds the matter cannot be satisfactorily resolved by affidavits. **(ii)** No counsel or party may attend the in camera showing. **(iii)** The court must seal and preserve for appeal evidence submitted under this subparagraph (2)(C). The evidence must not otherwise be

	revealed without the public entity's consent.
(3) *Legality of obtaining evidence.* If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the court is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, it may require the identity of the informer to be disclosed. The court shall, on request of the public entity, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this subdivision except a disclosure in camera, at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the public entity.	**(3)** ***Legality of Obtaining Evidence.*** **(A)** ***Court May Order Disclosure.*** The court may order the public entity to disclose an informer's identity if: **(i)** information from an informer is relied on to establish the legality of the means by which evidence was obtained; and **(ii)** the court is not satisfied that the information was received from an informer reasonably believed to be reliable or credible. **(B)** ***Procedures.*** **(i)** On the public entity's request, the court must order the disclosure be made in camera. **(ii)** No counsel or party may attend the in camera disclosure. **(iii)** If the informer's identity is disclosed in camera, the court must seal and preserve for appeal the record of the in camera proceeding. The record of the in camera proceeding must not otherwise be revealed without the public entity's consent.

CURRENT TEXAS	RESTYLED TEXAS
RULE 509. PHYSICIAN–PATIENT PRIVILEGE	**Rule 509. Physician–Patient Privilege**
(a) Definitions. As used in this rule:	**(a) Definitions.** In this rule:
(1) A "patient" means any person who consults or is seen by a physician to receive medical care.	**(1)** A "patient" is a person who consults or is seen by a physician for medical care.
(2) A "physician" means a person licensed to practice medicine in any state or nation, or reasonably believed by the patient so to be.	**(2)** A "physician" is a person licensed, or who the patient reasonably believes is licensed, to practice medicine in any state or nation.
(3) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or those reasonably necessary for the transmission of the communication, or those who are participating in the diagnosis and treatment under the direction of the physician, including members of the patient's family.	**(3)** A communication is "confidential" if not intended to be disclosed to third persons other than those: **(A)** present to further the patient's interest in the consultation, examination, or interview; **(B)** reasonably necessary to transmit the communication; or **(C)** participating in the diagnosis and treatment under the physician's direction, including members of the patient's family.
(b) Limited Privilege in Criminal Proceedings. There is no physician-patient privilege in criminal proceedings. However, a communication to any person involved in the treatment or examination of alcohol or drug abuse by a person being treated voluntarily or being examined for admission to treatment for alcohol or drug abuse is not admissible in a criminal proceeding.	**(b) Limited Privilege in a Criminal Case.** There is no physician-patient privilege in a criminal case. But a confidential communication is not admissible in a criminal case if made: **(1)** to a person involved in the treatment of or examination for alcohol or drug abuse; and **(2)** by a person being treated voluntarily or being examined for admission to treatment for alcohol or drug abuse.
	(b) Limited Privilege in a Criminal Case. There is no physician-patient privilege in a criminal case. But in a criminal case, a person has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication that was made by the person to anyone

Comment [sg1]: First version. Expressed as a rule of inadmissibility.

Comment [sg2]: Second alternative. Expressed as a privilege.

(c) General Rule of Privilege in Civil Proceedings. In a civil proceeding: (1) Confidential communications between a physician and a patient, relative to or in connection with any professional services rendered by a physician to the patient are privileged and may not be disclosed. (2) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed. (3) The provisions of this rule apply even if the patient received the services of a physician prior to the enactment of the Medical Liability and Insurance Improvement Act, TEX. REV. CIV. STAT. art. 4590i.	involved in the treatment of or examination for alcohol or drug abuse if the person was being: **(1)** treated voluntarily for alcohol or drug abuse; or **(2)** examined for admission to treatment for alcohol or drug abuse. **(c) General Rule in a Civil Case.** In a civil case, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing: **(1)** a confidential communication between a physician and the patient that relates to or was made in connection with any professional services the physician rendered the patient; and **(2)** a record of the patient's identity, diagnosis, evaluation, or treatment created or maintained by a physician.
(d) Who May Claim the Privilege in a Civil Proceeding. In a civil proceeding: (1) The privilege of confidentiality may be claimed by the patient or by a representative of the patient acting on the patient's behalf. (2) The physician may claim the privilege of confidentiality, but only on behalf of the patient. The authority to do so is presumed in the absence of evidence to the contrary.	**(d) Who May Claim in a Civil Case.** The privilege may be claimed by: **(1)** the patient; or **(2)** the patient's representative on the patient's behalf. The physician may claim the privilege on the patient's behalf — and is presumed to have authority to do so.
(e) Exceptions in a Civil Proceeding. Exceptions to confidentiality or privilege in administrative proceedings or in civil proceedings in court exist: (1) when the proceedings are brought by the patient against a physician, including but not limited to malpractice proceedings, and in any license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a physician; (2) when the patient or someone authorized	**(e) Exceptions in a Civil Case.** This privilege does not apply: **(1)** ***Proceeding Against Physician.*** If the communication or record is relevant to a physician's claim or defense in: **(A)** a proceeding the patient brings against a physician; or **(B)** a license revocation proceeding in which the patient is a complaining witness.

to act on the patient's behalf submits a written consent to the release of any privileged information, as provided in paragraph (f);	**(2)** ***Consent.*** If the patient or a person authorized to act on the patient's behalf consents in writing to the release of any privileged information, as provided in subdivision (f).
(3) when the purpose of the proceedings is to substantiate and collect on a claim for medical services rendered to the patient;	**(3)** ***Action to Collect.*** In an action to collect a claim for medical services rendered to the patient.
(4) as to a communication or record relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense;	**(4)** ***Party Relies on Patient's Condition.*** If any party relies on the patient's physical, mental, or emotional condition as a part of the party's claim or defense and the communication or record is relevant to that condition.
(5) in any disciplinary investigation or proceeding of a physician conducted under or pursuant to the Medical Practice Act, TEX. REV. CIV. STAT. art. 4495b, or of a registered nurse under or pursuant to TEX. REV. CIV. STAT. arts. 4525, 4527a, 4527b, and 4527c, provided that the board shall protect the identity of any patient whose medical records are examined, except for those patients covered under subparagraph (e)(1) or those patients who have submitted written consent to the release of their medical records as provided by paragraph (f);	**(5)** ***Disciplinary Investigation or Proceeding.*** In a disciplinary investigation of or proceeding against a physician under the Medical Practice Act, Tex. Occ. Code § 164.001 et seq., or a registered nurse under Tex. Occ. Code § 301.451 et seq. But the board conducting the investigation or proceeding must protect the identity of any patient whose medical records are examined unless: **(A)** the patient's records would be subject to disclosure under paragraph (e)(1); or **(B)** the patient has consented in writing to the release of medical records, as provided in subdivision (f).
(6) in an involuntary civil commitment proceeding, proceeding for court-ordered treatment, or probable cause hearing under TEX. HEALTH & SAFETY CODE ch. 464; tit. 7, subtit. C; and tit. 7, subtit. D;	**(6)** ***Involuntary Civil Commitment or Similar Proceeding.*** In a proceeding for involuntary civil commitment or court-ordered treatment, or a probable cause hearing under Tex. Health & Safety Code: **(A)** chapter 464 (Facilities Treating Alcoholics and Drug-Dependent Persons); **(B)** title 7, subtitle C (Texas Mental Health Code); or

	(C) title 7, subtitle D (Persons With Mental Retardation Act).
(7) in any proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of the resident of an "institution" as defined in TEX. HEALTH & SAFETY CODE § 242.002.	**(7)** ***Abuse or Neglect of "Institution" Resident.*** In a proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of a resident of an "institution" as defined in Tex. Health & Safety Code § 242.002.
(f) Consent.	**(f) Consent For Release of Privileged Information.**
(1) Consent for the release of privileged information must be in writing and signed by the patient, or a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage personal affairs, or an attorney ad litem appointed for the patient, as authorized by TEX. HEALTH & SAFETY CODE tit. 7, subtits. C and D; TEX. PROB. CODE ch. V; and TEX. FAM. CODE § 107.011; or a personal representative if the patient is deceased, provided that the written consent specifies the following:	**(1)** Consent for the release of privileged information must be in writing and signed by:
(A) the information or medical records to be covered by the release;	**(A)** the patient;
(B) the reasons or purposes for the release; and	**(B)** a parent or legal guardian if the patient is a minor;
(C) the person to whom the information is to be released.	**(C)** a legal guardian if the patient has been adjudicated incompetent to manage personal affairs;
(2) The patient, or other person authorized to consent, has the right to withdraw consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal.	**(D)** an attorney appointed for the patient under Tex. Health & Safety Code title 7, subtitles C and D;
(3) Any person who received information made privileged by this rule may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.	**(E)** an attorney ad litem appointed for the patient under Tex. Prob. Code chapter XIII;
	(F) an attorney ad litem or guardian ad litem appointed for a minor under Tex. Fam. Code chapter 107, subchapter B; or
	(G) a personal representative if the patient is deceased.
	(2) The consent must specify:
	(A) the information or medical records covered by the release;
	(B) the reasons or purposes for the release; and
	(C) the person to whom the information

Comment [sg3]: NOTE: The Probate Code is scheduled to be replaced by the Texas Estates Code on 1/1/2014. The corresponding citation will be Tex. Estates Code title 3, subtitle E.

	is to be released. **(3)** The patient, or other person authorized to consent, may withdraw consent to the release of any information. But a withdrawal of consent does not affect any information disclosed before the patient or authorized person gave written notice of the withdrawal. **(4)** Any person who receives information privileged under this rule may disclose the information only to the extent consistent with the purposes specified in the consent. **Comment to 2013 Restyling:** The physician-patient privilege in a civil case was first enacted in Texas in 1981 as part of the Medical Practice Act, formerly codified in Tex. Rev. Civ. Stat. art. 4495b. That statute provided that the privilege applied even if a patient had received a physician's services before the statute's enactment. Because more than thirty years have now passed, it is no longer necessary to burden the text of the rule with a statement regarding the privilege's retroactive application. But deleting this statement from the rule's text is not intended as a substantive change in the law. The former rule's reference to "confidentiality or" and "administrative proceedings" in subdivision (e) [Exceptions in a Civil Case] has been deleted. First, this rule is a privilege rule only. Tex. Occ. Code § 159.004 sets forth exceptions to a physician's duty to maintain confidentiality of patient information outside court and administrative proceedings. Second, by their own terms the rules of evidence govern only proceedings in Texas courts. See Rule 101(b). To the extent the rules apply in administrative proceedings, it is because the Administrative Procedure Act mandates their applicability. Tex. Gov't Code § 2001.083 provides that "In a contested case, a state agency shall give effect to the rules of privilege recognized by law." Section 2001.091 excludes privileged material from discovery in contested administrative cases. Statutory references in the former rule that are

	no longer up-to-date have been revised.

CURRENT TEXAS	RESTYLED TEXAS
RULE 510. CONFIDENTIALITY OF MENTAL HEALTH INFORMATION IN CIVIL CASES	**Rule 510. Mental Health Information Privilege in Civil Cases**
(a) Definitions. As used in this rule:	**(a) Definitions.** In this rule:
(1) "Professional" means any person:	**(1)** A "professional" is a person:
(A) authorized to practice medicine in any state or nation;	**(A)** authorized to practice medicine in any state or nation;
(B) licensed or certified by the State of Texas in the diagnosis, evaluation or treatment of any mental or emotional disorder;	**(B)** licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional disorder;
(C) involved in the treatment or examination of drug abusers; or	**(C)** involved in the treatment or examination of drug abusers; or
(D) reasonably believed by the patient to be included in any of the preceding categories.	**(D)** who the patient reasonably believes to be a professional under this rule.
(2) "Patient" means any person who:	**(2)** A "patient" is a person who:
(A) consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and drug addiction; or	**(A)** consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and drug addiction; or
(B) is being treated voluntarily or being examined for admission to voluntary treatment for drug abuse.	**(B)** is being treated voluntarily or being examined for admission to voluntary treatment for drug abuse.
(3) A representative of the patient is:	**(3)** A "patient's representative" is:
(A) any person bearing the written consent of the patient;	**(A)** any person who has the patient's written consent;
(B) a parent if the patient is a minor;	**(B)** the parent of a minor patient;
(C) a guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs; or	**(C)** the guardian of a patient who has been adjudicated incompetent to manage personal affairs; or
(D) the patient's personal representative if the patient is deceased.	**(D)** the personal representative of a deceased patient.
	(4) A communication is "confidential" if

(4) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the diagnosis, examination, evaluation, or treatment, or those reasonably necessary for the transmission of the communication, or those who are participating in the diagnosis, examination, evaluation, or treatment under the direction of the professional, including members of the patient's family.	not intended to be disclosed to third persons other than those: **(A)** present to further the patient's interest in the diagnosis, examination, evaluation, or treatment; **(B)** reasonably necessary to transmit the communication; or **(C)** participating in the diagnosis, examination, evaluation, or treatment under the professional's direction, including members of the patient's family.
(b) General Rule of Privilege. (1) Communication between a patient and a professional is confidential and shall not be disclosed in civil cases. (2) Records of the identity, diagnosis, evaluation, or treatment of a patient which are created or maintained by a professional are confidential and shall not be disclosed in civil cases. (3) Any person who received information from confidential communications or records as defined herein, other than a representative of the patient acting on the patient's behalf, shall not disclose in civil cases the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained. (4) The provisions of this rule apply even if the patient received the services of a professional prior to the enactment of TEX. REV. CIV. STAT. art. 5561h (Vernon Supp. 1984)(now codified as TEX. HEALTH & SAFETY CODE § 611.001–611.008).	**(b) General Rule; Disclosure.** **(1)** In a civil case, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing: **(A)** a confidential communication between the patient and a professional; and **(B)** a record of the patient's identity, diagnosis, evaluation, or treatment that is created or maintained by a professional. **(2)** In a civil case, any person — other than a patient's representative acting on the patient's behalf — who receives information privileged under this rule may disclose the information only to the extent consistent with the purposes for which it was obtained.
(c) Who May Claim the Privilege. (1) The privilege of confidentiality may be claimed by the patient or by a representative of the patient acting on the patient's behalf. (2) The professional may claim the privilege of confidentiality but only on behalf of the patient. The authority to do so is presumed in	**(c) Who May Claim.** The privilege may be claimed by: **(1)** the patient; or **(2)** the patient's representative on the patient's behalf. The professional may claim the privilege on the patient's behalf — and is presumed to have authority to do so.

the absence of evidence to the contrary. **(d) Exceptions.** Exceptions to the privilege in court or administrative proceedings exist: (1) when the proceedings are brought by the patient against a professional, including but not limited to malpractice proceedings, and in any license revocation proceedings in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional; (2) when the patient waives the right in writing to the privilege of confidentiality of any information, or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege; (3) when the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the patient; (4) when the judge finds that the patient after having been previously informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, providing that such communications shall not be privileged only with respect to issues involving the patient's mental or emotional health. On granting of the order, the court, in determining the extent to which any disclosure of all or any part of any communication is necessary, shall impose appropriate safeguards against unauthorized disclosure; (5) as to a communication or record relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense; (6) in any proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of the resident of an institution as defined in	**(d) Exceptions.** This privilege does not apply: **(1)** ***Proceeding Against Professional.*** If the communication or record is relevant to a professional's claim or defense in: **(A)** a proceeding the patient brings against a professional; or **(B)** a license revocation proceeding in which the patient is a complaining witness. **(2)** ***Written Waiver.*** If the patient or a person authorized to act on the patient's behalf waives the privilege in writing. **(3)** ***Action to Collect.*** In an action to collect a claim for mental or emotional health services rendered to the patient. **(4)** ***Communication Made in Court-Ordered Examination.*** To a communication the patient made to a professional during a court-ordered examination relating to the patient's mental or emotional condition or disorder if: **(A)** the patient made the communication after being informed that it would not be privileged; **(B)** the communication is offered to prove an issue involving the patient's mental or emotional health; and **(C)** the court imposes appropriate safeguards against unauthorized disclosure. **(5)** ***Party Relies on Patient's Condition.*** If any party relies on the patient's physical, mental, or emotional condition as a part of the party's claim or defense and the communication or record is relevant to that condition.

TEX. HEALTH AND SAFETY CODE § 242.002.	**(6)** ***Abuse or Neglect of "Institution" Resident.*** In a proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of a resident of an "institution" as defined in Tex. Health & Safety Code § 242.002. **Comment to 2013 Restyling:** The mental health information privilege in civil cases was enacted in Texas in 1979. Tex. Rev. Civ. Stat. art. 5561h (later codified at Tex. Health & Safety Code § 611.001 et seq.) provided that the privilege applied even if the patient had received the professional's services before the statute's enactment. Because more than thirty years have now passed, it is no longer necessary to burden the text of the rule with a statement regarding the privilege's retroactive application. But deleting this statement from the rule's text is not intended as a substantive change in the law.

CURRENT TEXAS	RESTYLED TEXAS
RULE 511. WAIVER OF PRIVILEGE BY VOLUNTARY DISCLOSURE A person upon whom these rules confer a privilege against disclosure waives the privilege if: (1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged; or (2) the person or a representative of the person calls a person to whom privileged communications have been made to testify as to the person's character or character trait insofar as such communications are relevant to such character or character trait.	**Rule 511.** **[PROPOSED AREC AND SCAC VERSIONS OF RULE 511 ALREADY PENDING BEFORE SUPREME COURT]**

CURRENT TEXAS	RESTYLED TEXAS
RULE 512. PRIVILEGED MATTER DISCLOSED UNDER COMPULSION OR WITHOUT OPPORTUNITY TO CLAIM PRIVILEGE	**Rule 512. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege**
A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.	A privilege claim is not defeated by a disclosure that was: **(a)** compelled erroneously; or **(b)** made without opportunity to claim the privilege.

CURRENT TEXAS	RESTYLED TEXAS
RULE 513. COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE; INSTRUCTION	**Rule 513. Comment On or Inference From a Privilege Claim; Instruction**
(a) Comment or Inference Not Permitted. Except as permitted in Rule 504(b)(2), the claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel, and no inference may be drawn therefrom.	**(a) Comment or Inference Not Permitted.** Except as permitted in Rule 504(b)(2), neither the court nor counsel may comment on a privilege claim – whether made in the present proceeding or previously – and the factfinder may not draw an inference from the claim.
(b) Claiming Privilege Without Knowledge of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.	**(b) Claiming Privilege Without the Jury's Knowledge.** To the extent practicable, the court must conduct a jury trial so that the making of a privilege claim is not suggested to the jury by any means.
(c) Claim of Privilege Against Self–Incrimination in Civil Cases. Paragraphs (a) and (b) shall not apply with respect to a party's claim, in the present civil proceeding, of the privilege against self-incrimination.	**(c) Claim of Privilege Against Self–Incrimination in a Civil Case.** Subdivisions (a) and (b) do not apply to a party's claim, in the present civil case, of the privilege against self-incrimination.
(d) Jury Instruction. Except as provided in Rule 504(b)(2) and in paragraph (c) of this Rule, upon request any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.	**(d) Jury Instruction.** When this rule forbids a jury from drawing an inference from a privilege claim, the court must, on request of a party against whom the jury might draw the inference, instruct the jury accordingly.

ARTICLE VI.
WITNESSES

CURRENT TEXAS	RESTYLED TEXAS
RULE 601. COMPETENCY AND INCOMPETENCY OF WITNESSES	**Rule 601. Competency to Testify in General; "Dead Man's Rule"**
(a) General Rule. Every person is competent to be a witness except as otherwise provided in these rules. The following witnesses shall be incompetent to testify in any proceeding subject to these rules: (1) *Insane persons*. Insane persons who, in the opinion of the court, are in an insane condition of mind at the time when they are offered as a witness, or who, in the opinion of the court, were in that condition when the events happened of which they are called to testify. (2) *Children*. Children or other persons who, after being examined by the court, appear not to possess sufficient intellect to relate transactions with respect to which they are interrogated.	**(a) In General.** Every person is competent to be a witness unless these rules provide otherwise. The following witnesses are incompetent: **(1)** ***Insane Persons.*** A person who is now insane or was insane at the time of the events about which the person is called to testify. **(2)** ***Persons Lacking Sufficient Intellect.*** A child—or any other person—who the court examines and finds lacks sufficient intellect to testify.
(b) "Dead Man's Rule" in Civil Actions. In civil actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any oral statement by the testator, intestate or ward, unless that testimony to the oral statement is corroborated or unless the witness is called at the trial to testify thereto by the opposite party; and, the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent based in whole or in part on such oral statement. Except for the foregoing, a witness is not precluded from giving evidence of or concerning any transaction with, any conversations with, any admissions of, or statement by, a deceased or insane party or person merely because the witness is a party to the action or a person interested in the event thereof. The trial court shall, in a proper case, where this rule prohibits an interested party or witness from testifying, instruct the jury that	**(b) The "Dead Man's Rule."** **(1)** ***Applicability.*** The "Dead Man's Rule" applies only in a civil case: **(A)** by or against a party in the party's capacity as an executor, administrator, or guardian; or **(B)** by or against a decedent's heirs or legal representatives and based in whole or in part on the decedent's oral statement. **(2)** ***General Rule.*** In cases described in subparagraph (b)(1)(A), a party may not testify against another party about an oral statement by the testator, intestate, or ward. In cases described in subparagraph (b)(1)(B), a party may not testify against another party about an oral statement by the decedent. **(3)** ***Exceptions.*** A party may testify against another party about an oral statement by the testator, intestate, ward, or decedent if:

such person is not permitted by the law to give evidence relating to any oral statement by the deceased or ward unless the oral statement is corroborated or unless the party or witness is called at the trial by the opposite party.	**(A)** the party's testimony about the statement is corroborated; or **(B)** the opposing party calls the party to testify at the trial about the statement. **(4)** ***Instructions.*** If a court excludes evidence under paragraph (b)(2), the court must instruct the jury that the law prohibits a party from testifying about an oral statement by the testator, intestate, ward, or decedent unless the oral statement is corroborated or the opposing party calls the party to testify at the trial about the statement. **Comment to 2013 Restyling:** The text of the "Dead Man's Rule" has been streamlined to clarify its meaning without making any substantive changes. The text of former Rule 601(b) (as well as its statutory predecessor, Vernon's Ann.Civ.St. art. 3716) prohibits only a "party" from testifying about the dead man's statements. Despite this, the last sentence of former Rule 601(b) requires the court to instruct the jury when the rule "prohibits an interested party or witness" from testifying. Because the rule prohibits only a "party" from testifying, restyled Rule 601(b)(4) references only "a party," and not "an interested party or witness." To be sure, courts have indicated that the rule (or its statutory predecessor) may be applicable to a witness who is not nominally a party and inapplicable to a witness who is only nominally a party. See, e.g., Chandler v. Welborn, 156 Tex. 312, 294 S.W.2d 801, 809 (1956); Ragsdale v. Ragsdale, 142 Tex. 476, 179 S.W.2d 291, 295 (1944). But these decisions are based on an interpretation of the meaning of "party." Therefore, limiting the court's instruction under restyled Rule 601(b)(4) to "a party" does not change Texas practice. In addition, restyled Rule 601(b) deletes the sentence in former Rule 601(b) that states "Except for the foregoing, a witness is not precluded from giving evidence . . . because the witness is a party to the action . . ." This sentence is surplusage. Rule 601(b) is a rule of exclusion. If the testimony falls outside the rule of exclusion, its admissibility will be

	determined by other applicable rules of evidence.

CURRENT TEXAS	RESTYLED TEXAS
RULE 602. LACK OF PERSONAL KNOWLEDGE A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.	**Rule 602. Need for Personal Knowledge** A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

CURRENT TEXAS	RESTYLED TEXAS
RULE 603. OATH OR AFFIRMATION Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.	**Rule 603. Oath or Affirmation to Testify Truthfully** Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

CURRENT TEXAS	RESTYLED TEXAS
RULE 604. INTERPRETERS An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.	**Rule 604. Interpreter** An interpreter must be qualified and must give an oath or affirmation to make a true translation.

CURRENT TEXAS	RESTYLED TEXAS
RULE 605. COMPETENCY OF JUDGE 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.	**Rule 605. Judge's Competency as a Witness** The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

CURRENT TEXAS	RESTYLED TEXAS
RULE 606. COMPETENCY OF JUROR 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 as a juror. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury. **(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 jury's deliberations, or to the effect of anything on any juror's mind or emotions or mental processes, as influencing any juror's assent to or dissent from the verdict or indictment. Nor may a juror's affidavit or any statement by a juror concerning any matter about which the juror would be precluded from testifying be admitted in evidence for any of these purposes. However, a juror may testify: (1) whether any outside influence was improperly brought to bear upon any juror; or (2) to rebut a claim that the juror was not qualified to serve.	**Rule 606. Juror's Competency as a Witness** **(a) At the Trial.** A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence. **(b) During an Inquiry into the Validity of a Verdict or Indictment.** **(1)** ***Prohibited Testimony or Other Evidence.*** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters. **(2)** ***Exceptions.*** A juror may testify: **(A)** about whether an outside influence was improperly brought to bear on any juror; or **(B)** to rebut a claim that the juror was not qualified to serve.

CURRENT TEXAS	RESTYLED TEXAS
RULE 607. WHO MAY IMPEACH The credibility of a witness may be attacked by any party, including the party calling the witness.	**Rule 607. Who May Impeach a Witness** Any party, including the party that called the witness, may attack the witness's credibility.

CURRENT TEXAS	RESTYLED TEXAS
RULE 608. EVIDENCE OF CHARACTER AND CONDUCT OF A WITNESS **(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. **(b) Specific Instances of Conduct.** Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be inquired into on cross-examination of the witness nor proved by extrinsic evidence.	**Rule 608. A Witness's Character for Truthfulness or Untruthfulness** **(a) Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked. **(b) Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, a party may not inquire into or offer extrinsic evidence to prove specific instances of the witness's conduct in order to attack or support the witness's character for truthfulness.

CURRENT TEXAS	RESTYLED TEXAS
RULE 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME	**Rule 609. Impeachment by Evidence of a Criminal Conviction**
(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to a party.	**(a) In General.** Evidence of a criminal conviction offered to attack a witness's character for truthfulness must be admitted if: **(1)** the crime was a felony or involved moral turpitude, regardless of punishment; **(2)** the probative value of the evidence outweighs its prejudicial effect to a party; and **(3)** it is elicited from the witness or established by public record.
(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.	**(b) Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.
(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if: (1) based on the finding of the rehabilitation of the person convicted, the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure, and that person has not been convicted of a subsequent crime which was classified as a felony or involved moral turpitude, regardless of punishment; (2) probation has been satisfactorily completed for the crime for which the person was convicted, and that person has not been convicted of a subsequent crime which was classified as a felony or involved moral	**(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if: **(1)** the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime that was classified as a felony or involved moral turpitude, regardless of punishment; **(2)** probation has been satisfactorily completed for the conviction, and the person has not been convicted of a later crime that was classified as a felony or

turpitude, regardless of punishment; or (3) based on a finding of innocence, the conviction has been the subject of a pardon, annulment, or other equivalent procedure.	involved moral turpitude, regardless of punishment; or **(3)** the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
(d) Juvenile Adjudications. Evidence of juvenile adjudications is not admissible, except for proceedings conducted pursuant to Title III, Family Code, in which the witness is a party, under this rule unless required to be admitted by the Constitution of the United States or Texas.	**(d) Juvenile Adjudications**. Evidence of a juvenile adjudication is admissible under this rule only if: **(1)** the witness is a party in a proceeding conducted under title 3 of the Texas Family Code; or **(2)** the United States or Texas Constitution requires it be admitted.
(e) Pendency of Appeal. Pendency of an appeal renders evidence of a conviction inadmissible.	**(e) Pendency of an Appeal.** A conviction for which an appeal is pending is not admissible under this rule.
(f) Notice. Evidence of a conviction is not admissible if after timely written request by the adverse party specifying the witness or witnesses, the proponent fails to give to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.	**(f) Notice.** Evidence of a witness's conviction is not admissible under this rule if, after receiving from the adverse party a timely written request specifying the witness, the proponent of the conviction fails to provide sufficient written notice of intent to use the conviction. Notice is sufficient if it provides a fair opportunity to contest the use of such evidence.

CURRENT TEXAS	RESTYLED TEXAS
RULE 610. RELIGIOUS BELIEFS OR OPINIONS Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.	**Rule 610. Religious Beliefs or Opinions** Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

CURRENT TEXAS	RESTYLED TEXAS
RULE 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION	**Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence**
(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.	**(a) Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: **(1)** make those procedures effective for determining the truth; **(2)** avoid wasting time; and **(3)** protect witnesses from harassment or undue embarrassment.
(b) Scope of Cross–Examination. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.	**(b) Scope of Cross-Examination.** A witness may be cross-examined on any relevant matter, including credibility.
(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the testimony of the witness. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.	**(c) Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions: **(1)** on cross-examination; and **(2)** when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

CURRENT TEXAS	RESTYLED TEXAS
RULE 612. WRITING USED TO REFRESH MEMORY If a witness uses a writing to refresh memory for the purpose of testifying either (1) while testifying; (2) before testifying, in civil cases, if the court in its discretion determines it is necessary in the interests of justice; or (3) before testifying, in criminal cases; 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 in camera, excise any portion 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.	**Rule 612. Writing Used to Refresh a Witness's Memory** **(a) Scope.** This rule gives an adverse party certain options when a witness uses a writing to refresh memory: **(1)** while testifying; **(2)** before testifying, in civil cases, if the court decides that justice requires the party to have those options; or **(3)** before testifying, in criminal cases. **(b) Adverse Party's Options; Deleting Unrelated Matter.** An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record. **(c) Failure to Produce or Deliver the Writing.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

CURRENT TEXAS	RESTYLED TEXAS
RULE 613. PRIOR STATEMENTS OF WITNESSES: IMPEACHMENT AND SUPPORT	**VERSION 1:** **Rule 613. Witness's Prior Statement and Bias or Interest**
(a) Examining Witness Concerning Prior Inconsistent Statement. In examining a witness concerning a prior inconsistent statement made by the witness, whether oral or written, and before further cross-examination concerning, or extrinsic evidence of, such statement may be allowed, the witness must be told the contents of such statement and the time and place and the person to whom it was made, and must be afforded an opportunity to explain or deny such statement. If written, the writing need not be shown to the witness at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits having made such statement, extrinsic evidence of same shall not be admitted. This provision does not apply to admissions of a party-opponent as defined in Rule 801(e)(2).	**(a) Witness's Prior Inconsistent Statement.** **(1)** ***Foundation Requirement.*** When examining a witness about the witness's prior inconsistent statement—whether oral or written—a party must first tell the witness: **(A)** the contents of the statement; **(B)** the time and place of the statement; and **(C)** the person to whom the witness made the statement. **(2)** ***Need Not Show Written Statement.*** If the witness's prior inconsistent statement is written, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel. **(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. **(5)** ***Opposing Party's Statement.*** This subdivision (a) does not apply to an opposing party's statement under Rule 801(e)(2).
(b) Examining Witness Concerning Bias or Interest. In impeaching a witness by proof of circumstances or statements showing bias or interest on the part of such witness, and before	**(b) Witness's Bias or Interest.** **(1)** ***Foundation Requirement.*** When examining a witness about the witness's

Comment [sg4]: PRACTICE-ORIENTED VERSION

further cross-examination concerning, or extrinsic evidence of, such bias or interest may be allowed, the circumstances supporting such claim or the details of such statement, including the contents and where, when and to whom made, must be made known to the witness, and the witness must be given an opportunity to explain or to deny such circumstances or statement. If written, the writing need not be shown to the witness at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits such bias or interest, extrinsic evidence of same shall not be admitted. A party shall be permitted to present evidence rebutting any evidence impeaching one of said party's witnesses on grounds of bias or interest.	bias or interest, a party must first tell the witness the circumstances or statements that tend to show the witness's bias or interest. If examining a witness about a statement—whether oral or written—to prove the witness's bias or interest, a party must tell the witness: **(A)** the contents of the statement; **(B)** the time and place of the statement; and **(C)** the person to whom the statement was made. **(2)** ***Need Not Show Written Statement.*** If a party uses a written statement to prove the witness's bias or interest, a party need not show the statement to the witness before inquiring about it, but must, upon request, show it to opposing counsel. **(3)** ***Opportunity to Explain or Deny.*** A witness must be given the opportunity to explain or deny the circumstances or statements that tend to show the witness's bias or interest. And the witness's proponent may present evidence to rebut the charge of bias or interest. **(4)** ***Extrinsic Evidence.*** Extrinsic evidence of a witness's bias or interest is not admissible unless the witness is first examined about the bias or interest and fails to unequivocally admit it.
(c) Prior Consistent Statements of Witnesses. A prior statement of a witness which is consistent with the testimony of the witness is inadmissible except as provided in Rule 801(e)(1)(B).	**(c) Witness's Prior Consistent Statement.** Unless Rule 801(e)(1)(B) provides otherwise, a witness's prior consistent statement is not admissible if offered solely to enhance the witness's credibility.

CURRENT TEXAS	RESTYLED TEXAS
RULE 613. PRIOR STATEMENTS OF WITNESSES: IMPEACHMENT AND SUPPORT	**VERSION 2:** **Rule 613. Witness's Prior Statement and Bias or Interest**
(a) Examining Witness Concerning Prior Inconsistent Statement. In examining a witness concerning a prior inconsistent statement made by the witness, whether oral or written, and before further cross-examination concerning, or extrinsic evidence of, such statement may be allowed, the witness must be told the contents of such statement and the time and place and the person to whom it was made, and must be afforded an opportunity to explain or deny such statement. If written, the writing need not be shown to the witness at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits having made such statement, extrinsic evidence of same shall not be admitted. This provision does not apply to admissions of a party-opponent as defined in Rule 801(e)(2).	**(a) Witness's Prior Inconsistent Statement.** **(1)** ***Foundation Requirement.*** When examining a witness about the witness's prior inconsistent statement—whether oral or written—and before offering extrinsic evidence of the statement, a party must provide the witness: **(A)** the contents of the statement; **(B)** the time and place of the statement; **(C)** the person to whom the witness made the statement; and **(D)** an opportunity to explain or deny the statement. **(2)** ***Need Not Show Written Statement.*** If the witness's prior inconsistent statement is written, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel. **(3)** ***Extrinsic Evidence.*** Extrinsic evidence of a witness's prior inconsistent statement is not admissible if the witness unequivocally admits making the statement. **(4)** ***Opposing Party's Statement.*** This subdivision (a) does not apply to an opposing party's statement under Rule 801(e)(2).
(b) Examining Witness Concerning Bias or Interest. In impeaching a witness by proof of circumstances or statements showing bias or interest on the part of such witness, and before further cross-examination concerning, or extrinsic evidence of, such bias or interest may be allowed, the circumstances supporting such	**(b) Witness's Bias or Interest.** **(1)** ***Foundation Requirement.*** When examining a witness about and before offering extrinsic evidence of the witness's bias or interest, a party must first tell the witness the circumstances

Comment [sg5]: TEXT-ORIENTED VERSION

claim or the details of such statement, including the contents and where, when and to whom made, must be made known to the witness, and the witness must be given an opportunity to explain or to deny such circumstances or statement. If written, the writing need not be shown to the witness at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits such bias or interest, extrinsic evidence of same shall not be admitted. A party shall be permitted to present evidence rebutting any evidence impeaching one of said party's witnesses on grounds of bias or interest.	or statements that tend to show the witness's bias or interest and give the witness an opportunity to explain or deny the circumstances or statements. If examining a witness about a statement—whether oral or written—to prove the witness's bias or interest, a party must tell the witness: **(A)** the contents of the statement; **(B)** the time and place of the statement; and **(C)** the person to whom the statement was made. **(2)** ***Need Not Show Written Statement.*** If a party uses a written statement to prove the witness's bias or interest, a party need not show the statement to the witness before inquiring about it, but must, upon request, show it to opposing counsel. **(3)** ***Proponent May Rebut.*** A witness's proponent may present evidence to rebut the charge of bias or interest. **(4)** ***Extrinsic Evidence.*** Extrinsic evidence of a witness's bias or interest is not admissible if the witness unequivocally admits the bias or interest.
(c) Prior Consistent Statements of Witnesses. A prior statement of a witness which is consistent with the testimony of the witness is inadmissible except as provided in Rule 801(e)(1)(B).	**(c) Witness's Prior Consistent Statement.** Unless Rule 801(e)(1)(B) provides otherwise, a witness's prior consistent statement is not admissible if offered solely to enhance the witness's credibility.

CURRENT TEXAS	RESTYLED TEXAS
RULE 614. EXCLUSION OF WITNESSES	**Rule 614. Excluding Witnesses**
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:	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:
(1) a party who is a natural person or in civil cases the spouse of such natural person;	**(a)** a party who is a natural person and, in civil cases, that person's spouse;
(2) an officer or employee of a party in a civil case or a defendant in a criminal case that is not a natural person designated as its representative by its attorney;	**(b)** after being designated as the party's representative by its attorney: **(1)** in a civil case, an officer or employee of a party that is not a natural person; or **(2)** in a criminal case, a defendant that is not a natural person;
(3) a person whose presence is shown by a party to be essential to the presentation of the party's cause; or	**(c)** a person whose presence a party shows to be essential to presenting the party's claim or defense; or
(4) the victim in a criminal case, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.	**(d)** the victim in a criminal case, unless the court determines that the victim's testimony would be materially affected by hearing other testimony at the trial.

CURRENT TEXAS	RESTYLED TEXAS
RULE 615. PRODUCTION OF STATEMENTS OF WITNESSES IN CRIMINAL CASES **(a) Motion for Production.** After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the state or the defendant and defendant's attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified. **(b) Production of Entire Statement.** If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party. **(c) Production of Excised Statement.** If the other party claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion withheld over objection shall be preserved and made available to the appellate court in the event of appeal. **(d) Recess for Examination of Statement.** Upon delivery of the statement to the moving party, the court, upon application of that party, shall recess proceedings in the trial for a reasonable examination of such statement and for preparation for its use in the trial. (**e) Sanction for Failure to Produce Statement.** If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the	**Rule 615. Producing a Witness's Statement in Criminal Cases** **(a) Motion to Produce.** After a witness other than the defendant testifies on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the state or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony. **(b) Producing the Entire Statement.** If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party. **(c) Producing a Redacted Statement.** If the party who called the witness claims that the statement contains information that does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any unrelated portions, the court must order delivery of the redacted statement to the moving party. If a party objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record. **(d) Recess to Examine a Statement.** On the moving party's request, the court must recess the proceedings to allow time for a party to examine the statement and prepare for its use. **(e) Sanction for Failure to Produce or Deliver a Statement.** If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the state disobeys the order, the court must declare a mistrial if justice so requires.

record and that the trial proceed, or, if it is the attorney for the state who elects not to comply, shall declare a mistrial if required by the interest of justice. **(f) Definition.** As used in this rule, a "statement" of a witness means: (1) a written statement made by the witness that is signed or otherwise adopted or approved by the witness; (2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or (3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.	**(f) "Statement" Defined.** As used in this rule, a witness's "statement'' means: **(1)** a written statement that the witness makes and signs, or otherwise adopts or approves; **(2)** a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or **(3)** the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

ARTICLE VII.
OPINIONS AND EXPERT TESTIMONY

CURRENT TEXAS	RESTYLED TEXAS
RULE 701. OPINION TESTIMONY BY LAY WITNESSES 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 and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.	**Rule 701. Opinion Testimony by Lay Witnesses** If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: **(a)** rationally based on the witness's perception; and **(b)** helpful to clearly understanding the witness's testimony or to determining a fact in issue. **Comment to 2013 Restyling:** All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

CURRENT TEXAS	RESTYLED TEXAS
RULE 702. TESTIMONY BY EXPERTS 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.	**Rule 702. Testimony by Expert Witnesses** A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if 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.

CURRENT TEXAS	RESTYLED TEXAS
RULE 703. BASES OF OPINION TESTIMONY BY EXPERTS The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by, reviewed 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.	**Rule 703. Bases of an Expert's Opinion Testimony** An expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, 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. **Comment to 2013 Restyling:** All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

CURRENT TEXAS	RESTYLED TEXAS
RULE 704. OPINION ON ULTIMATE ISSUE 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.	**Rule 704. Opinion on an Ultimate Issue** An opinion is not objectionable just because it embraces an ultimate issue.

CURRENT TEXAS	RESTYLED TEXAS
RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION	**Rule 705. Disclosing the Underlying Facts or Data and Examining an Expert About Them**
(a) Disclosure of Facts or Data. The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event disclose on direct examination, or be required to disclose on cross-examination, the underlying facts or data.	**(a) Stating an Opinion Without Disclosing the Underlying Facts or Data.** 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.
(b) Voir dire. Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be permitted to conduct a *voir dire* examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.	**(b) Voir Dire Examination of an Expert About the Underlying Facts or Data.** Before an expert states an opinion or discloses the underlying facts or data, an adverse party in a civil case may — or in a criminal case must — be permitted to examine the expert about the underlying facts or data. This examination must take place outside the jury's hearing.
(c) Admissibility of opinion. If the court determines that the underlying facts or data do not provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.	**(c) Admissibility of Opinion.** An expert's opinion is inadmissible if the underlying facts or data do not provide a sufficient basis for the opinion.
(d) Balancing test; limiting instructions. When the underlying facts or data would be inadmissible in evidence, the court shall exclude the underlying facts or data if the danger that they will be used for a purpose other than as explanation or support for the expert's opinion outweighs their value as explanation or support or are unfairly prejudicial. If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.	**(d) When Otherwise Inadmissible Underlying Facts or Data May Be Disclosed; Instructing the Jury.** If the underlying facts or data would otherwise be inadmissible, the proponent of the opinion may not disclose them to the jury if their probative value in helping the jury evaluate the opinion is outweighed by their prejudicial effect. If the court allows the proponent to disclose those facts or data the court must, upon timely request, restrict the evidence to its proper scope and instruct the jury accordingly.
Notes and Comments	
Comment to 1998 change: Paragraphs (b), (c), and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a *voir dire* examination into the qualifications of an expert.	**Comment to 2013 Restyling:** All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any

	distinction between an opinion and an inference. No change in current practice is intended.

CURRENT TEXAS	RESTYLED TEXAS
RULE 706. AUDIT IN CIVIL CASES Despite any other evidence rule to the contrary, verified reports of auditors prepared pursuant to Rule of Civil Procedure 172, whether in the form of summaries, opinions, or otherwise, shall be admitted in evidence when offered by any party whether or not the facts or data in the reports are otherwise admissible and whether or not the reports embrace the ultimate issues to be decided by the trier of fact. Where exceptions to the reports have been filed, a party may contradict the reports by evidence supporting the exceptions.	**Rule 706. Audit in Civil Cases** Notwithstanding any other evidence rule, the court must admit an auditor's verified report prepared under Rule of Civil Procedure 172 and offered by a party. If a party files exceptions to the report, a party may offer evidence supporting the exceptions to contradict the report.

ARTICLE VIII.
HEARSAY

CURRENT TEXAS	RESTYLED TEXAS
RULE 801. DEFINITIONS The following definitions apply under this article: **(a) Statement.** A "statement" is (1) an oral or written verbal expression or (2) nonverbal conduct of a person, if it is intended by the person as a substitute for verbal expression. **(b) Declarant.** A "declarant" is a person who makes a statement. **(c) Matter Asserted.** "Matter asserted" includes any matter explicitly asserted, and any matter implied by a statement, if the probative value of the statement as offered flows from declarant's belief as to the matter. **(d) 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. **(e) Statements Which Are Not Hearsay.** A statement is not hearsay if: (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 the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial,	**Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay** **(a) Statement.** "Statement" means a person's oral or written verbal expression, or nonverbal conduct that a person intended as a substitute for verbal expression. **(b) Declarant.** "Declarant" means the person who made the statement. **(c) Matter Asserted.** "Matter asserted" means: **(1)** any matter a declarant explicitly asserts; and **(2)** any matter implied by a statement, if the probative value of the statement as offered flows from the declarant's belief about the matter. **(d) Hearsay.** "Hearsay" means a statement that: **(1)** the declarant does not make while testifying at the current trial or hearing; and **(2)** a party offers in evidence to prove the truth of the matter asserted in the statement. **(e) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay: **(1)** ***A Declarant-Witness's Prior Statement.*** The declarant testifies and is subject to cross-examination about a prior statement, and the statement: **(A)** is inconsistent with the declarant's testimony and:

hearing, or other proceeding except a grand jury proceeding in a criminal case, or in a deposition; (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; (C) one of identification of a person made after perceiving the person; or (D) taken and offered in a criminal case in accordance with Code of Criminal Procedure article 38.071.	**(i)** when offered in a civil case, was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition; or **(ii)** when offered in a criminal case, was given under penalty of perjury at a trial, hearing, or other proceeding—except a grand jury proceeding—or in a deposition; **(B)** is consistent with the declarant's testimony and is offered 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 **(C)** identifies a person as someone the declarant perceived earlier.
(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 representative capacity; (B) a statement of which the party has manifested an adoption or belief in its truth; (C) a statement by a person authorized by the party to make a statement concerning the subject; (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.	**(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.
(3) *Depositions*. In a civil case, it is a	**(3)** ***A Deponent's Statement***. In a civil

deposition taken in the same proceeding, as same proceeding is defined in Rule of Civil Procedure 203.6(b). Unavailability of deponent is not a requirement for admissibility.	case, the statement was made in a deposition taken in the same proceeding. "Same proceeding" is defined in Rule of Civil Procedure 203.6(b). The deponent's unavailability as a witness is not a requirement for admissibility. **Comment to 2013 Restyling:** Statements falling under the hearsay exclusion provided by Rule 801(e)(2) are no longer referred to as "admissions" in the title to the subdivision. The term "admissions" is confusing because not all statements covered by the exclusion are admissions in the colloquial sense — a statement can be within the exclusion even if it "admitted" nothing and was not against the party's interest when made. The term "admissions" also raises confusion in comparison with the Rule 803(24) exception for declarations against interest. No change in application of the exclusion is intended. The deletion of former Rule 801(e)(1)(D), which cross-references Code of Criminal Procedure art. 38.071, is not intended as a substantive change. Including this cross-reference made sense when the Texas Rules of Criminal Evidence were first promulgated, but with subsequent changes to the statutory provision, its inclusion is no longer appropriate. The version of article 38.071 that was initially cross-referenced in the Rules of Criminal Evidence required the declarant-victim to be available to testify at the trial. That requirement has since been deleted from the statute, and the statute no longer requires either the availability or testimony of the declarant-victim. Thus, cross-referencing the statute in Rule 801(e)(1), which applies only when the declarant testifies at trial about the prior statement, no longer makes sense. Moreover, article 38.071 is but one of a number of statutes that mandate the admission of certain hearsay statements in particular circumstances. See, e.g., Code of Criminal Procedure art. 38.072; Family Code §§ 54.031, 104.002, 104.006. These statutory provisions take precedence over the general rule excluding hearsay, see Rules 101(c) and 802, and there is no apparent justification for cross-

	referencing article 38.071 and not all other such provisions.

CURRENT TEXAS	RESTYLED TEXAS
RULE 802. HEARSAY RULE Hearsay is not admissible except as provided by statute or these rules or by other rules prescribed pursuant to statutory authority. Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay.	**Rule 802. The Rule Against Hearsay** Hearsay is not admissible unless any of the following provides otherwise: • a statute; • these rules; or • other rules prescribed under statutory authority. Inadmissible hearsay admitted without objection may not be denied probative value merely because it is hearsay.

CURRENT TEXAS	RESTYLED TEXAS
RULE 803. HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL The following are not excluded by the hearsay rule, even though the declarant is available as a witness:	**Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness** The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
(1) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.	**(1)** ***Present Sense Impression.*** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
(2) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.	**(2)** ***Excited Utterance.*** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
(3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, 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 execution, revocation, identification, or terms of declarant's will.	**(3)** ***Then-Existing Mental, Emotional, or Physical Condition*****.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
(4) 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.	**(4)** ***Statement Made for Medical Diagnosis or Treatment.*** A statement that: **(A)** is made for — and is reasonably pertinent to — medical diagnosis or treatment; and **(B)** describes medical history; past or present symptoms or sensations; their inception; or their general

	cause.

(5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had personal knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly, unless the circumstances of preparation cast doubt on the document's trustworthiness. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.	**(5)** ***Recorded Recollection.*** A record that: **(A)** is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately; **(B)** was made or adopted by the witness when the matter was fresh in the witness's memory; and **(C)** accurately reflects the witness's knowledge, unless the circumstances of the record's preparation cast doubt on its trustworthiness. If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, 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 affidavit that complies with Rule 902(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. "Business" as used in this paragraph includes any and every kind of regular organized activity whether conducted for profit or not.	**(6)** ***Records of a Regularly Conducted Activity.*** A record of an act, event, condition, opinion, or diagnosis if: **(A)** the record was made at or near the time by — or from information transmitted by — someone with knowledge; **(B)** the record was kept in the course of a regularly conducted business activity; **(C)** making the record was a regular practice of that activity; **(D)** all these conditions are shown by the testimony of the custodian or another qualified witness, or by an affidavit or unsworn declaration that complies with Rule 902(10); and

	(E) the opponent fails to show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. "Business" as used in this paragraph includes every kind of regular organized activity whether conducted for profit or not.
(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.	**(7)** ***Absence of a Record of a Regularly Conducted Activity.*** Evidence that a matter is not included in a record described in paragraph (6) if: **(A)** the evidence is admitted to prove that the matter did not occur or exist; **(B)** a record was regularly kept for a matter of that kind; and **(C)** the opponent fails to show that the possible source of the information or other circumstances indicate a lack of trustworthiness.
(8) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies setting forth: (A) the activities of the office or agency; (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding in criminal cases matters observed by police officers and other law enforcement personnel; or (C) in civil cases as to any party and in criminal cases as against the state, factual findings resulting from an investigation made pursuant to authority granted by law; unless the sources of information or other circumstances indicate lack of trustworthiness.	**(8)** ***Public Records.*** A record or statement of a public office if: **(A)** it sets out: **(i)** the office's activities; **(ii)** a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or **(iii)** in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and **(B)** the opponent fails to show that the source of information or other

	circumstances indicate a lack of trustworthiness.
(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.	**(9)** ***Public Records of Vital Statistics.*** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.
(10) Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report statement, or data compilation, or entry.	**(10)** ***Absence of a Public Record.*** Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that: **(A)** the record or statement does not exist; or **(B)** a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.
(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.	**(11)** ***Records of Religious Organizations Concerning Personal or Family History.*** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.
(12) 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 member of the clergy, 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.	**(12)** ***Certificates of Marriage, Baptism, and Similar Ceremonies.*** A statement of fact contained in a certificate: **(A)** made by a person who is authorized by a religious organization or by law to perform the act certified; **(B)** attesting that the person performed a marriage or similar ceremony or administered a

	sacrament; and **(C)** purporting to have been issued at the time of the act or within a reasonable time after it.
(13) Family Records. 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.	**(13)** ***Family Records.*** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.
(14) Records of Documents 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.	**(14)** ***Records of Documents That Affect an Interest in Property.*** The record of a document that purports to establish or affect an interest in property if: **(A)** the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it; **(B)** the record is kept in a public office; and **(C)** a statute authorizes recording documents of that kind in that office.
(15) Statements in Documents 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.	**(15)** ***Statements in Documents That Affect an Interest in Property.*** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.
(16) Statements in Ancient Documents. Statements in a document in existence twenty years or more the authenticity of which is established.	**(16)** ***Statements in Ancient Documents.*** A statement in a document that is at least 20 years old and whose authenticity is established.

(17) Market Reports, 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.	**(17)** ***Market Reports and Similar Commercial Publications.*** Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.
(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert 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.	**(18)** ***Statements in Learned Treatises, Periodicals, or Pamphlets.*** A statement contained in a treatise, periodical, or pamphlet if: **(A)** the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and **(B)** the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice. If admitted, the statement may be read into evidence but not received as an exhibit.
(19) Reputation Concerning Personal or Family History. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's 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 personal or family history.	**(19)** ***Reputation Concerning Personal or Family History.*** A reputation among a person's family by blood, adoption, or marriage — or among a person's associates or in the community — concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.
(20) Reputation Concerning Boundaries or General History. 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	**(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

important to the community or state or nation in which located.	that affect the land, or concerning general historical events important to that community, state, or nation.

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

(22) Judgment of Previous Conviction. In civil cases, evidence of a judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), judging a person guilty of a felony, to prove any fact essential to sustain the judgment of conviction. In criminal cases, evidence of a judgment, entered after a trial or upon a plea of guilty or nolo contendere, adjudging a person guilty of a criminal offense, to prove any fact essential to sustain the judgment of conviction, but not including, when offered by the state for purposes other than impeachment, judgments against persons other than the accused. In all cases, the pendency of an appeal renders such evidence inadmissible.	**(22)** ***Judgment of a Previous Conviction.*** Evidence of a final judgment of conviction if: **(A)** it is offered in a civil case and: **(i)** the judgment was entered after a trial or guilty plea, but not a nolo contendere plea; **(ii)** the conviction was for a felony; **(iii)** the evidence is admitted to prove any fact essential to the judgment; and **(iv)** an appeal of the conviction is not pending; or **(B)** it is offered in a criminal case and: **(i)** the judgment was entered after a trial or a guilty or nolo contendere plea; **(ii)** the conviction was for a criminal offense; **(iii)** the evidence is admitted to prove any fact essential to the judgment; **(iv)** when offered by the prosecutor for a purpose other than impeachment, the judgment was against the defendant; and

	(v) an appeal of the conviction is not pending.

(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.	**(23)** ***Judgments Involving Personal, Family, or General History or a Boundary.*** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter: **(A)** was essential to the judgment; and **(B)** could be proved by evidence of reputation.

(24) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in declarant's position would not have made the statement unless believing it to be true. In criminal cases, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.	**(24)** ***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 or to make the declarant an object of hatred, ridicule, or disgrace; 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.

CURRENT TEXAS	RESTYLED TEXAS
RULE 804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE	**Rule 804. Exceptions to the Rule Against Hearsay — When the Declarant Is Unavailable as a Witness**
(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:	**(a) Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:
(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;	**(1)** is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;	**(2)** refuses to testify about the subject matter despite a court order to do so;
(3) testifies to a lack of memory of the subject matter of the declarant's statement;	**(3)** testifies to not remembering the subject matter;
(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	**(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 hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.	**(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 the declarant's attendance or testimony.
A declarant is not unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrong-doing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.	But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

CURRENT TEXAS	RESTYLED TEXAS
(b) Hearsay Exceptions. The following are not excluded if the declarant is unavailable as a witness:	**(b) The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
(1) *Former testimony*. In civil cases, testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in the course of another proceeding, if the party against whom the testimony is now offered, or a person with a similar interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. In criminal cases, testimony given as a witness at another hearing of the same or a different proceeding, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. In criminal cases the use of depositions is controlled by Chapter 39 of the Code of Criminal Procedure.	**(1) *Former Testimony.*** Testimony that: **(A)** when offered in a civil case: **(i)** was given as a witness at a trial or hearing of the current or a different proceeding or was given as a witness in a deposition in a different proceeding; and **(ii)** is now offered against a party and the party—or a person with similar interest—had an opportunity and similar motive to develop the testimony by direct, cross-, or redirect examination. **(B)** when offered in a criminal case: **(i)** was given as a witness at a trial or hearing, whether given during the current or a different proceeding; and **(ii)** is now offered against a party who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination; or **(iii)** was taken in a deposition under—and is now offered in accordance with—chapter 39 of the Code of Criminal Procedure.
(2) *Dying declarations*. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the	**(2) *Statement Under the Belief of Imminent Death.*** A statement that the declarant, while believing the declarant's death to be imminent, made

declarant believed to be impending death.	about its cause or circumstances.

(3) *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.	**(3)** ***Statement of Personal or Family History.*** A statement about: **(A)** the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or **(B)** another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

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RULE 805. HEARSAY WITHIN HEARSAY 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.	**Rule 805. Hearsay Within Hearsay** Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

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RULE 806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT When a hearsay statement, or a statement defined in Rule 801(e)(2) (C), (D), or (E), or in civil cases a statement defined in Rule 801(e)(3), 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, offered to impeach the declarant, is not subject to any requirement that the declarant 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 the declarant on the statement as if under cross-examination.	**Rule 806. Attacking and Supporting the Declarant's Credibility** When a hearsay statement — or a statement described in Rule 801(e)(2)(C), (D), or (E), or, in a civil case, a statement described in Rule 801(e)(3)— 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 statement or conduct, offered to impeach the declarant, 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.

ARTICLE IX.
AUTHENTICATION AND IDENTIFCATION

CURRENT TEXAS	RESTYLED TEXAS
RULE 901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION **(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.	**Rule 901. Authenticating or Identifying Evidence** **(a) In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.
(b) 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: (1) *Testimony of witness with knowledge*. Testimony that a matter is what it is claimed to be.	**(b) Examples.** The following are examples only — not a complete list — of evidence that satisfies the requirement: **(1)** ***Testimony of a Witness with Knowledge.*** Testimony that an item is what it is claimed to be.
(2) *Nonexpert opinion on handwriting*. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.	**(2)** ***Nonexpert Opinion About Handwriting.*** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.
(3) *Comparison by trier or expert witness*. Comparison by the trier of fact or by expert witness with specimens which have been found by the court to be genuine.	**(3)** ***Comparison by an Expert Witness or the Trier of Fact.*** A comparison by an expert witness or the trier of fact with a specimen that the court has found is genuine.
(4) *Distinctive characteristics and the like*. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.	**(4)** ***Distinctive Characteristics and the Like.*** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.
(5) *Voice identification*. Identification of a voice, whether heard firsthand or through	**(5)** ***Opinion About a Voice.*** An opinion identifying a person's voice —

mechanical or electronic transmission or recording, by opinion based upon hearing the voice at anytime under circumstances connecting it with the alleged speaker.	whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.
(6) *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.	**(6)** ***Evidence About a Telephone Conversation.*** For a telephone conversation, evidence that a call was made to the number assigned at the time to: **(A)** a particular person, if circumstances, including self-identification, show that the person answering was the one called; or **(B)** a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.
(7) *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.	**(7)** ***Evidence About Public Records.*** Evidence that: **(A)** a document was recorded or filed in a public office as authorized by law; or **(B)** a purported public record or statement is from the office where items of this kind are kept.
(8) *Ancient documents or data compilation*. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence twenty years or more at the time it is offered.	**(8)** ***Evidence About Ancient Documents or Data Compilations.*** For a document or data compilation, evidence that it: **(A)** is in a condition that creates no suspicion about its authenticity; **(B)** was in a place where, if authentic, it would likely be; and **(C)** is at least 20 years old when offered.

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

(10) *Methods provided by statute or rule*. Any method of authentication or identification provided by statute or by other rule prescribed pursuant to statutory authority.	**(10)** ***Methods Provided by a Statute or Rule.*** Any method of authentication or identification allowed by a statute or other rule prescribed under statutory authority.

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RULE 902. SELF–AUTHENTICATION Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following: **(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.	**Rule 902. Evidence That Is Self-Authenticating** The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted: **(1)** ***Domestic Public Documents That Are Sealed and Signed.*** A document that bears: **(A)** a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and **(B)** a signature purporting to be an execution or attestation.
(2) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in the 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.	**(2)** ***Domestic Public Documents That Are Not Sealed But Are Signed and Certified.*** A document that bears no seal if: **(A)** it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and **(B)** another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.
(3) Foreign Public Documents. A document purporting to be executed or attested in an official capacity by a person, authorized by the laws of a foreign country to make the execution	**(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.

or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of 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. The final certification shall be dispensed with whenever both the United States and the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces such requirement, in which case the record and the attestation shall be certified by the means provided in the treaty or convention.	**(A)** ***In General.*** 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. **(B)** ***If Parties Have Reasonable Opportunity to Investigate.*** If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either: **(i)** order that it be treated as presumptively authentic without final certification; or **(ii)** allow it to be evidenced by an attested summary with or without final certification. **(C)** ***If a Treaty Abolishes or Displaces the Final Certification Requirement.*** If the United States and the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces the final certification requirement, the record and attestation must be certified under the terms of the treaty or convention.
(4) Certified Copies of Public Records. A	**(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 statute or other rule prescribed pursuant to statutory authority.	copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by: **(A)** the custodian or another person authorized to make the certification; or **(B)** a certificate that complies with Rule 902(1), (2), or (3), a statute, or a rule prescribed under statutory authority.
(5) Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.	**(5)** ***Official Publications.*** A book, pamphlet, or other publication purporting to be issued by a public authority.
(6) Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.	**(6)** ***Newspapers and Periodicals.*** Printed material purporting to be a newspaper or periodical.
(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.	**(7)** ***Trade Inscriptions and the Like.*** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.
(8) Acknowledged Documents. 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.	**(8)** ***Acknowledged Documents.*** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.
(9) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.	**(9)** ***Commercial Paper and Related Documents.*** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.
(10) Business Records Accompanied by	**(10)** ***Records of a Regularly Conducted***

Affidavit.

(a) *Records or photocopies; admissibility; affidavit; filing*. Any record or set of records or photographically reproduced copies of such records, which would be admissible under Rule 803(6) or (7) shall be admissible in evidence in any court in this state upon the affidavit of the person who would otherwise provide the prerequisites of Rule 803(6) or (7), that such records attached to such affidavit were in fact so kept as required by Rule 803(6) or (7), provided further, that such record or records along with such affidavit are filed with the clerk of the court for inclusion with the papers in the cause in which the record or records are sought to be used as evidence at least fourteen days prior to the day upon which trial of said cause commences, and provided the other parties to said cause are given prompt notice by the party filing same of the filing of such record or records and affidavit, which notice shall identify the name and employer, if any, of the person making the affidavit and such records shall be made available to the counsel for other parties to the action or litigation for inspection and copying. The expense for copying shall be borne by the party, parties or persons who desire copies and not by the party or parties who file the records and serve notice of said filing, in compliance with this rule. Notice shall be deemed to have been promptly given if it is served in the manner contemplated by Rule of Civil Procedure 21a fourteen days prior to commencement of trial in said cause.

(b) *Form of affidavit*. A form for the affidavit of such person as shall make such affidavit as is permitted in paragraph (a) above shall be sufficient if it follows this form though this form shall not be exclusive, and an affidavit which sub substantially complies with the provisions of this rule shall suffice, to-wit:

[CASE STYLE FORM OMITTED]

AFFIDAVIT

Before me, the undersigned authority, personally appeared _____, who, being

Activity.

(A) ***Requirements.*** The original or a copy of a record that meets the requirements of Rule 803(6)(A)-(C) or 803(7)(A)-(B), as shown by the custodian's or another qualified person's affidavit or unsworn declaration. The proponent of the record must:

(i) file the affidavit or unsworn declaration and the record with the court at least 14 days before trial;

(ii) make the record available to the other parties for inspection and copying, but the party seeking the copy must bear the cost of copying; and

(iii) give the other parties prompt notice of the filing, including the name and employer, if any, of the person making the affidavit or unsworn declaration. If the proponent gives notice at least 14 days before trial in a manner acceptable under Rule of Civil Procedure 21a, the court must find the notice is prompt.

(B) ***Form for Business Records.*** A properly-executed affidavit or unsworn declaration that includes the following language meets the requirements of Rule 803(6)(A)-(C), although other language may also meet the requirements:

"1. I am the custodian of these records, or I am an employee familiar with the manner in which these records are created and maintained by virtue of my duties and responsibilities.
2. Attached are _____ pages of

by me duly sworn, deposed as follows:

My name is _____, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of _____. Attached hereto are _____ pages of records from _____. These said ____ pages of records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

_____
Affiant

[JURAT OMITTED]

(c) *Medical expenses affidavit*. A party may make prima facie proof of medical expenses by affidavit that substantially complies with the following form:

[CASE STYLE FORM OMITTED]

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for _____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____ provided to _____ on _____. The attached records are a part of this affidavit.

The attached records are kept by _____ in the regular course of business, and it was the regular course of records. These are the original records or exact duplicates of the original records.

3. The records were made at or near the time of the occurrence of the matters set forth.

4. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth.

5. The records were kept in the course of regularly conducted business activity.

6. It was the regular practice of the business activity to make the records."

(C) ***Form for Medical Expenses.*** A properly-executed affidavit or unsworn declaration that includes the following language constitutes prima facie proof of medical expenses:

"1. I am the custodian of these records, or I am an employee familiar with the manner in which these records are created and maintained by virtue of my duties and responsibilities.

2. Attached are _____ pages of records. These are the original records or exact duplicates of the original records and are a part of this [affidavit *or* unsworn declaration].

3. The attached records provide an itemized statement of the services and charge for the services that _____ provided to _____ on _____.

4. The records were made at or near the time the service was provided.

5. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth.

6. The records were kept in the course of regularly conducted business activity.

business of __________ for an employee or representative of __________, with knowledge of the service provided, to make the record or to transmit information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original. The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided. The total amount paid for the services was $_____ and the amount currently unpaid but which __________ has a right to be paid after any adjustments or credits is $_____. ________________________ Affiant **[JURAT OMITTED]**	7. It was the regular practice of the business activity to make the records. 8. The services provided were necessary, and the amount charged for the services was reasonable at the time and place the services were provided. 9. The total amount paid for the services was $____, and the amount currently unpaid but which ___________ has a right to be paid after any adjustments or credits is $______.”

(11) Presumptions Under Statutes or Other Rules. Any signature, document, or other matter declared by statute or by other rules prescribed pursuant to statutory authority to be presumptively or prima facie genuine or authentic.	**(11)** ***Presumptions Under a Statute or Rule.*** A signature, document, or anything else that a statute or rule prescribed under statutory authority declares to be presumptively or prima facie genuine or authentic.

	Comment to 2013 Restyling: The forms provided in Rules 902(10)(B) and (C) respectively include only the language designed to meet the requirements of the business record exception and medical expense form. They omit language for introductory material and the jurat because these may differ between an affidavit and an unsworn declaration. For example, an unsworn declaration will not include language typically found in an affidavit (e.g., “Before me, the undersigned authority, personally appeared _______, who, being by me duly sworn, deposed as follows”). Similarly, Tex. Civ. Prac. & Rem. Code § 132.001 prescribes a jurat for unsworn declarations that differs from the jurat typically used in affidavits. Because

	Rules 902(10)(B) and (C) require that an affidavit or unsworn declaration be "properly-executed," a party must be sure to include introductory material and a jurat appropriate to the type of document filed.

CURRENT TEXAS	RESTYLED TEXAS
RULE 903. SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY 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.	**Rule 903. Subscribing Witness's Testimony** A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

ARTICLE X.
CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

CURRENT TEXAS	RESTYLED TEXAS
RULE 1001. DEFINITIONS For purposes of this article the following definitions are applicable: **(a) 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. **(b) Photographs.** "Photographs" include still photographs, X-ray films, video tapes, and motion pictures. **(c) 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." **(d) 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 reproduce the original.	**Rule 1001. Definitions That Apply to This Article** In this article: **(a)** A "writing" consists of letters, words, numbers, or their equivalent set down in any form. **(b)** A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner. **(c)** A "photograph" means a photographic image or its equivalent stored in any form. **(d)** An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout — or other output readable by sight — if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it. **(e)** A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

CURRENT TEXAS	RESTYLED TEXAS
RULE 1002. REQUIREMENT OF ORIGINALS 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 law.	**Rule 1002. Requirement of the Original** An original writing, recording, or photograph is required in order to prove its content unless these rules or other law provides otherwise.

CURRENT TEXAS	RESTYLED TEXAS
RULE 1003. ADMISSIBILITY OF DUPLICATES A duplicate is admissible to the same extent as an original unless (1) a 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.	**Rule 1003. Admissibility of Duplicates** A duplicate is admissible to the same extent as the original unless a question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

CURRENT TEXAS	RESTYLED TEXAS
RULE 1004. ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if: **(a) Originals Lost or Destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; **(b) Original Not Obtainable.** No original can be obtained by any available judicial process or procedure; **(c) Original Outside the State.** No original is located in Texas; **(d) 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 content would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or **(e) Collateral Matters.** The writing, recording or photograph is not closely related to a controlling issue.	**Rule 1004. Admissibility of Other Evidence of Content** An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if: **(a)** all the originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith; **(b)** an original cannot be obtained by any available judicial process; **(c)** an original is not located in Texas; **(d)** 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 **(e)** the writing, recording, or photograph is not closely related to a controlling issue.

CURRENT TEXAS	RESTYLED TEXAS
RULE 1005. PUBLIC RECORDS 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.	**Rule 1005. Copies of Public Records to Prove Content** The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

CURRENT TEXAS	RESTYLED TEXAS
RULE 1006. SUMMARIES The contents of voluminous writings, recordings, or photographs, otherwise admissible, which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.	**Rule 1006. Summaries to Prove Content** The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

CURRENT TEXAS	RESTYLED TEXAS
RULE 1007. TESTIMONY OR WRITTEN ADMISSION OF PARTY 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.	**Rule 1007. Testimony or Statement of a Party to Prove Content** The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

CURRENT TEXAS	RESTYLED TEXAS
RULE 1008. FUNCTIONS OF COURT AND JURY 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.	**Rule 1008. Functions of the Court and Jury** Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether: **(a)** an asserted writing, recording, or photograph ever existed; **(b)** another one produced at the trial or hearing is the original; or **(c)** other evidence of content accurately reflects the content.

CURRENT TEXAS	RESTYLED TEXAS
RULE 1009. TRANSLATION OF FOREIGN LANGUAGE DOCUMENTS	**Rule 1009. Translating a Foreign Language Document**
(a) Translations. A translation of foreign language documents shall be admissible upon the affidavit of a qualified translator setting forth the qualifications of the translator and certifying that the translation is fair and accurate. Such affidavit, along with the translation and the underlying foreign language documents, shall be served upon all parties at least 45 days prior to the date of trial.	**(a) Submitting a Translation.** A translation of a foreign language document is admissible if, at least 45 days before trial, the proponent serves on all parties: **(1)** the translation and the underlying foreign language document; and **(2)** a qualified translator's affidavit or unsworn declaration that sets forth the translator's qualifications and certifies that the translation is accurate.
(b) Objections. Any party may object to the accuracy of another party's translation by pointing out the specific inaccuracies of the translation and by stating with specificity what the objecting party contends is a fair and accurate translation. Such objection shall be served upon all parties at least 15 days prior to the date of trial.	**(b) Objection.** When objecting to a translation's accuracy, a party should specifically indicate its inaccuracies and offer an accurate translation. A party must serve the objection on all parties at least 15 days before trial.
(c) Effect of Failure to Object or Offer Conflicting Translation. If no conflicting translation or objection is timely served, the court shall admit a translation submitted under paragraph (a) without need of proof, provided however that the underlying foreign language documents are otherwise admissible under the Texas Rules of Evidence. Failure to serve a conflicting translation under paragraph (a) or failure to timely and properly object to the accuracy of a translation under paragraph (b) shall preclude a party from attacking or offering evidence contradicting the accuracy of such translation at trial.	**(c) Effect of Failing to Object or Submit a Conflicting Translation.** If the underlying foreign language document is otherwise admissible, the court must admit — and may not allow a party to attack the accuracy of — a translation submitted under subdivision (a) unless the party has: **(1)** submitted a conflicting translation under subdivision (a); or **(2)** objected to the translation under subdivision (b).
(d) Effect of Objections or Conflicting Translations. In the event of conflicting translations under paragraph (a) or if objections to another party's translation are served under paragraph (b), the court shall determine whether there is a genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact.	**(d) Effect of Objecting or Submitting a Conflicting Translation.** If conflicting translations are submitted under subdivision (a) or an objection is made under subdivision (b), the court must determine whether there is a genuine issue about the accuracy of a material part of the translation. If so, the trier of fact must resolve the issue.
(e) Expert Testimony of Translator. Except as provided in paragraph (c), this Rule does not preclude the admission of a translation of	**(e) Qualified Translator May Testify.** Except for subdivision (c), this rule does not

foreign language documents at trial either by live testimony or by deposition testimony of a qualified expert translator.	preclude a party from offering the testimony of a qualified translator to translate a foreign language document.
(f) Varying of Time Limits. The court, upon motion of any party and for good cause shown, may enlarge or shorten the time limits set forth in this Rule.	**(f) Time Limits.** On a party's motion and for good cause, the court may alter this rule's time limits.
(g) Court Appointment. The court, if necessary, may appoint a qualified translator, the reasonable value of whose services shall be taxed as court costs.	**(g) Court-Appointed Translator.** If necessary, the court may appoint a qualified translator. The reasonable value of the translator's services must be taxed as court costs.

ARTICLE I.
GENERAL PROVISIONS

RESTYLED FRE	RESTYLED TEXAS
Rule 1103. Title These rules may be cited as the Federal Rules of Evidence. **Rule 101. Scope; Definitions** **(a) Scope.** These rules apply to proceedings in United States courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101. **Rule 1101. Applicability of the Rules** **(c) Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding. **(d) Exceptions.** These rules — except for those on privilege — do not apply to the following: (**1**) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility; (**2**) grand-jury proceedings; and (**3**) miscellaneous proceedings such as: • extradition or rendition; • issuing an arrest warrant, criminal summons, or search warrant;	**Rule 101. Title, Scope, and Applicability of the Rules; Definitions** **(a) Title.** These rules may be cited as the Texas Rules of Evidence. **(b) Scope.** These rules apply to proceedings in Texas courts except as otherwise provided in subdivisions (d)–(f). **(c) Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding. **(d) Exception for Constitutional or Statutory Provisions or Other Rules.** Despite these rules, a court must admit or exclude evidence if required to do so by the United States or Texas Constitution, a federal or Texas statute, or a rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals. If possible, a court should resolve by reasonable construction any inconsistency between these rules and applicable constitutional or statutory provisions or other rules. **(e) Exceptions.** These rules—except for those on privilege—do not apply to: **(1)** the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility; **(2)** grand jury proceedings; and **(3)** the following miscellaneous proceedings: **(A)** an application for habeas corpus in extradition, rendition, or interstate detainer proceedings;

Comment [SG1]: TRE 101 covers material covered in FRE 101, 1101, and 1103.

• a preliminary examination in a criminal case; • sentencing; • granting or revoking probation or supervised release; and • considering whether to release on bail or otherwise.	**(B)** an inquiry by the court under Code of Criminal Procedure article 46B.004 to determine whether evidence exists that would support a finding that the defendant may be incompetent to stand trial;
(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.	**(C)** bail proceedings other than hearings to deny, revoke, or increase bail; **(D)** hearings on justification for pretrial detention not involving bail; **(E)** proceedings to issue a search or arrest warrant; and **(F)** direct contempt determination proceedings. **(f) Exception for Justice Court Cases.** These rules do not apply to justice court cases except as authorized by Texas Rule of Civil Procedure 500.3.
Rule 101. Scope; Definitions **(b) Definitions.** In these rules: **(1)** "civil case" means a civil action or proceeding; **(2)** "criminal case" includes a criminal proceeding; **(3)** "public office" includes a public agency; **(4)** "record" includes a memorandum, report, or data compilation; **(5)** a "rule prescribed by the Supreme Court" means a rule adopted by the Supreme Court under statutory authority; and **(6)** a reference to any kind of written material or any other medium includes electronically stored information.	**(g) Exception for Military Justice Hearings**. The Texas Code of Military Justice, Tex. Gov't Code §§ 432.001–432.195, governs the admissibility of evidence in hearings held under that Code. **(h) Definitions.** In these rules: **(1)** "civil case" means a civil action or proceeding; **(2)** "criminal case" means a criminal action or proceeding, including an examining trial; **(3)** "public office" includes a public agency; **(4)** "record" includes a memorandum, report, or data compilation; **(5)** a "rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals" means a rule adopted by any of those courts under statutory authority;

Rule 1101. Applicability of the Rules

(a) To Courts and Judges. These rules apply to proceedings before:

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

(b) To Cases and Proceedings. These rules apply in:

- civil cases and proceedings, including bankruptcy, admiralty, and maritime cases;
- criminal cases and proceedings; and
- contempt proceedings, except those in which the court may act summarily.

(6) "unsworn declaration" means an unsworn declaration made in accordance with Tex. Civ. Prac. & Rem. Code § 132.001; and

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

Comment to 2013 Restyling: The reference to "hierarchical governance" in former Rule 101(c) has been deleted as unnecessary. The textual limitation of former Rule 101(c) to criminal cases has been eliminated. Courts in civil cases must also admit or exclude evidence when required to do so by constitutional or statutory provisions or other rules that take precedence over these rules. Likewise, the title to former Rule 101(d) has been changed to more accurately indicate the purpose and scope of the subdivision.

RESTYLED FRE	RESTYLED TEXAS
Rule 102. Purpose These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.	**Rule 102. Purpose** These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

RESTYLED FRE	RESTYLED TEXAS
Rule 103. Rulings on Evidence	**Rule 103. Rulings on Evidence**
(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and: **(1)** if the ruling admits evidence, a party, on the record: **(A)** timely objects or moves to strike; and **(B)** states the specific ground, unless it was apparent from the context; or **(2)** if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.	**(a) Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and: **(1)** if the ruling admits evidence, a party, on the record: **(A)** timely objects or moves to strike; and **(B)** states the specific ground, unless it was apparent from the context; or **(2)** if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.
(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record — either before or at trial — a party need not renew an objection or offer of proof to preserve a claim of error for appeal.	**(b) Not Needing to Renew an Objection.** When the court hears a party's objections outside the presence of the jury and rules that evidence is admissible, a party need not renew an objection to preserve a claim of error for appeal.
(c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.	**(c) Court's Statement About the Ruling; Directing an Offer of Proof.** The court must allow a party to make an offer of proof outside the jury's presence as soon as practicable—and before the court reads its charge to the jury. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. At a party's request, the court must direct that an offer of proof be made in question-and-answer form. Or the court may do so on its own.
(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.	**(d) Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) Taking Notice of Plain Error. A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.	**(e) Taking Notice of Fundamental Error in Criminal Cases.** In criminal cases, a court may take notice of a fundamental error affecting a substantial right, even if the claim of error was not properly preserved.

RESTYLED FRE	RESTYLED TEXAS
Rule 104. Preliminary Questions	**Rule 104. Preliminary Questions**
(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.	**(a) In General.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.
(b) Relevance That Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.	**(b) Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.
(c) Conducting a Hearing So That the Jury Cannot Hear It. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if: **(1)** the hearing involves the admissibility of a confession; **(2)** a defendant in a criminal case is a witness and so requests; or **(3)** justice so requires.	**(c) Conducting a Hearing So That the Jury Cannot Hear It.** The court must conduct any hearing on a preliminary question so that the jury cannot hear it if: **(1)** the hearing involves the admissibility of a confession in a criminal case; **(2)** a defendant in a criminal case is a witness and so requests; or **(3)** justice so requires.
(d) Cross-Examining a Defendant in a Criminal Case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.	**(d) Cross-Examining a Defendant in a Criminal Case.** By testifying outside the jury's hearing on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.
(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.	**(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.

RESTYLED FRE	RESTYLED TEXAS
Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.	**Rule 105. Evidence That Is Not Admissible Against Other Parties or for Other Purposes** **(a) Limiting Admitted Evidence.** 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. **(b) Preserving a Claim of Error.** **(1)** ***Court Admits the Evidence Without Restriction*** A party may claim error in a ruling to admit evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — only if the party requests the court to restrict the evidence to its proper scope and instruct the jury accordingly. **(2)** ***Court Excludes the Evidence.*** A party may claim error in a ruling to exclude evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — only if the party limits its offer to the party against whom or the purpose for which the evidence is admissible.

RESTYLED FRE	RESTYLED TEXAS
Rule 106. Remainder of or Related Writings or Recorded Statements If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time.	**Rule 106. Remainder of or Related Writings or Recorded Statements** If a party introduces all or part of a writing or recorded statement, an adverse party may introduce, at that time, any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time. "Writing or recorded statement" includes depositions.

RESTYLED FRE	RESTYLED TEXAS
NO FRE 107	**Rule 107. Rule of Optional Completeness** If a party introduces part of an act, declaration, conversation, writing, or recorded statement, an adverse party may inquire into any other part on the same subject. An adverse party may also introduce any other act, declaration, conversation, writing, or recorded statement that is necessary to explain or allow the trier of fact to fully understand the part offered by the opponent. "Writing or recorded statement" includes a deposition.

ARTICLE II.
JUDICIAL NOTICE

RESTYLED FRE	RESTYLED TEXAS
Rule 201. Judicial Notice of Adjudicative Facts	**Rule 201. Judicial Notice of Adjudicative Facts**
(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact	**(a) Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it: **(1)** is generally known within the trial court's territorial jurisdiction; or **(2)** can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.	**(b) Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it: **(1)** is generally known within the trial court's territorial jurisdiction; or **(2)** can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
(c) Taking Notice. The court: **(1)** may take judicial notice on its own; or **(2)** must take judicial notice if a party requests it and the court is supplied with the necessary information.	**(c) Taking Notice.** The court: **(1)** may take judicial notice on its own; or **(2)** must take judicial notice if a party requests it and the court is supplied with the necessary information.
(d) Timing. The court may take judicial notice at any stage of the proceeding.	**(d) Timing.** The court may take judicial notice at any stage of the proceeding.
(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.	**(e) Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.	**(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.

RESTYLED FRE	RESTYLED TEXAS
NO FRE 202	**Rule 202. Judicial Notice of Other States' Law** **(a) Scope.** This rule governs judicial notice of another state's, territory's, or federal jurisdiction's: • Constitution; • public statutes; • rules; • regulations; • ordinances; • court decisions; and • common law. **(b) Taking Notice.** The court: **(1)** may take judicial notice on its own; or **(2)** must take judicial notice if a party requests it and the court is supplied with the necessary information. **(c) Notice and Opportunity to Be Heard.** **(1)** ***Notice.*** The court may require a party requesting judicial notice to notify all other parties of the request so they may respond to it. **(2)** ***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 matter to be noticed. If the court takes judicial notice before a party has been notified, the party, on request, is still entitled to be heard. **(d) Timing.** The court may take judicial notice at any stage of the proceeding. **(e) Determination and Review.** The court—not the jury—must determine the law of another state, territory, or federal jurisdiction. The court's determination must be treated as a ruling on a question of law.

RESTYLED FRE	RESTYLED TEXAS
NO FRE 203	**Rule 203. Determining Foreign Law** **(a) Raising a Foreign Law Issue.** A party who intends to raise an issue about a foreign country's law must: **(1)** give reasonable notice by a pleading or other writing; and **(2)** at least 30 days before trial, supply all parties a copy of any written materials or sources the party intends to use to prove the foreign law. **(b) Translations.** If the materials or sources were originally written in a language other than English, the party intending to rely on them must, at least 30 days before trial, supply all parties both a copy of the foreign language text and an English translation. **(c) Materials the Court May Consider; Notice.** In determining foreign law, the court may consider any material or source, whether or not admissible. If the court considers any material or source not submitted by a party, it must give all parties notice and a reasonable opportunity to comment and submit additional materials. **(d) Determination and Review.** The court—not the jury—must determine foreign law. The court's determination must be treated as a ruling on a question of law.

RESTYLED FRE	RESTYLED TEXAS
NO FRE 204	**Rule 204. Judicial Notice of Texas Municipal and County Ordinances, Texas Register Contents, and Published Agency Rules** **(a) Scope.** This rule governs judicial notice of Texas municipal and county ordinances, the contents of the Texas Register, and agency rules published in the Texas Administrative Code. **(b) Taking Notice.** The court: **(1)** may take judicial notice on its own; or **(2)** must take judicial notice if a party requests it and the court is supplied with the necessary information. **(c) Notice and Opportunity to Be Heard.** **(1)** ***Notice.*** The court may require a party requesting judicial notice to notify all other parties of the request so they may respond to it. **(2)** ***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 matter to be noticed. If the court takes judicial notice before a party has been notified, the party, on request, is still entitled to be heard. **(d) Determination and Review.** The court—not the jury—must determine municipal and county ordinances, the contents of the Texas Register, and published agency rules. The court's determination must be treated as a ruling on a question of law.

ARTICLE III.
PRESUMPTIONS
[FRE: PRESUMPTIONS IN CIVIL CASES]

RESTYLED FRE	**RESTYLED TEXAS**
Rule 301. Presumptions in Civil Cases Generally In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally. **Rule 302. Applying State Law to Presumptions in Civil Cases** In a civil case, state law governs the effect of a presumption regarding a claim or defense for which state law supplies the rule of decision.	**NO RULES ADOPTED AT THIS TIME**

ARTICLE IV.
RELEVANCY AND ITS LIMITS

RESTYLED FRE	RESTYLED TEXAS
Rule 401. Test for Relevant Evidence Evidence is relevant if: **(a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and **(b)** the fact is of consequence in determining the action.	**Rule 401. Test for Relevant Evidence** Evidence is relevant if: **(a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and **(b)** the fact is of consequence in determining the action.

RESTYLED FRE	RESTYLED TEXAS
Rule 402. General Admissibility of Relevant Evidence Relevant evidence is admissible unless any of the following provides otherwise: • the United States Constitution; • a federal statute; • these rules; or • other rules prescribed by the Supreme Court. Irrelevant evidence is not admissible.	**Rule 402. General Admissibility of Relevant Evidence** Relevant evidence is admissible unless any of the following provides otherwise: • the United States or Texas Constitution; • a statute; • these rules; or • other rules prescribed under statutory authority. Irrelevant evidence is not admissible.

RESTYLED FRE	RESTYLED TEXAS
Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.	**Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, or Other Reasons** The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.

RESTYLED FRE	RESTYLED TEXAS
Rule 404. Character Evidence; Crimes or Other Acts	**Rule 404. Character Evidence; Crimes or Other Acts**
(a) Character Evidence.	**(a) Character Evidence.**
(1) ***Prohibited Uses.*** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.	**(1)** ***Prohibited Uses.*** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
(2) ***Exceptions for a Defendant or Victim in a Criminal Case.*** The following exceptions apply in a criminal case:	**(2)** ***Exceptions for an Accused.***
(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;	**(A)** In a criminal case, a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.
	(B) In a civil case, a party accused of conduct involving moral turpitude may offer evidence of the party's pertinent trait, and if the evidence is admitted, the accusing party may offer evidence to rebut it.
	(3) ***Exceptions for a Victim.***
(B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:	**(A)** In a criminal case, subject to the limitations in Rule 412, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.
(i) offer evidence to rebut it; and	**(B)** In a homicide case, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.
(ii) offer evidence of the defendant's same trait; and	
(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.	**(C)** In a civil case, a party accused of assaultive conduct may offer evidence of the victim's trait of violence to prove self-defense, and if the evidence is admitted, the accusing party may offer evidence

	of the victim's trait of peacefulness.
(3) ***Exceptions for a Witness.*** Evidence of a witness's character may be admitted under Rules 607, 608, and 609.	**(4)** ***Exceptions for a Witness.*** Evidence of a witness's character may be admitted under Rules 607, 608, and 609. **(5)** ***Definition of "Victim."*** In this rule, "victim" includes an alleged victim.
(b) Crimes, Wrongs, or Other Acts.	**(b) Crimes, Wrongs, or Other Acts.**
(1) ***Prohibited Uses.*** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.	**(1)** ***Prohibited Uses.*** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
(2) ***Permitted Uses; Notice in a Criminal Case.*** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must: **(A)** provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and **(B)** do so before trial — or during trial if the court, for good cause, excuses lack of pretrial notice.	**(2)** ***Permitted Uses; Notice in Criminal Case.*** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On timely request by a defendant in a criminal case, the prosecutor must provide reasonable notice before trial that the prosecution intends to introduce such evidence — other than that arising in the same transaction — in its case-in-chief.

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RESTYLED FRE	RESTYLED TEXAS
Rule 405. Methods of Proving Character	**Rule 405. Methods of Proving Character**
(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.	**(a) By Reputation or Opinion.** **(1)** ***In General.*** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, inquiry may be made into relevant specific instances of the person's conduct. **(2)** ***Accused's Character in a Criminal Case.*** In the guilt stage of a criminal case, a witness may testify to the defendant's character or character trait only if, before the day of the offense, the witness was familiar with the defendant's reputation or the facts or information that form the basis of the witness's opinion.
(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.	**(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.

RESTYLED FRE	RESTYLED TEXAS
Rule 406. Habit; Routine Practice Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.	**Rule 406. Habit; Routine Practice** Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

RESTYLED FRE	RESTYLED TEXAS
Rule 407. Subsequent Remedial Measures When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove: • negligence; • culpable conduct; • a defect in a product or its design; or • a need for a warning or instruction. But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.	**Rule 407. Subsequent Remedial Measures; Notification of Defect** **(a) Subsequent Remedial Measures.** When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove: • negligence; • culpable conduct; • a defect in a product or its design; or • a need for a warning or instruction. But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures. **(b) Notification of Defect.** A manufacturer's written notification to a purchaser of a defect in one of its products is admissible against the manufacturer to prove the defect. **Comment to 2013 Restyling:** Rule 407 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

RESTYLED FRE	RESTYLED TEXAS
Rule 408. Compromise Offers and Negotiations	**Rule 408. Compromise Offers and Negotiations**
(a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction: **(1)** furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and **(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.	**(a) Prohibited Uses.** Evidence of the following is not admissible either to prove or disprove the validity or amount of a disputed claim: **(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 **(2)** conduct or statements made during compromise negotiations about the claim.
(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.	**(b) Permissible Uses.** The court may admit this evidence for another purpose, such as proving a party's or witness's bias, prejudice, or interest, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. **Comment to 2013 Restyling:** Rule 408 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

	The reference to "liability" has been deleted on the ground that the deletion makes the Rule flow better and easier to read, and because "liability" is covered by the broader term "validity." Courts have not made substantive decisions on the basis of any distinction between validity and liability. No change in current practice or in the coverage of the Rule is intended. Finally, the sentence of the Rule referring to evidence "otherwise discoverable" has been deleted as superfluous. The intent of the sentence was to prevent a party from trying to immunize admissible information, such as a pre-existing document, through the pretense of disclosing it during compromise negotiations. But even without the sentence, the Rule cannot be read to protect pre-existing information simply because it was presented to the adversary in compromise negotiations.

RESTYLED FRE	RESTYLED TEXAS
Rule 409. Offers to Pay Medical and Similar Expenses Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.	**Rule 409. Offers to Pay Medical and Similar Expenses** Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

RESTYLED FRE	RESTYLED TEXAS
Rule 410. Pleas, Plea Discussions, and Related Statements	**Rule 410. Pleas, Plea Discussions, and Related Statements**
(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:	**(a) Prohibited Uses in Civil Cases.** In a civil case, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:
(1) a guilty plea that was later withdrawn;	**(1)** a guilty plea that was later withdrawn;
(2) a nolo contendere plea;	**(2)** a nolo contendere plea;
(3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or	**(3)** a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.	**(4)** a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.
	(b) Prohibited Uses in Criminal Cases. In a criminal case, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:
	(1) a guilty plea that was later withdrawn;
	(2) a nolo contendere plea that was later withdrawn;
	(3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
	(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty or nolo contendere plea or they resulted in a later-withdrawn guilty or nolo contendere plea.

(b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4): **(1)** in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or **(2)** in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.	**(c) Exception.** In a civil case, the court may admit a statement described in paragraph (a)(3) or (4) and in a criminal case, the court may admit a statement described in paragraph (b)(3) or (4), when another statement made during the same plea or plea discussions has been introduced and in fairness the statements ought to be considered together.

RESTYLED FRE	RESTYLED TEXAS
Rule 411. Liability Insurance Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.	**Rule 411. Liability Insurance** Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or, if disputed, proving agency, ownership, or control.

RESTYLED FRE	RESTYLED TEXAS
Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition	**Rule 412. Evidence of Previous Sexual Conduct in Criminal Cases**
(a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct: **(1)** evidence offered to prove that a victim engaged in other sexual behavior; or **(2)** evidence offered to prove a victim's sexual predisposition.	**(a) In General.** The following evidence is not admissible in a prosecution for sexual assault, aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault: **(1)** reputation or opinion evidence of a victim's past sexual behavior; or **(2)** specific instances of a victim's past sexual behavior.
(b) Exceptions. **(1)** ***Criminal Cases.*** The court may admit the following evidence in a criminal case: **(A)** evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence; **(B)** evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and **(C)** evidence whose exclusion would violate the defendant's constitutional rights. **(2)** ***Civil Cases.*** In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.	**(b) Exceptions for Specific Instances.** Evidence of specific instances of a victim's past sexual behavior is admissible if: **(1)** the court admits the evidence in accordance with subdivisions (c) and (d); **(2)** the evidence: **(A)** is necessary to rebut or explain scientific or medical evidence offered by the prosecutor; **(B)** concerns past sexual behavior with the defendant and is offered by the defendant to prove consent; **(C)** relates to the victim's motive or bias; **(D)** is admissible under Rule 609; or **(E)** is constitutionally required to be admitted; and **(3)** the probative value of the evidence outweighs the danger of unfair prejudice.

(c) Procedure to Determine Admissibility. **(1)** ***Motion.*** If a party intends to offer evidence under Rule 412(b), the party must: **(A)** file a motion that specifically describes the evidence and states the purpose for which it is to be offered; **(B)** do so at least 14 days before trial unless the court, for good cause, sets a different time; **(C)** serve the motion on all parties; and **(D)** notify the victim or, when appropriate, the victim's guardian or representative. **(2)** ***Hearing*****.** Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed. **(d) Definition of "Victim."** In this rule, "victim" includes an alleged victim.	**(c) Procedure for Offering Evidence.** Before offering any evidence of the victim's past sexual behavior, the defendant must inform the court outside the jury's presence. The court must then conduct an in camera hearing, recorded by a court reporter, and determine whether the proposed evidence is admissible. The defendant may not refer to any evidence ruled inadmissible without first requesting and gaining the court's approval outside the jury's presence. **(d) Record Sealed.** The court must preserve the record of the in camera hearing, under seal, as part of the record. **(e) Definition of "Victim."** In this rule, "victim" includes an alleged victim.

RESTYLED FRE	RESTYLED TEXAS
Rule 413. Similar Crimes in Sexual-Assault Cases **(a) Permitted Uses.** In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant. **(b) Disclosure to the Defendant.** If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause. **(c) Effect on Other Rules.** This rule does not limit the admission or consideration of evidence under any other rule. **(d) Definition of "Sexual Assault."** In this rule and Rule 415, "sexual assault" means a crime under federal law or under state law (as "state" is defined in 18 U.S.C. § 513) involving: **(1)** any conduct prohibited by 18 U.S.C. chapter 109A; **(2)** contact, without consent, between any part of the defendant's body — or an object — and another person's genitals or anus; **(3)** contact, without consent, between the defendant's genitals or anus and any part of another person's body; **(4)** deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or **(5)** an attempt or conspiracy to engage in conduct described in subparagraphs (1)–(4).	**NO CORRESPONDING TRE**

RESTYLED FRE	RESTYLED TEXAS
Rule 414. Similar Crimes in Child-Molestation Cases **(a) Permitted Uses.** In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant. **(b) Disclosure to the Defendant.** If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause. **(c) Effect on Other Rules.** This rule does not limit the admission or consideration of evidence under any other rule. **(d) Definition of "Child" and "Child Molestation."** In this rule and Rule 415: **(1)** "child" means a person below the age of 14; and **(2)** "child molestation" means a crime under federal law or under state law (as "state" is defined in 18 U.S.C. § 513) involving: **(A)** any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child; **(B)** any conduct prohibited by 18 U.S.C. chapter 110; **(C)** contact between any part of the defendant's body — or an object — and a child's genitals or anus; **(D)** contact between the defendant's genitals or anus and any part of a	**NO CORRESPONDING TRE**

Comment [SG2]: The 2013 Legislature passed SB 12, which is similar in substance to FRE 414. The substance of SB 12 could easily be restyled and codified in a new TRE 414.

child's body; **(E)** deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or **(F)** an attempt or conspiracy to engage in conduct described in subparagraphs (A)–(E).	

RESTYLED FRE	RESTYLED TEXAS
Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation **(a) Permitted Uses.** In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation. The evidence may be considered as provided in Rules 413 and 414. **(b) Disclosure to the Opponent.** If a party intends to offer this evidence, the party must disclose it to the party against whom it will be offered, including witnesses' statements or a summary of the expected testimony. The party must do so at least 15 days before trial or at a later time that the court allows for good cause. **(c) Effect on Other Rules.** This rule does not limit the admission or consideration of evidence under any other rule.	**NO CORRESPONDING TRE**

ARTICLE V.
PRIVILEGES

RESTYLED FRE	RESTYLED TEXAS
Rule 501. Privilege in General The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise: • the United States Constitution; • a federal statute; or • rules prescribed by the Supreme Court. But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.	**Rule 501. Privileges in General** Unless a Constitution, a statute, or these or other rules prescribed under statutory authority provide otherwise, no person has a privilege to: **(a)** refuse to be a witness; **(b)** refuse to disclose any matter; **(c)** refuse to produce any object or writing; or **(d)** prevent another from being a witness, disclosing any matter, or producing any object or writing.

RESTYLED FRE	RESTYLED TEXAS
Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection. **(a) Disclosure Made in a Federal Proceeding or to a Federal Office or Agency; Scope of a Waiver.** When the disclosure is made in a Federal proceeding or to a Federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a Federal or State proceeding only if: **(1)** the waiver is intentional; **(2)** the disclosed and undisclosed communications or information concern the same subject matter; and **(3)** they ought in fairness to be considered together. **(b) Inadvertent Disclosure.** When made in a Federal proceeding or to a Federal office or agency, the disclosure does not operate as a waiver in a Federal or State proceeding if: **(1)** the disclosure is inadvertent; **(2)** the holder of the privilege or protection took reasonable steps to prevent disclosure; and **(3)** the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B). **(c) Disclosure Made in a State Proceeding.** When the disclosure is made in a State proceeding and is not the subject of a State-court order concerning waiver, the	**SUBSTANCE OF FRE 502 IS COVERED IN PROPOSED AREC AND SCAC VERSION OF TRE 511, ALREADY PENDING BEFORE SUPREME COURT**

disclosure does not operate as a waiver in a Federal proceeding if the disclosure: **(1)** would not be a waiver under this rule if it had been made in a Federal proceeding; or **(2)** is not a waiver under the law of the State where the disclosure occurred. **(d) Controlling Effect of a Court Order.** A Federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court--in which event the disclosure is also not a waiver in any other Federal or State proceeding. **(e) Controlling Effect of a Party Agreement.** An agreement on the effect of disclosure in a Federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order. **(f) Controlling Effect of this Rule.** Notwithstanding Rules 101 and 1101, this rule applies to State proceedings and to Federal court-annexed and Federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if State law provides the rule of decision. **(g) Definitions.** In this rule: **(1)** "attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications; and **(2)** "work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.	

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 502. Required Reports Privileged By Statute** **(a) In General.** If a law requiring a return or report to be made so provides: **(1)** a person, corporation, association, or other organization or entity—whether public or private—that makes the required return or report has a privilege to refuse to disclose it and to prevent any other person from disclosing it; and **(2)** a public officer or agency to whom the return or report must be made has a privilege to refuse to disclose it. **(b) Exceptions.** This privilege does not apply in an action involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 503. Lawyer–Client Privilege** **(a) Definitions.** In this rule: **(1)** A "client" is a person, public officer, or corporation, association, or other organization or entity–whether public or private–that: **(A)** is rendered professional legal services by a lawyer; or **(B)** consults a lawyer with a view to obtaining professional legal services. **(2)** A "client's representative" is: **(A)** a person who has authority to obtain professional legal services for the client or to act for the client on the legal advice rendered; or **(B)** any other person who, to facilitate the rendition of professional legal services to the client, makes or receives a confidential communication while acting in the scope of employment for the client. **(3)** A "lawyer" is a person authorized, or who the client reasonably believes is authorized, to practice law in any state or nation. **(4)** A "lawyer's representative" is: **(A)** one employed by the lawyer to assist in the rendition of professional legal services; or **(B)** an accountant who is reasonably necessary for the lawyer's rendition of professional legal services. **(5)** A communication is "confidential" if not intended to be disclosed to third persons other than those:

	(A) to whom disclosure is made to further the rendition of professional legal services to the client; or **(B)** reasonably necessary to transmit the communication. **(b) Rules of Privilege.** **(1)** ***General Rule.*** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client: **(A)** between the client or the client's representative and the client's lawyer or the lawyer's representative; **(B)** between the client's lawyer and the lawyer's representative; **(C)** by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action; **(D)** between the client's representatives or between the client and the client's representative; or **(E)** among lawyers and their representatives representing the same client. **(2)** ***Special Rule in a Criminal Case.*** In a criminal case, a client has a privilege to prevent a lawyer or lawyer's representative from disclosing any other fact that came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.

	(c) Who May Claim. The privilege may be claimed by: **(1)** the client; **(2)** the client's guardian or conservator; **(3)** a deceased client's personal representative; or **(4)** the successor, trustee, or similar representative of a corporation, association, or other organization or entity — whether or not in existence. The person who was the client's lawyer or the lawyer's representative when the communication was made may claim the privilege on the client's behalf – and is presumed to have authority to do so. **(d) Exceptions.** This privilege does not apply: **(1)** ***Furtherance of Crime or Fraud.*** If the lawyer's services were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud. **(2)** ***Claimants Through Same Deceased Client.*** If the communication is relevant to an issue between parties claiming through the same deceased client. **(3)** ***Breach of Duty By a Lawyer or Client.*** If the communication is relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer. **(4)** ***Document Attested By a Lawyer.*** If the communication is relevant to an issue concerning an attested document to which the lawyer is an attesting witness. **(5)** ***Joint Clients.*** If the communication: **(A)** is offered in an action between clients who retained or consulted a lawyer in common;

	(B) was made by any of the clients to the lawyer; and **(C)** is relevant to a matter of common interest between the clients.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 504. Spousal Privileges** **(a) Confidential Communication Privilege.** **(1)** ***Definition*****.** A communication is "confidential" if a person makes it privately to the person's spouse and does not intend its disclosure to any other person. **(2)** ***General Rule.*** A person has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made to the person's spouse while they were married. This privilege survives termination of the marriage. **(3)** ***Who May Claim*****.** The privilege may be claimed by: **(A)** the communicating spouse; **(B)** the guardian of an incompetent communicating spouse; or **(C)** the personal representative of a deceased communicating spouse. The other spouse may claim the privilege on the communicating spouse's behalf – and is presumed to have authority to do so. **(4)** ***Exceptions.*** This privilege does not apply: **(A)** ***Furtherance of Crime or Fraud.*** If the communication is made – wholly or partially – to enable or aid anyone to commit or plan to commit a crime or fraud. **(B)** ***Proceeding Between Spouse and Other Spouse or Claimant Through Deceased Spouse.*** In a civil proceeding: **(i)** brought by or on behalf of one

	spouse against the other; or **(ii)** between a surviving spouse and a person claiming through the deceased spouse. **(C)** ***Crime Against Family, Spouse, Household Member, or Minor Child.*** In a: **(i)** proceeding in which a party is accused of conduct that, if proved, is a crime against the person of the other spouse, any member of the household of either spouse, or any minor child; or **(ii)** criminal proceeding involving a charge of bigamy under Section 25.01 of the Penal Code. **(D)** ***Commitment or Similar Proceeding.*** In a proceeding to commit either spouse or otherwise to place the spouse or the spouse's property under another's control because of a mental or physical condition. **(E)** ***Proceeding to Establish Competence.*** In a proceeding brought by or on behalf of either spouse to establish competence. **(b) Privilege Not to Testify in a Criminal Case.** **(1)** ***General Rule.*** In a criminal case, an accused's spouse has a privilege not to be called to testify for the state. But this rule neither prohibits a spouse from testifying voluntarily for the state nor gives a spouse a privilege to refuse to be called to testify for the accused. **(2)** ***Failure to Call Spouse.*** If other evidence indicates that the accused's spouse could testify to relevant matters, an accused's failure to call the spouse to testify is a proper subject of comment

	by counsel. **(3)** ***Who May Claim*.** The privilege not to testify may be claimed by the accused's spouse or the spouse's guardian or representative, but not by the accused. **(4)** ***Exceptions*.** This privilege does not apply: **(A)** ***Certain Criminal Proceedings.*** In a criminal proceeding in which a spouse is charged with: **(i)** a crime against the other spouse, any member of the household of either spouse, or any minor child; or **(ii)** bigamy under Section 25.01 of the Penal Code. **(B)** ***Matters That Occurred Before the Marriage.*** If the spouse is called to testify about matters that occurred before the marriage. **Comment to 2013 Restyling**: Previously, Rule 504(b)(1) provided that, "A spouse who testifies on behalf of an accused is subject to cross-examination as provided in Rule 611(b)." That sentence was included in the original version of Rule 504 when the Texas Rules of Criminal Evidence were promulgated in 1986 and changed the rule to a testimonial privilege held by the witness spouse. Until then, a spouse was deemed incompetent to testify against his or her defendant spouse, and when a spouse testified on behalf of a defendant spouse, the state was limited to cross-examining the spouse about matters relating to the spouse's direct testimony. The quoted sentence from the original Criminal Rule 504(b) was designed to overturn this limitation and allow the state to cross-examine a testifying spouse in the same manner as any other witness. More than twenty-five years later, it is clear that a spouse who testifies either for or against a defendant spouse may be cross-examined in the same manner as any other witness. Therefore, the continued inclusion in the rule of a provision that refers only to the

	cross-examination of a spouse who testifies on behalf of the accused is more confusing than helpful. Its deletion is designed to clarify the rule and does not change existing law.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 505. Privilege For Communications to a Clergy Member** **(a) Definitions.** In this rule: **(1)** A "clergy member" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or someone whom a communicant reasonably believes is a clergy member. **(2)** A "communicant" is a person who consults a clergy member in the clergy member's professional capacity as a spiritual adviser. **(3)** A communication is "confidential" if made privately and not intended for further disclosure except to other persons present to further the purpose of the communication. **(b) General Rule.** A communicant has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication by the communicant to a clergy member in the clergy member's professional capacity as spiritual adviser. **(c) Who May Claim.** The privilege may be claimed by: **(1)** the communicant; **(2)** the communicant's guardian or conservator; or **(3)** a deceased communicant's personal representative. The clergy member to whom the communication was made may claim the privilege on the communicant's behalf – and is presumed to have authority to do so.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 506. Political Vote Privilege** A person has a privilege to refuse to disclose the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 507. Trade Secrets Privilege** **(a) General Rule.** A person has a privilege to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, unless the court finds that nondisclosure will tend to conceal fraud or otherwise work injustice. **(b) Who May Claim.** The privilege may be claimed by the person who owns the trade secret or the person's agent or employee. **(c) Protective Measure.** If a court orders a person to disclose a trade secret, it must take any protective measure required by the interests of the privilege holder and the parties and to further justice.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 508. Informer's Identity Privilege** **(a) General Rule.** The United States, a state, or a subdivision of either has a privilege to refuse to disclose a person's identity if: **(1)** the person has furnished information to a law enforcement officer or a member of a legislative committee or its staff conducting an investigation of a possible violation of law; and **(2)** the information relates to or assists in the investigation. **(b) Who May Claim.** The privilege may be claimed by an appropriate representative of the public entity to which the informer furnished the information. The court in a criminal case must reject the privilege claim if the state objects. **(c) Exceptions.** **(1)** ***Voluntary Disclosure; Informer a Witness.*** This privilege does not apply if: **(A)** the informer's identity or the informer's interest in the communication's subject matter has been disclosed – by a privilege holder or the informer's own action – to a person who would have cause to resent the communication; or **(B)** the informer appears as a witness for the public entity. **(2)** ***Testimony About the Merits.*** **(A)** ***Criminal Case.*** In a criminal case, this privilege does not apply if the court finds a reasonable probability exists that the informer can give testimony necessary to a fair determination of guilt or innocence. If the court so finds and the public entity elects not to disclose the

	informer's identity: **(i)** on the defendant's motion, the court must dismiss the charges to which the testimony would relate; or **(ii)** on its own motion, the court may dismiss the charges to which the testimony would relate. **(B)** ***Certain Civil Cases.*** In a civil case in which the public entity is a party, this privilege does not apply if the court finds a reasonable probability exists that the informer can give testimony necessary to a fair determination of a material issue on the merits. If the court so finds and the public entity elects not to disclose the informer's identity, the court may make any order that justice requires. **(C)** ***Procedures.*** **(i)** If it appears that an informer may be able to give the testimony required to invoke this exception and the public entity claims the privilege, the court must give the public entity an opportunity to show in camera facts relevant to determining whether this exception is met. The showing should ordinarily be made by affidavits, but the court may take testimony if it finds the matter cannot be satisfactorily resolved by affidavits. **(ii)** No counsel or party may attend the in camera showing. **(iii)** The court must seal and preserve for appeal evidence submitted under this subparagraph (2)(C). The evidence must not otherwise be

	revealed without the public entity's consent. **(3)** ***Legality of Obtaining Evidence.*** **(A)** ***Court May Order Disclosure.*** The court may order the public entity to disclose an informer's identity if: **(i)** information from an informer is relied on to establish the legality of the means by which evidence was obtained; and **(ii)** the court is not satisfied that the information was received from an informer reasonably believed to be reliable or credible. **(B)** ***Procedures.*** **(i)** On the public entity's request, the court must order the disclosure be made in camera. **(ii)** No counsel or party may attend the in camera disclosure. **(iii)** If the informer's identity is disclosed in camera, the court must seal and preserve for appeal the record of the in camera proceeding. The record of the in camera proceeding must not otherwise be revealed without the public entity's consent.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 509. Physician–Patient Privilege** **(a) Definitions.** In this rule: **(1)** A "patient" is a person who consults or is seen by a physician for medical care. **(2)** A "physician" is a person licensed, or who the patient reasonably believes is licensed, to practice medicine in any state or nation. **(3)** A communication is "confidential" if not intended to be disclosed to third persons other than those: **(A)** present to further the patient's interest in the consultation, examination, or interview; **(B)** reasonably necessary to transmit the communication; or **(C)** participating in the diagnosis and treatment under the physician's direction, including members of the patient's family. **(b) Limited Privilege in a Criminal Case.** There is no physician-patient privilege in a criminal case. But a confidential communication is not admissible in a criminal case if made: **(1)** to a person involved in the treatment of or examination for alcohol or drug abuse; and **(2)** by a person being treated voluntarily or being examined for admission to treatment for alcohol or drug abuse. **(b) Limited Privilege in a Criminal Case.** There is no physician-patient privilege in a criminal case. But in a criminal case, a person has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication that was made by the person to anyone

Comment [sg3]: First version. Expressed as a rule of inadmissibility.

Comment [sg4]: Second alternative. Expressed as a privilege.

	involved in the treatment of or examination for alcohol or drug abuse if the person was being: **(1)** treated voluntarily for alcohol or drug abuse; or **(2)** examined for admission to treatment for alcohol or drug abuse. **(c) General Rule in a Civil Case.** In a civil case, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing: **(1)** a confidential communication between a physician and the patient that relates to or was made in connection with any professional services the physician rendered the patient; and **(2)** a record of the patient's identity, diagnosis, evaluation, or treatment created or maintained by a physician. **(d) Who May Claim in a Civil Case.** The privilege may be claimed by: **(1)** the patient; or **(2)** the patient's representative on the patient's behalf. The physician may claim the privilege on the patient's behalf — and is presumed to have authority to do so. **(e) Exceptions in a Civil Case.** This privilege does not apply: **(1)** ***Proceeding Against Physician.*** If the communication or record is relevant to a physician's claim or defense in: **(A)** a proceeding the patient brings against a physician; or **(B)** a license revocation proceeding in which the patient is a complaining witness.

	(2) ***Consent.*** If the patient or a person authorized to act on the patient's behalf consents in writing to the release of any privileged information, as provided in subdivision (f). **(3)** ***Action to Collect.*** In an action to collect a claim for medical services rendered to the patient. **(4)** ***Party Relies on Patient's Condition.*** If any party relies on the patient's physical, mental, or emotional condition as a part of the party's claim or defense and the communication or record is relevant to that condition. **(5)** ***Disciplinary Investigation or Proceeding.*** In a disciplinary investigation of or proceeding against a physician under the Medical Practice Act, Tex. Occ. Code § 164.001 et seq., or a registered nurse under Tex. Occ. Code § 301.451 et seq. But the board conducting the investigation or proceeding must protect the identity of any patient whose medical records are examined unless: **(A)** the patient's records would be subject to disclosure under paragraph (e)(1); or **(B)** the patient has consented in writing to the release of medical records, as provided in subdivision (f). **(6)** ***Involuntary Civil Commitment or Similar Proceeding.*** In a proceeding for involuntary civil commitment or court-ordered treatment, or a probable cause hearing under Tex. Health & Safety Code: **(A)** chapter 464 (Facilities Treating Alcoholics and Drug-Dependent Persons); **(B)** title 7, subtitle C (Texas Mental Health Code); or

(C) title 7, subtitle D (Persons With Mental Retardation Act).

(7) ***Abuse or Neglect of "Institution" Resident.*** In a proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of a resident of an "institution" as defined in Tex. Health & Safety Code § 242.002.

(f) Consent For Release of Privileged Information.

(1) Consent for the release of privileged information must be in writing and signed by:

(A) the patient;

(B) a parent or legal guardian if the patient is a minor;

(C) a legal guardian if the patient has been adjudicated incompetent to manage personal affairs;

(D) an attorney appointed for the patient under Tex. Health & Safety Code title 7, subtitles C and D;

(E) an attorney ad litem appointed for the patient under Tex. Prob. Code chapter XIII ;

(F) an attorney ad litem or guardian ad litem appointed for a minor under Tex. Fam. Code chapter 107, subchapter B; or

(G) a personal representative if the patient is deceased.

(2) The consent must specify:

(A) the information or medical records covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information

Comment [sg5]: NOTE: The Probate Code is scheduled to be replaced by the Texas Estates Code on 1/1/2014. The corresponding citation will be Tex. Estates Code title 3, subtitle E.

	is to be released. **(3)** The patient, or other person authorized to consent, may withdraw consent to the release of any information. But a withdrawal of consent does not affect any information disclosed before the patient or authorized person gave written notice of the withdrawal. **(4)** Any person who receives information privileged under this rule may disclose the information only to the extent consistent with the purposes specified in the consent. **Comment to 2013 Restyling:** The physician-patient privilege in a civil case was first enacted in Texas in 1981 as part of the Medical Practice Act, formerly codified in Tex. Rev. Civ. Stat. art. 4495b. That statute provided that the privilege applied even if a patient had received a physician's services before the statute's enactment. Because more than thirty years have now passed, it is no longer necessary to burden the text of the rule with a statement regarding the privilege's retroactive application. But deleting this statement from the rule's text is not intended as a substantive change in the law. The former rule's reference to "confidentiality or" and "administrative proceedings" in subdivision (e) [Exceptions in a Civil Case] has been deleted. First, this rule is a privilege rule only. Tex. Occ. Code § 159.004 sets forth exceptions to a physician's duty to maintain confidentiality of patient information outside court and administrative proceedings. Second, by their own terms the rules of evidence govern only proceedings in Texas courts. See Rule 101(b). To the extent the rules apply in administrative proceedings, it is because the Administrative Procedure Act mandates their applicability. Tex. Gov't Code § 2001.083 provides that "In a contested case, a state agency shall give effect to the rules of privilege recognized by law." Section 2001.091 excludes privileged material from discovery in contested administrative cases. Statutory references in the former rule that are

	no longer up-to-date have been revised.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 510. Mental Health Information Privilege in Civil Cases** **(a) Definitions.** In this rule: **(1)** A "professional" is a person: **(A)** authorized to practice medicine in any state or nation; **(B)** licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional disorder; **(C)** involved in the treatment or examination of drug abusers; or **(D)** who the patient reasonably believes to be a professional under this rule. **(2)** A "patient" is a person who: **(A)** consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and drug addiction; or **(B)** is being treated voluntarily or being examined for admission to voluntary treatment for drug abuse. **(3)** A "patient's representative" is: **(A)** any person who has the patient's written consent; **(B)** the parent of a minor patient; **(C)** the guardian of a patient who has been adjudicated incompetent to manage personal affairs; or **(D)** the personal representative of a deceased patient. **(4)** A communication is "confidential" if

	not intended to be disclosed to third persons other than those: **(A)** present to further the patient's interest in the diagnosis, examination, evaluation, or treatment; **(B)** reasonably necessary to transmit the communication; or **(C)** participating in the diagnosis, examination, evaluation, or treatment under the professional's direction, including members of the patient's family. **(b) General Rule; Disclosure.** **(1)** In a civil case, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing: **(A)** a confidential communication between the patient and a professional; and **(B)** a record of the patient's identity, diagnosis, evaluation, or treatment that is created or maintained by a professional. **(2)** In a civil case, any person — other than a patient's representative acting on the patient's behalf — who receives information privileged under this rule may disclose the information only to the extent consistent with the purposes for which it was obtained. **(c) Who May Claim.** The privilege may be claimed by: **(1)** the patient; or **(2)** the patient's representative on the patient's behalf. The professional may claim the privilege on the patient's behalf — and is presumed to have authority to do so.

	(d) Exceptions. This privilege does not apply: **(1)** ***Proceeding Against Professional.*** If the communication or record is relevant to a professional's claim or defense in: **(A)** a proceeding the patient brings against a professional; or **(B)** a license revocation proceeding in which the patient is a complaining witness. **(2)** ***Written Waiver.*** If the patient or a person authorized to act on the patient's behalf waives the privilege in writing. **(3)** ***Action to Collect.*** In an action to collect a claim for mental or emotional health services rendered to the patient. **(4)** ***Communication Made in Court-Ordered Examination.*** To a communication the patient made to a professional during a court-ordered examination relating to the patient's mental or emotional condition or disorder if: **(A)** the patient made the communication after being informed that it would not be privileged; **(B)** the communication is offered to prove an issue involving the patient's mental or emotional health; and **(C)** the court imposes appropriate safeguards against unauthorized disclosure. **(5)** ***Party Relies on Patient's Condition.*** If any party relies on the patient's physical, mental, or emotional condition as a part of the party's claim or defense and the communication or record is relevant to that condition.

	(6) ***Abuse or Neglect of "Institution" Resident.*** In a proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of a resident of an "institution" as defined in Tex. Health & Safety Code § 242.002. **Comment to 2013 Restyling:** The mental health information privilege in civil cases was enacted in Texas in 1979. Tex. Rev. Civ. STAT. ART. 5561H (LATER CODIFIED AT TEX. HEALTH & SAFETY CODE § 611.001 ET SEQ.) PROVIDED that the privilege applied even if the patient had received the professional's services before the statute's enactment. Because more than thirty years have now passed, it is no longer necessary to burden the text of the rule with a statement regarding the privilege's retroactive application. But deleting this statement from the rule's text is not intended as a substantive change in the law.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 511. [PROPOSED AREC AND SCAC VERSIONS OF RULE 511 ALREADY PENDING BEFORE SUPREME COURT]**

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 512. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege** A privilege claim is not defeated by a disclosure that was: **(a)** compelled erroneously; or **(b)** made without opportunity to claim the privilege.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 513. Comment On or Inference From a Privilege Claim; Instruction** **(a) Comment or Inference Not Permitted.** Except as permitted in Rule 504(b)(2), neither the court nor counsel may comment on a privilege claim – whether made in the present proceeding or previously – and the factfinder may not draw an inference from the claim. **(b) Claiming Privilege Without the Jury's Knowledge.** To the extent practicable, the court must conduct a jury trial so that the making of a privilege claim is not suggested to the jury by any means. **(c) Claim of Privilege Against Self–Incrimination in a Civil Case.** Subdivisions (a) and (b) do not apply to a party's claim, in the present civil case, of the privilege against self-incrimination. **(d) Jury Instruction.** When this rule forbids a jury from drawing an inference from a privilege claim, the court must, on request of a party against whom the jury might draw the inference, instruct the jury accordingly.

ARTICLE VI.
WITNESSES

RESTYLED FRE	RESTYLED TEXAS
Rule 601. Competency to Testify in General Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness's competency regarding a claim or defense for which state law supplies the rule of decision.	**Rule 601. Competency to Testify in General; "Dead Man's Rule"** **(a) In General.** Every person is competent to be a witness unless these rules provide otherwise. The following witnesses are incompetent: **(1)** ***Insane Persons.*** A person who is now insane or was insane at the time of the events about which the person is called to testify. **(2)** ***Persons Lacking Sufficient Intellect.*** A child—or any other person—who the court examines and finds lacks sufficient intellect to testify. **(b) The "Dead Man's Rule."** **(1)** ***Applicability.*** The "Dead Man's Rule" applies only in a civil case: **(A)** by or against a party in the party's capacity as an executor, administrator, or guardian; or **(B)** by or against a decedent's heirs or legal representatives and based in whole or in part on the decedent's oral statement. **(2)** ***General Rule.*** In cases described in subparagraph (b)(1)(A), a party may not testify against another party about an oral statement by the testator, intestate, or ward. In cases described in subparagraph (b)(1)(B), a party may not testify against another party about an oral statement by the decedent. **(3)** ***Exceptions.*** A party may testify against another party about an oral statement by the testator, intestate, ward, or decedent if:

	(A) the party's testimony about the statement is corroborated; or **(B)** the opposing party calls the party to testify at the trial about the statement. **(4)** ***Instructions.*** If a court excludes evidence under paragraph (b)(2), the court must instruct the jury that the law prohibits a party from testifying about an oral statement by the testator, intestate, ward, or decedent unless the oral statement is corroborated or the opposing party calls the party to testify at the trial about the statement. **Comment to 2013 Restyling:** The text of the "Dead Man's Rule" has been streamlined to clarify its meaning without making any substantive changes. The text of former Rule 601(b) (as well as its statutory predecessor, Vernon's Ann.Civ.St. art. 3716) prohibits only a "party" from testifying about the dead man's statements. Despite this, the last sentence of former Rule 601(b) requires the court to instruct the jury when the rule "prohibits an interested party or witness" from testifying. Because the rule prohibits only a "party" from testifying, restyled Rule 601(b)(4) references only "a party," and not "an interested party or witness." To be sure, courts have indicated that the rule (or its statutory predecessor) may be applicable to a witness who is not nominally a party and inapplicable to a witness who is only nominally a party. See, e.g., Chandler v. Welborn, 156 Tex. 312, 294 S.W.2d 801, 809 (1956); Ragsdale v. Ragsdale, 142 Tex. 476, 179 S.W.2d 291, 295 (1944). But these decisions are based on an interpretation of the meaning of "party." Therefore, limiting the court's instruction under restyled Rule 601(b)(4) to "a party" does not change Texas practice. In addition, restyled Rule 601(b) deletes the sentence in former Rule 601(b) that states "Except for the foregoing, a witness is not precluded from giving evidence . . . because the witness is a party to the action . . ." This sentence is surplusage. Rule 601(b) is a rule of exclusion. If the testimony falls outside the rule of exclusion, its admissibility will be

	determined by other applicable rules of evidence.

RESTYLED FRE	RESTYLED TEXAS
Rule 602. Need for Personal Knowledge A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.	**Rule 602. Need for Personal Knowledge** A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

RESTYLED FRE	RESTYLED TEXAS
Rule 603. Oath or Affirmation to Testify Truthfully Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.	**Rule 603. Oath or Affirmation to Testify Truthfully** Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

RESTYLED FRE	RESTYLED TEXAS
Rule 604. Interpreter An interpreter must be qualified and must give an oath or affirmation to make a true translation.	**Rule 604. Interpreter** An interpreter must be qualified and must give an oath or affirmation to make a true translation.

RESTYLED FRE	RESTYLED TEXAS
Rule 605. Judge's Competency as a Witness The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.	**Rule 605. Judge's Competency as a Witness** The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

RESTYLED FRE	RESTYLED TEXAS
Rule 606. Juror's Competency as a Witness	**Rule 606. Juror's Competency as a Witness**
(a) At the Trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.	**(a) At the Trial.** A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.
(b) During an Inquiry into the Validity of a Verdict or Indictment.	**(b) During an Inquiry into the Validity of a Verdict or Indictment.**
(1) ***Prohibited Testimony or Other Evidence.*** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.	**(1)** ***Prohibited Testimony or Other Evidence.*** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.
(2) ***Exceptions.*** A juror may testify about whether:	**(2)** ***Exceptions.*** A juror may testify:
(A) extraneous prejudicial information was improperly brought to the jury's attention;	**(A)** about whether an outside influence was improperly brought to bear on any juror; or
(B) an outside influence was improperly brought to bear on any juror; or	**(B)** to rebut a claim that the juror was not qualified to serve.
(C) a mistake was made in entering the verdict on the verdict form.	

RESTYLED FRE	RESTYLED TEXAS
Rule 607. Who May Impeach a Witness Any party, including the party that called the witness, may attack the witness's credibility.	**Rule 607. Who May Impeach a Witness** Any party, including the party that called the witness, may attack the witness's credibility.

RESTYLED FRE	RESTYLED TEXAS
Rule 608. A Witness's Character for Truthfulness or Untruthfulness	**Rule 608. A Witness's Character for Truthfulness or Untruthfulness**
(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.	**(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.
(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of: **(1)** the witness; or **(2)** another witness whose character the witness being cross-examined has testified about. By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.	**(b) Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, a party may not inquire into or offer extrinsic evidence to prove specific instances of the witness's conduct in order to attack or support the witness's character for truthfulness.

RESTYLED FRE	RESTYLED TEXAS
Rule 609. Impeachment by Evidence of a Criminal Conviction	**Rule 609. Impeachment by Evidence of a Criminal Conviction**
(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction: **(1)** for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence: **(A)** must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and **(B)** must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and **(2)** for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.	**(a) In General.** Evidence of a criminal conviction offered to attack a witness's character for truthfulness must be admitted if: **(1)** the crime was a felony or involved moral turpitude, regardless of punishment; **(2)** the probative value of the evidence outweighs its prejudicial effect to a party; and **(3)** it is elicited from the witness or established by public record.
(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if: **(1)** its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and **(2)** the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair	**(b) Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.

opportunity to contest its use.	
(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:	**(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:
(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or	**(1)** the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime that was classified as a felony or involved moral turpitude, regardless of punishment;
(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.	**(2)** probation has been satisfactorily completed for the conviction, and the person has not been convicted of a later crime that was classified as a felony or involved moral turpitude, regardless of punishment; or
	(3) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:	**(d) Juvenile Adjudications**. Evidence of a juvenile adjudication is admissible under this rule only if:
(1) it is offered in a criminal case;	**(1)** the witness is a party in a proceeding conducted under title 3 of the Texas Family Code; or
(2) the adjudication was of a witness other than the defendant;	**(2)** the United States or Texas Constitution requires it be admitted.
(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and	
(4) admitting the evidence is necessary to fairly determine guilt or innocence.	
(e) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.	**(e) Pendency of an Appeal.** A conviction for which an appeal is pending is not admissible under this rule.
	(f) Notice. Evidence of a witness's conviction is not admissible under this rule if, after receiving from the adverse party a timely

	written request specifying the witness, the proponent of the conviction fails to provide sufficient written notice of intent to use the conviction. Notice is sufficient if it provides a fair opportunity to contest the use of such evidence.

RESTYLED FRE	RESTYLED TEXAS
Rule 610. Religious Beliefs or Opinions Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.	**Rule 610. Religious Beliefs or Opinions** Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

RESTYLED FRE	RESTYLED TEXAS
Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence	**Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence**
(a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: **(1)** make those procedures effective for determining the truth; **(2)** avoid wasting time; and **(3)** protect witnesses from harassment or undue embarrassment.	**(a) Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: **(1)** make those procedures effective for determining the truth; **(2)** avoid wasting time; and **(3)** protect witnesses from harassment or undue embarrassment.
(b) Scope of Cross-Examination. Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.	**(b) Scope of Cross-Examination.** A witness may be cross-examined on any relevant matter, including credibility.
(c) Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions: **(1)** on cross-examination; and **(2)** when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.	**(c) Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions: **(1)** on cross-examination; and **(2)** when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

RESTYLED FRE	RESTYLED TEXAS
Rule 612. Writing Used to Refresh a Witness's Memory	**Rule 612. Writing Used to Refresh a Witness's Memory**
(a) Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory: **(1)** while testifying; or **(2)** before testifying, if the court decides that justice requires the party to have those options.	**(a) Scope.** This rule gives an adverse party certain options when a witness uses a writing to refresh memory: **(1)** while testifying; **(2)** before testifying, in civil cases, if the court decides that justice requires the party to have those options; or **(3)** before testifying, in criminal cases.
(b) Adverse Party's Options; Deleting Unrelated Matter. Unless 18 U.S.C. § 3500 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.	**(b) Adverse Party's Options; Deleting Unrelated Matter.** An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.
(c) Failure to Produce or Deliver the Writing. If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.	**(c) Failure to Produce or Deliver the Writing.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

RESTYLED FRE	RESTYLED TEXAS
Rule 613. Witness's Prior Statement **(a) Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney. **(b) Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).	**VERSION 1:** **Rule 613. Witness's Prior Statement and Bias or Interest** **(a) Witness's Prior Inconsistent Statement.** **(1)** ***Foundation Requirement.*** When examining a witness about the witness's prior inconsistent statement—whether oral or written—a party must first tell the witness: **(A)** the contents of the statement; **(B)** the time and place of the statement; and **(C)** the person to whom the witness made the statement. **(2)** ***Need Not Show Written Statement.*** If the witness's prior inconsistent statement is written, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel. **(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. **(5)** ***Opposing Party's Statement.*** This subdivision (a) does not apply to an opposing party's statement under Rule 801(e)(2). **(b) Witness's Bias or Interest.** **(1)** ***Foundation Requirement.*** When examining a witness about the witness's bias or interest, a party must first tell the

Comment [sg6]: PRACTICE-ORIENTED VERSION

	witness the circumstances or statements that tend to show the witness's bias or interest. If examining a witness about a statement—whether oral or written—to prove the witness's bias or interest, a party must tell the witness: **(A)** the contents of the statement; **(B)** the time and place of the statement; and **(C)** the person to whom the statement was made. **(2)** ***Need Not Show Written Statement.*** If a party uses a written statement to prove the witness's bias or interest, a party need not show the statement to the witness before inquiring about it, but must, upon request, show it to opposing counsel. **(3)** ***Opportunity to Explain or Deny.*** A witness must be given the opportunity to explain or deny the circumstances or statements that tend to show the witness's bias or interest. And the witness's proponent may present evidence to rebut the charge of bias or interest. **(4)** ***Extrinsic Evidence.*** Extrinsic evidence of a witness's bias or interest is not admissible unless the witness is first examined about the bias or interest and fails to unequivocally admit it. **(c) Witness's Prior Consistent Statement.** Unless Rule 801(e)(1)(B) provides otherwise, a witness's prior consistent statement is not admissible if offered solely to enhance the witness's credibility.

RESTYLED FRE	RESTYLED TEXAS
Rule 613. Witness's Prior Statement **(a) Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney. **(b) Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).	**VERSION 2:** **Rule 613. Witness's Prior Statement and Bias or Interest** **(a) Witness's Prior Inconsistent Statement.** **(1)** ***Foundation Requirement.*** When examining a witness about the witness's prior inconsistent statement—whether oral or written—and before offering extrinsic evidence of the statement, a party must provide the witness: **(A)** the contents of the statement; **(B)** the time and place of the statement; **(C)** the person to whom the witness made the statement; and **(D)** an opportunity to explain or deny the statement. **(2)** ***Need Not Show Written Statement.*** If the witness's prior inconsistent statement is written, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel. **(3)** ***Extrinsic Evidence.*** Extrinsic evidence of a witness's prior inconsistent statement is not admissible if the witness unequivocally admits making the statement. **(4)** ***Opposing Party's Statement.*** This subdivision (a) does not apply to an opposing party's statement under Rule 801(e)(2). **(b) Witness's Bias or Interest.** **(1)** ***Foundation Requirement.*** When examining a witness about and before offering extrinsic evidence of the witness's bias or interest, a party must first tell the witness the circumstances or statements that tend to show the

Comment [sg7]: TEXT-ORIENTED VERSION

	witness's bias or interest and give the witness an opportunity to explain or deny the circumstances or statements. If examining a witness about a statement—whether oral or written—to prove the witness's bias or interest, a party must tell the witness: **(A)** the contents of the statement; **(B)** the time and place of the statement; and **(C)** the person to whom the statement was made. **(2)** ***Need Not Show Written Statement.*** If a party uses a written statement to prove the witness's bias or interest, a party need not show the statement to the witness before inquiring about it, but must, upon request, show it to opposing counsel. **(3)** ***Proponent May Rebut.*** A witness's proponent may present evidence to rebut the charge of bias or interest. **(4)** ***Extrinsic Evidence.*** Extrinsic evidence of a witness's bias or interest is not admissible if the witness unequivocally admits the bias or interest. **(c) Witness's Prior Consistent Statement.** Unless Rule 801(e)(1)(B) provides otherwise, a witness's prior consistent statement is not admissible if offered solely to enhance the witness's credibility.

RESTYLED FRE	RESTYLED TEXAS
Rule 615. Excluding Witnesses	**Rule 614. Excluding Witnesses**
At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:	At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:
(a) a party who is a natural person;	**(a)** a party who is a natural person and, in civil cases, that person's spouse;
(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;	**(b)** after being designated as the party's representative by its attorney: **(1)** in a civil case, an officer or employee of a party that is not a natural person; or **(2)** in a criminal case, a defendant that is not a natural person;
(c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or	**(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.	**(d)** the victim in a criminal case, unless the court determines that the victim's testimony would be materially affected by hearing other testimony at the trial.

Comment [SG8]: FRE 614 is titled "Court's Calling or Examining a Witness." There is no corresponding rule in the TRE.

RESTYLED FRE	RESTYLED TEXAS
[Criminal Procedure] Rule 26.2. Producing a Witness's Statement	**Rule 615. Producing a Witness's Statement in Criminal Cases**
(a) Motion to Produce. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the government or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony.	**(a) Motion to Produce.** After a witness other than the defendant testifies on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the state or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony.
(b) Producing the Entire Statement. If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.	**(b) Producing the Entire Statement.** If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.
(c) Producing a Redacted Statement. If the party who called the witness claims that the statement contains information that is privileged or does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any privileged or unrelated portions, the court must order delivery of the redacted statement to the moving party. If the defendant objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.	**(c) Producing a Redacted Statement.** If the party who called the witness claims that the statement contains information that does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any unrelated portions, the court must order delivery of the redacted statement to the moving party. If a party objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.
(d) Recess to Examine a Statement. The court may recess the proceedings to allow time for a party to examine the statement and prepare for its use.	**(d) Recess to Examine a Statement.** On the moving party's request, the court must recess the proceedings to allow time for a party to examine the statement and prepare for its use.
(e) Sanction for Failure to Produce or Deliver a Statement. If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the government disobeys the order, the court must declare a mistrial if justice so requires.	**(e) Sanction for Failure to Produce or Deliver a Statement.** If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the state disobeys the order, the court must declare a mistrial if justice so requires.

(f) "Statement" Defined. As used in this rule, a witness's "statement" means: **(1)** a written statement that the witness makes and signs, or otherwise adopts or approves; **(2)** a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or **(3)** the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement. **(g) Scope.** This rule applies at trial, at a suppression hearing under Rule 12, and to the extent specified in the following rules: **(1)** Rule 5.1(h) (preliminary hearing); **(2)** Rule 32(i)(2) (sentencing); **(3)** Rule 32.1(e) (hearing to revoke or modify probation or supervised release); **(4)** Rule 46(j) (detention hearing); and **(5)** Rule 8 of the Rules.	**(f) "Statement" Defined.** As used in this rule, a witness's "statement'' means: **(1)** a written statement that the witness makes and signs, or otherwise adopts or approves; **(2)** a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or **(3)** the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

ARTICLE VII.
OPINIONS AND EXPERT TESTIMONY

RESTYLED FRE	RESTYLED TEXAS
Rule 701. Opinion Testimony by Lay Witnesses If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: **(a)** rationally based on the witness's perception; **(b)** helpful to clearly understanding the witness's testimony or to determining a fact in issue; and **(c)** not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.	**Rule 701. Opinion Testimony by Lay Witnesses** If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: **(a)** rationally based on the witness's perception; and **(b)** helpful to clearly understanding the witness's testimony or to determining a fact in issue. **Comment to 2013 Restyling:** All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

RESTYLED FRE	RESTYLED TEXAS
Rule 702. Testimony by Expert Witnesses A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: **(a)** the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; **(b)** the testimony is based on sufficient facts or data; **(c)** the testimony is the product of reliable principles and methods; and **(d)** the expert has reliably applied the principles and methods to the facts of the case.	**Rule 702. Testimony by Expert Witnesses** A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if 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.

RESTYLED FRE	RESTYLED TEXAS
Rule 703. Bases of an Expert's Opinion Testimony An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.	**Rule 703. Bases of an Expert's Opinion Testimony** An expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, 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. **Comment to 2013 Restyling:** All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

RESTYLED FRE	RESTYLED TEXAS
Rule 704. Opinion on an Ultimate Issue **(a) In General — Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue. **(b) Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.	**Rule 704. Opinion on an Ultimate Issue** An opinion is not objectionable just because it embraces an ultimate issue.

RESTYLED FRE	RESTYLED TEXAS
Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.	**Rule 705. Disclosing the Underlying Facts or Data and Examining an Expert About Them** **(a) Stating an Opinion Without Disclosing the Underlying Facts or Data.** 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. **(b) Voir Dire Examination of an Expert About the Underlying Facts or Data.** Before an expert states an opinion or discloses the underlying facts or data, an adverse party in a civil case may — or in a criminal case must — be permitted to examine the expert about the underlying facts or data. This examination must take place outside the jury's hearing. **(c) Admissibility of Opinion.** An expert's opinion is inadmissible if the underlying facts or data do not provide a sufficient basis for the opinion. **(d) When Otherwise Inadmissible Underlying Facts or Data May Be Disclosed; Instructing the Jury.** If the underlying facts or data would otherwise be inadmissible, the proponent of the opinion may not disclose them to the jury if their probative value in helping the jury evaluate the opinion is outweighed by their prejudicial effect. If the court allows the proponent to disclose those facts or data the court must, upon timely request, restrict the evidence to its proper scope and instruct the jury accordingly. **Comment to 2013 Restyling:** All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an

	inference. No change in current practice is intended.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE.	**Rule 706. Audit in Civil Cases** Notwithstanding any other evidence rule, the court must admit an auditor's verified report prepared under Rule of Civil Procedure 172 and offered by a party. If a party files exceptions to the report, a party may offer evidence supporting the exceptions to contradict the report.

Comment [SG9]: FRE 706 is titled Court-Appointed Expert Witnesses. There is no corresponding TRE.

ARTICLE VIII.
HEARSAY

RESTYLED FRE	RESTYLED TEXAS
Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay	**Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay**
(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.	**(a) Statement.** "Statement" means a person's oral or written verbal expression, or nonverbal conduct that a person intended as a substitute for verbal expression.
(b) Declarant. "Declarant" means the person who made the statement.	**(b) Declarant.** "Declarant" means the person who made the statement.
	(c) Matter Asserted. "Matter asserted" means: **(1)** any matter a declarant explicitly asserts; and **(2)** any matter implied by a statement, if the probative value of the statement as offered flows from the declarant's belief about the matter.
(c) Hearsay. "Hearsay" means a statement that: **(1)** the declarant does not make while testifying at the current trial or hearing; and **(2)** a party offers in evidence to prove the truth of the matter asserted in the statement.	**(d) Hearsay.** "Hearsay" means a statement that: **(1)** the declarant does not make while testifying at the current trial or hearing; and **(2)** a party offers in evidence to prove the truth of the matter asserted in the statement.
(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay: **(1)** ***A Declarant-Witness's Prior Statement.*** The declarant testifies and is subject to cross-examination about a prior statement, and the statement: **(A)** is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial,	**(e) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay: **(1)** ***A Declarant-Witness's Prior Statement.*** The declarant testifies and is subject to cross-examination about a prior statement, and the statement: **(A)** is inconsistent with the declarant's testimony and:

hearing, or other proceeding or in a deposition; **(B)** is consistent with the declarant's testimony and is offered 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 **(C)** identifies a person as someone the declarant perceived earlier.	**(i)** when offered in a civil case, was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition; or **(ii)** when offered in a criminal case, was given under penalty of perjury at a trial, hearing, or other proceeding—except a grand jury proceeding—or in a deposition; **(B)** is consistent with the declarant's testimony and is offered 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 **(C)** identifies a person as someone the declarant perceived earlier.
(2) ***An Opposing Party's Statement.*** The statement is offered against an opposing party and: **(A)** was made by the party in an individual or representative capacity; **(B)** is one the party manifested that it adopted or believed to be true; **(C)** was made by a person whom the party authorized to make a statement on the subject; **(D)** was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or **(E)** was made by the party's coconspirator during and in furtherance of the conspiracy.	**(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	**(3)** ***A Deponent's Statement***. In a civil case, the statement was made in a

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).	deposition taken in the same proceeding. "Same proceeding" is defined in Rule of Civil Procedure 203.6(b). The deponent's unavailability as a witness is not a requirement for admissibility. **Comment to 2013 Restyling:** Statements falling under the hearsay exclusion provided by Rule 801(e)(2) are no longer referred to as "admissions" in the title to the subdivision. The term "admissions" is confusing because not all statements covered by the exclusion are admissions in the colloquial sense — a statement can be within the exclusion even if it "admitted" nothing and was not against the party's interest when made. The term "admissions" also raises confusion in comparison with the Rule 803(24) exception for declarations against interest. No change in application of the exclusion is intended. The deletion of former Rule 801(e)(1)(D), which cross-references Code of Criminal Procedure art. 38.071, is not intended as a substantive change. Including this cross-reference made sense when the Texas Rules of Criminal Evidence were first promulgated, but with subsequent changes to the statutory provision, its inclusion is no longer appropriate. The version of article 38.071 that was initially cross-referenced in the Rules of Criminal Evidence required the declarant-victim to be available to testify at the trial. That requirement has since been deleted from the statute, and the statute no longer requires either the availability or testimony of the declarant-victim. Thus, cross-referencing the statute in Rule 801(e)(1), which applies only when the declarant testifies at trial about the prior statement, no longer makes sense. Moreover, article 38.071 is but one of a number of statutes that mandate the admission of certain hearsay statements in particular circumstances. See, e.g., Code of Criminal Procedure art. 38.072; Family Code §§ 54.031, 104.002, 104.006. These statutory provisions take precedence over the general rule excluding hearsay, see Rules 101(c) and 802, and there is no apparent justification for cross-referencing article 38.071 and not all other

	such provisions.

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Rule 802. The Rule Against Hearsay Hearsay is not admissible unless any of the following provides otherwise: • a federal statute; • these rules; or • other rules prescribed by the Supreme Court.	**Rule 802. The Rule Against Hearsay** Hearsay is not admissible unless any of the following provides otherwise: • a statute; • these rules; or • other rules prescribed under statutory authority. Inadmissible hearsay admitted without objection may not be denied probative value merely because it is hearsay.

RESTYLED FRE	RESTYLED TEXAS
Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:	**Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness** The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
(1) ***Present Sense Impression.*** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.	**(1)** ***Present Sense Impression.*** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
(2) ***Excited Utterance.*** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.	**(2)** ***Excited Utterance.*** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
(3) ***Then-Existing Mental, Emotional, or Physical Condition*****.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.	**(3)** ***Then-Existing Mental, Emotional, or Physical Condition*****.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
(4) ***Statement Made for Medical Diagnosis or Treatment.*** A statement that: **(A)** is made for — and is reasonably pertinent to — medical diagnosis or treatment; and **(B)** describes medical history; past or present symptoms or sensations;	**(4)** ***Statement Made for Medical Diagnosis or Treatment.*** A statement that: **(A)** is made for — and is reasonably pertinent to — medical diagnosis or treatment; and **(B)** describes medical history; past or present symptoms or sensations;

their inception; or their general cause.	their inception; or their general cause.

(5) ***Recorded Recollection.*** A record that: **(A)** is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately; **(B)** was made or adopted by the witness when the matter was fresh in the witness's memory; and **(C)** accurately reflects the witness's knowledge. If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.	**(5)** ***Recorded Recollection.*** A record that: **(A)** is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately; **(B)** was made or adopted by the witness when the matter was fresh in the witness's memory; and **(C)** accurately reflects the witness's knowledge, unless the circumstances of the record's preparation cast doubt on its trustworthiness. If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) ***Records of a Regularly Conducted Activity.*** A record of an act, event, condition, opinion, or diagnosis if: **(A)** the record was made at or near the time by — or from information transmitted by — someone with knowledge; **(B)** the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit; (**C**) making the record was a regular practice of that activity; (**D**) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with	**(6)** ***Records of a Regularly Conducted Activity.*** A record of an act, event, condition, opinion, or diagnosis if: **(A)** the record was made at or near the time by — or from information transmitted by — someone with knowledge; **(B)** the record was kept in the course of a regularly conducted business activity; **(C)** making the record was a regular practice of that activity; **(D)** all these conditions are shown by the testimony of the custodian or another qualified witness, or by an affidavit or unsworn declaration that complies with Rule 902(10); and

Rule 902(11) or (12) or with a statute permitting certification; and (**E**) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.	**(E)** the opponent fails to show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. "Business" as used in this paragraph includes every kind of regular organized activity whether conducted for profit or not.
(**7**) ***Absence of a Record of a Regularly Conducted Activity.*** Evidence that a matter is not included in a record described in paragraph (6) if: (**A**) the evidence is admitted to prove that the matter did not occur or exist; (**B**) a record was regularly kept for a matter of that kind; and (**C**) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.	(**7**) ***Absence of a Record of a Regularly Conducted Activity.*** Evidence that a matter is not included in a record described in paragraph (6) if: **(A)** the evidence is admitted to prove that the matter did not occur or exist; **(B)** a record was regularly kept for a matter of that kind; and **(C)** the opponent fails to show that the possible source of the information or other circumstances indicate a lack of trustworthiness.
(**8**) ***Public Records.*** A record or statement of a public office if: (**A**) it sets out: (**i**) the office's activities; (**ii**) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or (**iii**) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and (**B**) neither the source of information	(**8**) ***Public Records.*** A record or statement of a public office if: **(A)** it sets out: **(i)** the office's activities; **(ii)** a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or **(iii)** in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and **(B)** the opponent fails to show that the

nor other circumstances indicate a lack of trustworthiness.	source of information or other circumstances indicate a lack of trustworthiness.
(9) ***Public Records of Vital Statistics.*** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.	**(9)** ***Public Records of Vital Statistics.*** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.
(10) ***Absence of a Public Record.*** Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that: (**A**) the record or statement does not exist; or (**B**) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.	**(10)** ***Absence of a Public Record.*** Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that: **(A)** the record or statement does not exist; or **(B)** a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.
(11) ***Records of Religious Organizations Concerning Personal or Family History.*** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.	**(11)** ***Records of Religious Organizations Concerning Personal or Family History.*** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.
(12) ***Certificates of Marriage, Baptism, and Similar Ceremonies.*** A statement of fact contained in a certificate: (**A**) made by a person who is authorized by a religious organization or by law to perform the act certified; (**B**) attesting that the person performed a marriage or similar	**(12)** ***Certificates of Marriage, Baptism, and Similar Ceremonies.*** A statement of fact contained in a certificate: **(A)** made by a person who is authorized by a religious organization or by law to perform the act certified; **(B)** attesting that the person performed a marriage or similar

Comment [SG10]: On April 16, 2013, the Supreme Court transmitted to Congress an amended version of Rule 803(10), which—unless disapproved by Congress—will become effective December 1, 2013. The amendment requires the prosecution in a criminal case to provide written notice of its intent to offer a certification under this exception and gives the defense a time period to object.

ceremony or administered a sacrament; and **(C)** purporting to have been issued at the time of the act or within a reasonable time after it.	ceremony or administered a sacrament; and **(C)** purporting to have been issued at the time of the act or within a reasonable time after it.
(13) ***Family Records.*** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.	**(13)** ***Family Records.*** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.
(14) ***Records of Documents That Affect an Interest in Property.*** The record of a document that purports to establish or affect an interest in property if: **(A)** the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it; **(B)** the record is kept in a public office; and **(C)** a statute authorizes recording documents of that kind in that office.	**(14)** ***Records of Documents That Affect an Interest in Property.*** The record of a document that purports to establish or affect an interest in property if: **(A)** the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it; **(B)** the record is kept in a public office; and **(C)** a statute authorizes recording documents of that kind in that office.
(15) ***Statements in Documents That Affect an Interest in Property.*** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.	**(15)** ***Statements in Documents That Affect an Interest in Property.*** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.
(16) ***Statements in Ancient Documents.*** A statement in a document that is at least 20 years old and whose authenticity is	**(16)** ***Statements in Ancient Documents.*** A statement in a document that is at least 20 years old and whose

established.	authenticity is established.

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

(18) ***Statements in Learned Treatises, Periodicals, or Pamphlets.*** A statement contained in a treatise, periodical, or pamphlet if: (**A**) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and (**B**) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice. If admitted, the statement may be read into evidence but not received as an exhibit.	**(18)** ***Statements in Learned Treatises, Periodicals, or Pamphlets.*** A statement contained in a treatise, periodical, or pamphlet if: **(A)** the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and **(B)** the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice. If admitted, the statement may be read into evidence but not received as an exhibit.

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

((20) ***Reputation Concerning Boundaries or General History.*** A reputation in a community — arising before the controversy — concerning boundaries	**(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.	of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.
(21) ***Reputation Concerning Character.*** A reputation among a person's associates or in the community concerning the person's character.	**(21)** ***Reputation Concerning Character.*** A reputation among a person's associates or in the community concerning the person's character.
(22) ***Judgment of a Previous Conviction.*** Evidence of a final judgment of conviction if: (**A**) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea; (**B**) the conviction was for a crime punishable by death or by imprisonment for more than a year; (**C**) the evidence is admitted to prove any fact essential to the judgment; and (**D**) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant. The pendency of an appeal may be shown but does not affect admissibility.	**(22)** ***Judgment of a Previous Conviction.*** Evidence of a final judgment of conviction if: **(A)** it is offered in a civil case and: **(i)** the judgment was entered after a trial or guilty plea, but not a nolo contendere plea; **(ii)** the conviction was for a felony; **(iii)** the evidence is admitted to prove any fact essential to the judgment; and **(iv)** an appeal of the conviction is not pending; or **(B)** it is offered in a criminal case and: **(i)** the judgment was entered after a trial or a guilty or nolo contendere plea; **(ii)** the conviction was for a criminal offense; **(iii)** the evidence is admitted to prove any fact essential to the judgment; **(iv)** when offered by the prosecutor for a purpose other than impeachment, the judgment was against the

	defendant; and **(v)** an appeal of the conviction is not pending.

(23) ***Judgments Involving Personal, Family, or General History or a Boundary.*** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter: (**A**) was essential to the judgment; and (**B**) could be proved by evidence of reputation.	**(23)** ***Judgments Involving Personal, Family, or General History or a Boundary.*** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter: **(A)** was essential to the judgment; and **(B)** could be proved by evidence of reputation.

Rule 804(b)(3) **(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.	**(24)** ***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 or to make the declarant an object of hatred, ridicule, or disgrace; 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.

RESTYLED FRE	RESTYLED TEXAS
Rule 804. Exceptions to the Rule Against Hearsay — When the Declarant Is Unavailable as a Witness	**Rule 804. Exceptions to the Rule Against Hearsay — When the Declarant Is Unavailable as a Witness**
(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant: (**1**) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies; (**2**) refuses to testify about the subject matter despite a court order to do so; (**3**) testifies to not remembering the subject matter; (**4**) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or (**5**) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure: (**A**) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or (**B**) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4). But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.	**(a) Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant: **(1)** is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies; **(2)** refuses to testify about the subject matter despite a court order to do so; **(3)** testifies to not remembering the subject matter; **(4)** cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or **(5)** is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance or testimony. But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

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(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:	**(b) The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
(**1**) ***Former Testimony.*** Testimony that: (**A**) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and (**B**) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.	**(1)** ***Former Testimony.*** Testimony that: **(A)** when offered in a civil case: **(i)** was given as a witness at a trial or hearing of the current or a different proceeding or was given as a witness in a deposition in a different proceeding; and **(ii)** is now offered against a party and the party—or a person with similar interest—had an opportunity and similar motive to develop the testimony by direct, cross-, or redirect examination. **(B)** when offered in a criminal case: **(i)** was given as a witness at a trial or hearing, whether given during the current or a different proceeding; and **(ii)** is now offered against a party who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination; or **(iii)** was taken in a deposition under—and is now offered in accordance with—chapter 39 of the Code of Criminal Procedure.
(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	**(2)** ***Statement Under the Belief of Imminent Death.*** A statement that the declarant, while believing the declarant's death to be imminent, made

declarant's death to be imminent, made about its cause or circumstances.	about its cause or circumstances.

(4) ***Statement of Personal or Family History.*** A statement about: (**A**) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or (**B**) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.	**(3)** ***Statement of Personal or Family History.*** A statement about: **(A)** the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or **(B)** another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(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.	**NO CORRESPONDING TRE**

Comment [sg11]: The Legislature passed SB 1360, which includes a forfeiture by wrongdoing provision. It is codified in new Code of Crim.Proc. art. 38.49. It applies to criminal cases only and is broader than a hearsay exception.

RESTYLED FRE	RESTYLED TEXAS
Rule 805. Hearsay Within Hearsay Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.	**Rule 805. Hearsay Within Hearsay** Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

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Rule 806. Attacking and Supporting the Declarant's Credibility When a hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.	**Rule 806. Attacking and Supporting the Declarant's Credibility** When a hearsay statement — or a statement described in Rule 801(e)(2)(C), (D), or (E), or, in a civil case, a statement described in Rule 801(e)(3)— 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 statement or conduct, offered to impeach the declarant, 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.

RESTYLED FRE	RESTYLED TEXAS
Rule 807. Residual Exception **(a) In General.** Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804: **(1)** the statement has equivalent circumstantial guarantees of trustworthiness; **(2)** it is offered as evidence of a material fact; **(3)** it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and **(4)** admitting it will best serve the purposes of these rules and the interests of justice. **(b) Notice.** The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.	**NO CORRESPONDING TRE**

ARTICLE IX.
AUTHENTICATION AND IDENTIFCATION

RESTYLED FRE	RESTYLED TEXAS
Rule 901. Authenticating or Identifying Evidence	**Rule 901. Authenticating or Identifying Evidence**
(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.	**(a) In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.
(b) Examples. The following are examples only — not a complete list — of evidence that satisfies the requirement: **(1)** ***Testimony of a Witness with Knowledge.*** Testimony that an item is what it is claimed to be.	**(b) Examples.** The following are examples only — not a complete list — of evidence that satisfies the requirement: **(1)** ***Testimony of a Witness with Knowledge.*** Testimony that an item is what it is claimed to be.
(2) ***Nonexpert Opinion About Handwriting.*** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.	**(2)** ***Nonexpert Opinion About Handwriting.*** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.
(3) ***Comparison by an Expert Witness or the Trier of Fact.*** A comparison with an authenticated specimen by an expert witness or the trier of fact.	**(3)** ***Comparison by an Expert Witness or the Trier of Fact.*** A comparison by an expert witness or the trier of fact with a specimen that the court has found is genuine.
(4) ***Distinctive Characteristics and the Like.*** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.	**(4)** ***Distinctive Characteristics and the Like.*** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.
(5) ***Opinion About a Voice.*** An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any	**(5)** ***Opinion About a Voice.*** An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the

time under circumstances that connect it with the alleged speaker.	voice at any time under circumstances that connect it with the alleged speaker.
(6) ***Evidence About a Telephone Conversation.*** For a telephone conversation, evidence that a call was made to the number assigned at the time to: **(A)** a particular person, if circumstances, including self-identification, show that the person answering was the one called; or **(B)** a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.	**(6)** ***Evidence About a Telephone Conversation.*** For a telephone conversation, evidence that a call was made to the number assigned at the time to: **(A)** a particular person, if circumstances, including self-identification, show that the person answering was the one called; or **(B)** a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.
(7) ***Evidence About Public Records.*** Evidence that: **(A)** a document was recorded or filed in a public office as authorized by law; or **(B)** a purported public record or statement is from the office where items of this kind are kept.	**(7)** ***Evidence About Public Records.*** Evidence that: **(A)** a document was recorded or filed in a public office as authorized by law; or **(B)** a purported public record or statement is from the office where items of this kind are kept.
(8) ***Evidence About Ancient Documents or Data Compilations.*** For a document or data compilation, evidence that it: **(A)** is in a condition that creates no suspicion about its authenticity; **(B)** was in a place where, if authentic, it would likely be; and **(C)** is at least 20 years old when offered.	**(8)** ***Evidence About Ancient Documents or Data Compilations.*** For a document or data compilation, evidence that it: **(A)** is in a condition that creates no suspicion about its authenticity; **(B)** was in a place where, if authentic, it would likely be; and **(C)** is at least 20 years old when offered.
(9) ***Evidence About a Process or System.*** Evidence describing a process or	**(9)** ***Evidence About a Process or System.*** Evidence describing a process or

system and showing that it produces an accurate result.	system and showing that it produces an accurate result.

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

RESTYLED FRE	RESTYLED TEXAS
Rule 902. Evidence That Is Self-Authenticating The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted: (**1**) ***Domestic Public Documents That Are Sealed and Signed.*** A document that bears: (**A**) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and (**B**) a signature purporting to be an execution or attestation.	**Rule 902. Evidence That Is Self-Authenticating** The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted: **(1)** ***Domestic Public Documents That Are Sealed and Signed.*** A document that bears: **(A)** a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and **(B)** a signature purporting to be an execution or attestation.
(2) ***Domestic Public Documents That Are Not Sealed but Are Signed and Certified.*** A document that bears no seal if: (**A**) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and (**B**) another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.	**(2)** ***Domestic Public Documents That Are Not Sealed But Are Signed and Certified.*** A document that bears no seal if: **(A)** it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and **(B)** another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.
(3) ***Foreign Public Documents.*** A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so.	**(3)** ***Foreign Public Documents.*** A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so.

The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either: **(A)** order that it be treated as presumptively authentic without final certification; or (**B)** allow it to be evidenced by an attested summary with or without final certification.	**(A)** ***In General.*** 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. **(B)** ***If Parties Have Reasonable Opportunity to Investigate.*** If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either: **(i)** order that it be treated as presumptively authentic without final certification; or **(ii)** allow it to be evidenced by an attested summary with or without final certification. **(C)** ***If a Treaty Abolishes or Displaces the Final Certification Requirement.*** If the United States and the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces the final certification requirement, the record and attestation must be certified under the terms of the treaty or convention.

(4) ***Certified Copies of Public Records.*** A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by: (**A**) the custodian or another person authorized to make the certification; or (**B**) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.	**(4)** ***Certified Copies of Public Records.*** A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by: **(A)** the custodian or another person authorized to make the certification; or **(B)** a certificate that complies with Rule 902(1), (2), or (3), a statute, or a rule prescribed under statutory authority.
(5) ***Official Publications.*** A book, pamphlet, or other publication purporting to be issued by a public authority.	**(5)** ***Official Publications.*** A book, pamphlet, or other publication purporting to be issued by a public authority.
(6) ***Newspapers and Periodicals.*** Printed material purporting to be a newspaper or periodical.	**(6)** ***Newspapers and Periodicals.*** Printed material purporting to be a newspaper or periodical.
(7) ***Trade Inscriptions and the Like.*** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.	**(7)** ***Trade Inscriptions and the Like.*** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.
(8) ***Acknowledged Documents.*** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.	**(8)** ***Acknowledged Documents.*** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.
(9) ***Commercial Paper and Related Documents.*** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.	**(9)** ***Commercial Paper and Related Documents.*** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(11) ***Certified Domestic Records of a Regularly Conducted Activity.*** The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them. **(12)** ***Certified Foreign Records of a Regularly Conducted Activity.*** In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a federal statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).	**(10)** ***Records of a Regularly Conducted Activity.*** **(A)** ***Requirements.*** The original or a copy of a record that meets the requirements of Rule 803(6)(A)-(C) or 803(7)(A)-(B), as shown by the custodian's or another qualified person's affidavit or unsworn declaration. The proponent of the record must: **(i)** file the affidavit or unsworn declaration and the record with the court at least 14 days before trial; **(ii)** make the record available to the other parties for inspection and copying, but the party seeking the copy must bear the cost of copying; and **(iii)** give the other parties prompt notice of the filing, including the name and employer, if any, of the person making the affidavit or unsworn declaration. If the proponent gives notice at least 14 days before trial in a manner acceptable under Rule of Civil Procedure 21a, the court must find the notice is prompt. **(B)** ***Form for Business Records.*** A properly-executed affidavit or unsworn declaration that includes the following language meets the requirements of Rule 803(6)(A)-(C), although other language may also meet the requirements: "1. I am the custodian of these records, or I am an employee familiar with the manner in which these records are created and maintained by virtue of my duties and responsibilities.

	2. Attached are _____ pages of records. These are the original records or exact duplicates of the original records. 3. The records were made at or near the time of the occurrence of the matters set forth. 4. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth. 5. The records were kept in the course of regularly conducted business activity. 6. It was the regular practice of the business activity to make the records." **(C)** ***Form for Medical Expenses.*** A properly-executed affidavit or unsworn declaration that includes the following language constitutes prima facie proof of medical expenses: "1. I am the custodian of these records, or I am an employee familiar with the manner in which these records are created and maintained by virtue of my duties and responsibilities. 2. Attached are _____ pages of records. These are the original records or exact duplicates of the original records and are a part of this [affidavit *or* unsworn declaration]. 3. The attached records provide an itemized statement of the services and charge for the services that _____ provided to _____ on _____. 4. The records were made at or near the time the service was provided. 5. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth. 6. The records were kept in the course of regularly conducted

	business activity. 7. It was the regular practice of the business activity to make the records. 8. The services provided were necessary, and the amount charged for the services was reasonable at the time and place the services were provided. 9. The total amount paid for the services was $____, and the amount currently unpaid but which _____ has a right to be paid after any adjustments or credits is $_____."

(10) ***Presumptions Under a Federal Statute.*** A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.	**(11)** ***Presumptions Under a Statute or Rule.*** A signature, document, or anything else that a statute or rule prescribed under statutory authority declares to be presumptively or prima facie genuine or authentic.

	Comment to 2013 Restyling: The forms provided in Rules 902(10)(B) and (C) respectively include only the language designed to meet the requirements of the business record exception and medical expense form. They omit language for introductory material and the jurat because these may differ between an affidavit and an unsworn declaration. For example, an unsworn declaration will not include language typically found in an affidavit (e.g., "Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows"). Similarly, Tex. Civ. Prac. & Rem. Code § 132.001 prescribes a jurat for unsworn declarations that differs from the jurat typically used in affidavits. Because Rules 902(10)(B) and (C) require that an affidavit or unsworn declaration be "properly-executed," a party must be sure to include introductory material and a jurat appropriate to the type of document filed.

RESTYLED FRE	RESTYLED TEXAS
Rule 903. Subscribing Witness's Testimony A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.	**Rule 903. Subscribing Witness's Testimony** A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

ARTICLE X.
CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

RESTYLED FRE	RESTYLED TEXAS
Rule 1001. Definitions That Apply to This Article	**Rule 1001. Definitions That Apply to This Article**
In this article:	In this article:
(a) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.	**(a)** A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
(b) A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.	**(b)** A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
(c) A "photograph" means a photographic image or its equivalent stored in any form.	**(c)** A "photograph" means a photographic image or its equivalent stored in any form.
(d) An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout — or other output readable by sight — if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.	**(d)** An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout — or other output readable by sight — if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.
(e) A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.	**(e)** A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

RESTYLED FRE	RESTYLED TEXAS
Rule 1002. Requirement of the Original An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.	**Rule 1002. Requirement of the Original** An original writing, recording, or photograph is required in order to prove its content unless these rules or other law provides otherwise.

RESTYLED FRE	RESTYLED TEXAS
Rule 1003. Admissibility of Duplicates A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.	**Rule 1003. Admissibility of Duplicates** A duplicate is admissible to the same extent as the original unless a question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

RESTYLED FRE	RESTYLED TEXAS
Rule 1004. Admissibility of Other Evidence of Content	**Rule 1004. Admissibility of Other Evidence of Content**
An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:	An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:
(a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;	**(a)** all the originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith;
(b) an original cannot be obtained by any available judicial process;	**(b)** an original cannot be obtained by any available judicial process;
	(c) an original is not located in Texas;
(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or	**(d)** the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
(d) the writing, recording, or photograph is not closely related to a controlling issue.	**(e)** the writing, recording, or photograph is not closely related to a controlling issue.

RESTYLED FRE	RESTYLED TEXAS
Rule 1005. Copies of Public Records to Prove Content The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.	**Rule 1005. Copies of Public Records to Prove Content** The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

RESTYLED FRE	RESTYLED TEXAS
Rule 1006. Summaries to Prove Content The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.	**Rule 1006. Summaries to Prove Content** The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

RESTYLED FRE	RESTYLED TEXAS
Rule 1007. Testimony or Statement of a Party to Prove Content The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.	**Rule 1007. Testimony or Statement of a Party to Prove Content** The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

RESTYLED FRE	RESTYLED TEXAS
Rule 1008. Functions of the Court and Jury Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether: (**a**) an asserted writing, recording, or photograph ever existed; (**b**) another one produced at the trial or hearing is the original; or (**c**) other evidence of content accurately reflects the content.	**Rule 1008. Functions of the Court and Jury** Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether: **(a)** an asserted writing, recording, or photograph ever existed; **(b)** another one produced at the trial or hearing is the original; or **(c)** other evidence of content accurately reflects the content.

RESTYLED FRE	RESTYLED TEXAS
NO CORRESPONDING FRE	**Rule 1009. Translating a Foreign Language Document** **(a) Submitting a Translation.** A translation of a foreign language document is admissible if, at least 45 days before trial, the proponent serves on all parties: **(1)** the translation and the underlying foreign language document; and **(2)** a qualified translator's affidavit or unsworn declaration that sets forth the translator's qualifications and certifies that the translation is accurate. **(b) Objection.** When objecting to a translation's accuracy, a party should specifically indicate its inaccuracies and offer an accurate translation. A party must serve the objection on all parties at least 15 days before trial. **(c) Effect of Failing to Object or Submit a Conflicting Translation.** If the underlying foreign language document is otherwise admissible, the court must admit — and may not allow a party to attack the accuracy of — a translation submitted under subdivision (a) unless the party has: **(1)** submitted a conflicting translation under subdivision (a); or **(2)** objected to the translation under subdivision (b). **(d) Effect of Objecting or Submitting a Conflicting Translation.** If conflicting translations are submitted under subdivision (a) or an objection is made under subdivision (b), the court must determine whether there is a genuine issue about the accuracy of a material part of the translation. If so, the trier of fact must resolve the issue. **(e) Qualified Translator May Testify.** Except for subdivision (c), this rule does not

	preclude a party from offering the testimony of a qualified translator to translate a foreign language document. **(f) Time Limits.** On a party's motion and for good cause, the court may alter this rule's time limits. **(g) Court-Appointed Translator.** If necessary, the court may appoint a qualified translator. The reasonable value of the translator's services must be taxed as court costs.

[FRE
ARTICLE XI.
MISCELLANEOUS RULES]

RESTYLED FRE	**RESTYLED TEXAS**
Rule 1101. Applicability of the Rules	**COVERED UNDER TRE 101**
Rule 1102. Amendments These rules may be amended as provided in 28 U.S.C. § 2072.	**NO CORRESPONDING TRE**
Rule 1103. Title	**COVERED UNDER TRE 101**

Tab C

Rule 702. Testimony by Experts

A witness may give expert testimony in the form of opinion or otherwise if the following are satisfied:

(1) Basis for testimony. The testimony is based on scientific, technical, or other specialized knowledge.

(2) Assistance to trier of fact. The testimony will assist the trier of fact to understand evidence or determine a fact in issue.

(3) Qualification of witness. The witness is qualified by knoweldge, skill, experience training, or education as an expert in the scientific, technical, or other specialized field.

(4) Reliability. The testimony is

(A) based upon sufficient facts or data;

(B) the product of reliable principles and methods; and

(C) the product of a reliable application of the data, principles and methods to the facts of the case.

Comments

An expert opinion derived from scientific, technical, or other specialized knowledge must assist the trier of fact. *K-Mart Corp. v. Honeycutt*, 24 S.W.3d 357, 360 (Tex. 2000). The opinion will not assist the trier of fact unless the opinion is relevant to a material issue and is based upon a foundation of knowledge shown to be, or known to be, reliable. *E.I. duPont de Nemours v. Robinson,* 923 S.W.2d 549 (Tex. 1995).

Subdivisions (a)(1), (2) and (3) retain the substance of existing Rule 702 but are changed stylistically to show the different subparts of the rule.

Subdivision (a)(4) is based on **[FRE 702 as amended December 1, 2000 and]** the three different reliably tests identified by *Merrell Dow Pharm., Inc. v. Havner,* 953 S.W.2d 706, 714 (Tex. 1997). Reliability requires the trial court to scrutinize not only the principles and methods used by the expert, but also whether these principles and methods have been properly applied to the facts of the case and any data, studies, or facts that underlie, or form the foundation of, the expert's opinion.

The relevant factors for determining reliability under Rule 702(a)(4) will vary from expertise to expertise. For a list of some of the factors used by courts, see *E.I. duPont de Nemours v. Robinson,* 923 S.W.2d 549 (Tex. 1995); *Nenno v. State,* 970 S.W.2d 549, 561 (Tex. Crim. App. 1998); *Kelly v. State,* 824 S.W.2d 569, 572, 573 (Tex. Crim. App.

1992). The court should also consider whether the expert has used the same principles and methodology that the expert uses in his or her field. *Kumho Tire Co. Ltd. vs. Carmichael*, 526 U.S. 137 (1999). The reliability inquiry is a flexible one and will vary according to the expert's field. In some cases, the extent of the expert's personal experience will be an important factor for determining reliability. *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 712 (Tex. 1998).

The trial court's determination of admissibility should be made outside the presence of the jury.

The role of the trial court is not to determine the validity or accuracy of the opinions formed by the expert, but to determine admissibility of the opinions. The trial court's decision on admissibility and selection of the criteria for examining the principles and methodology used by the expert is subject to review for abuse of discretion. Courts may consider inadmissible evidence pursuant to Rule 104(a) in making this determination.

Particular opinions or portions of the testimony of an expert may be admissible under this rule even though other opinions or portions of the testimony from the same witness are inadmissible under this rule.

Tab D

Kristal Voth

From: Kristal Voth

Sent: Wednesday, March 23, 2011 1:02 PM

To: 'Kennon L. Peterson'; 'Kennon L. Peterson'

Subject: Re: Rule 511

Kennon,

The work of both committees is complete. The State Bar Evidence Committee reviewed our final draft and we have reviewed their final draft. Each committee wants to stick with the draft they submitted. The draft submitted by the SCAC was approved overwhelmingly by the whole SCAC. The basic difference between the two rules is that the state bar rule includes only work product and attorney client privilege. The SCAC rule includes all privileges in the evidence rules and in the rules of civil procedure. The State Bar Evidence Committee followed the federal rule but the difference is the federal rule does not list all of the privileges that the Texas Evidence Rules include. Therefore, on waiver, it could be argued that the waiver of related documents under the state bar rule only includes work product and attorney client privilege. Under the SCAC rule waiver of related documents applies to all rules and there is no question about this.

If you have any questions please let me know.

Sincerely,
Buddy Low

Kristal C. Voth
Assistant to Gilbert I. Low
Orgain Bell & Tucker
(409) 838-6412 ext.332
Fax (409) 838-6959

PROPOSED AMENDMENT TO
TEXAS RULE OF EVIDENCE 511

Rule 511. Waiver by Voluntary Disclosure

(a) General Rule

A person upon whom these rules confer a privilege against disclosure waives the privilege if:

(1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged; or

(2) the person or a representative of the person calls a person to whom privileged communications have been made to testify as to the person's character or character trait insofar as such communications are relevant to such character or character trait.

(b) Lawyer-Client Privilege and Work Product; Limitations on Waiver

Notwithstanding paragraph (a), the following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the lawyer-client privilege or work-product protection.

(1) Disclosure made in a federal or state proceeding or to a federal or state office or agency; scope of a waiver. — When the disclosure is made in a federal or state proceeding of any state or to a federal or state office or agency of any state and waives the lawyer-client privilege or work-product protection, the waiver extends to an undisclosed communication or information only if:

(A) the waiver is intentional;

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

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

(2) Inadvertent Disclosure in State Civil Proceedings. — When made in a Texas state proceeding, an inadvertent disclosure does not operate as a waiver if the holder followed the procedures of Tex. R. Civ. P. 193.3(d).

(3) Controlling Effect of a Court Order. — A disclosure made pursuant to an order of a state court of any state that the privilege or protection is not waived by disclosure connected with the litigation pending before that court is also not a waiver in any Texas state proceeding. A disclosure made in litigation pending before a federal court that has entered such an order is likewise not a waiver in a Texas state proceeding.

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

Comment

The addition of Rule 511(b) is designed to align Texas law with Federal Rule 502, which was enacted in 2008 and which governs only lawyer-client privilege and work-product waivers. Consequently, Rule 511(b) addresses only those waiver issues addressed in Federal Rule 502. As the phrase "in the circumstances set out" in the first sentence of Rule 511(b) makes clear, Rule 511(b) governs only certain types of waiver issues regarding the lawyer-client privilege and work-product. The failure to address in Rule 511(b) other waiver issues and waiver issues regarding other privileges or protections is not intended to affect the law regarding those other issues, privileges or protections.

Rule 511(b) does not govern whether an inadvertent disclosure of privileged matter constitutes a waiver. An inadvertent disclosure that is made in the course of state civil discovery is governed by Texas Rule of Civil Procedure 193.3(d). An inadvertent disclosure that is made in a Federal proceeding or to a Federal office or agency is governed by Federal Rule 502(b).

Rule 511(b) intentionally does not define "work product." It is anticipated that courts will apply the definition of "work product" applicable at the time. *See, e.g.,* TEX. R. CIV. P. 192.5 (defining "work product" for civil cases), and *Pope v. State*, 207 S.W.3d 352, 357-363 (Tex. Crim. App. 2006) (addressing "work product" in criminal case).

Rule 511(b) provides the rule of decision governing the effect disclosures made to offices or agencies of any state, and to disclosures, orders, or agreements made in proceedings pending in courts of any state.

Report of AREC Regarding Proposed Amendment to Tex. R. Evid. 511

On September 19, 2008, the President signed into law S. 2450, which adopted new Fed. R. Evid. 502. Even before the adoption of Fed. R. Evid. 502, AREC was working on a draft of a Texas Rule of Evidence that would adopt the same principles embodied in Fed. R. Evid. 502. Transmitted with this report is the result of that work, a proposed new Tex. R. Evid. 511(b), modeled on Fed. R. Evid. 502.

In its comment accompanying the federal rule, the Advisory Committee on Evidence Rules states that the federal rule has two purposes:

> 1) It resolves some longstanding disputes in the courts about the effect of certain disclosures of communications or information protected by the attorney-client privilege or as work product — specifically those disputes involving inadvertent disclosure and subject matter waiver.
>
> 2) It responds to the widespread complaint that litigation costs necessary to protect against waiver of attorney-client privilege or work product have become prohibitive due to the concern that any disclosure (however innocent or minimal) will operate as a subject matter waiver of all protected communications or information. This concern is especially troubling in cases involving electronic discovery. See, e.g., *Hopson v. City of Baltimore*, 232 F.R.D. 228, 244 (D.Md. 2005) (electronic discovery may encompass "millions of documents" and to insist upon "record-by-record pre-production privilege review, on pain of subject matter waiver, would impose upon parties costs of production that bear no proportionality to what is at stake in the litigation").

See Fed. R. Evid. 502 advisory committee note. In proposing a parallel rule for Texas, the Committee has kept these same purposes in mind, and proposes the rule to further those same goals. In addition, the Texas rule implements that portion of the federal rule which states that "[n]otwithstanding Rules 101 and 1101, this rule applies to State proceedings," and "notwithstanding Rule 501, this rule applies even if Sate law provides the rule of decision." Fed. R. Evid. 502(f).

The Committee recommends that the new rule be added to what is presently Tex. R. Evid. 511. To accomplish this, we have taken what is presently Rule 511 and made that subpart (a), and have added the new proposed rule as subpart (b). We have changed the caption of Rule 511 from "Waiver of Privilege by Voluntary Disclosure" to "Waiver by Voluntary Disclosure." Subpart (a) – which is exactly the same language that is contained in the current Rule 511 – would be titled "General Rule," and the new subpart would be titled "Lawyer-Client Privilege and Work Product; Limitations on Waiver."

To a large extent, we adopted the language of the federal rule. The most significant issue we had to face was whether the rule should apply (a) to disclosures

made only to Texas offices or agencies or also to disclosures made to *other* states' offices or agencies and (b) to disclosures, orders or agreements in litigation pending only in Texas state courts, or also to those made in *other* state courts (the federal rule already requires that we are governed by disclosures, orders, or agreements made to or in federal offices, agencies, or courts). The unanimous view of the Committee was that the Texas rule should take the broader form, as this was far more consistent with both of the goals (discussed above) of the rulemaking. Thus, the rule we have proposed is intended to provide Texas courts with the rule of decision governing the effect of disclosures made to offices or agencies of any state, and to disclosures, orders, or agreements made in proceedings pending in courts of any state.

We are not aware of any other state having adopted or proposed a rule that parallels Fed. R. Evid. 502. Thus, in drafting the rule, we did not have the benefit of any other state's experience. We did, however, have the benefit of the extensive record of the drafting and public comment involved in the adoption of Fed. R. Evid. 502.

Rule 511. Waiver by Voluntary Disclosure

(a) General Rule

A person upon whom these rules confer a privilege against disclosure waives the privilege if:

(1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged; or

(2) the person or a representative of the person calls a person to whom privileged communications have been made to testify as to the person's character or character trait insofar as such communications are relevant to such character or character trait.

(b) Limitations on Waiver

Notwithstanding paragraph (a), the following provisions apply to privileges recognized by these rules or to the protection that Texas law provides for tangible material (or its intangible equivalent) under Tex. R. Civ. P. 192.5.

(1) Disclosure made in a federal or state proceeding or to a federal or state office or agency; scope of a waiver. — When the disclosure is made in a federal or state proceeding of any state or to a federal or state office or agency of any state and waives the privilege or protection, the waiver extends to an undisclosed communication or information only if:

(A) the waiver is intentional;

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

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

(2) Inadvertent Disclosure in State Civil Proceedings. — When made in a Texas state proceeding, an inadvertent disclosure does not operate as a waiver if the holder followed the procedures of Tex. R. Civ. P. 193.3(d).

(3) Controlling Effect of a Court Order. — A disclosure made pursuant to an order of a state court of any state that the privilege or protection is not waived by disclosure connected with the litigation pending before that court is also not a waiver in any Texas state proceeding. A disclosure made in litigation pending before a federal court that has entered such an order is likewise not a waiver in a Texas state proceeding.

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

Comment

The addition of Rule 511(b) is designed to align Texas law with Federal Rule 502. One difference between this Rule and the Federal Rule, which was enacted in 2008, is that the Federal Rule governs only lawyer-client privilege and work-product waivers.

Rule 511(b) does not govern whether an inadvertent disclosure of privileged matter constitutes a waiver. An inadvertent disclosure that is made in the course of state civil discovery is governed by Texas Rule of Civil Procedure 193.3(d). An inadvertent disclosure that is made in a Federal proceeding or to a Federal office or agency is governed by Federal Rule 502(b).

Rule 511(b) intentionally does not define "work product." It is anticipated that courts will apply the definition of "work product" applicable at the time. *See, e.g.,* TEX. R. CIV. P. 192.5 (defining "work product" for civil cases), and *Pope v. State*, 207 S.W.3d 352, 357-363 (Tex. Crim. App. 2006) (addressing "work product" in criminal case).

Rule 511(b) provides the rule of decision governing the effect disclosures made to offices or agencies of any state, and to disclosures, orders, or agreements made in proceedings pending in courts of any state.

subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.

(4) *Trial Preparation: Experts.*

(A) *Expert Who May Testify.* A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) *Expert Employed Only for Trial Preparation.* Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(C) *Payment.* Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (B); and

(ii) for discovery under (B), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) *Claiming Privilege or Protecting Trial-Preparation Materials.*

(A) *Information Withheld.* When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders.

(1) *In General.* A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place, for the disclosure or discovery;

See chart, "Summary of 2009 FRCP Time-Computation Changes," p. 737.