COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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TO: **Honorable Lee H. Rosenthal, Chair**
Standing Committee on Rules of Practice and Procedure

FROM: **Robert L. Hinkle, Chair**
Advisory Committee on Evidence Rules

DATE: **December 1, 2008**

RE: **Report of the Advisory Committee on Evidence Rules**

I. Introduction

The Advisory Committee on Evidence Rules (the "Committee") met on October 23-24 in Santa Fe.

At its meeting, the Committee approved proposed amendments that would restyle Evidence Rules 501-706. The Committee seeks approval of these proposed amendments for release for public comment — with the proviso that these rules, if approved, will be held until all the rules are restyled, so that the restyled rules will be released for public comment in a single package. The proposed restyled Rules 501-706 are attached as Appendix A to this Report.

The Committee also discussed a number of other matters at its meeting that required no action. These matters are discussed below as information items.

A complete discussion of all of these action and information items can be found in the draft minutes of the Fall 2008 meeting, attached as Appendix B to this Report.

II. Action Item

Restyled Evidence Rules 501-706

At its Fall 2007 meeting the Committee agreed upon a protocol and a timetable for its project to restyle the Evidence Rules. The Committee established a step-by-step process for restyling that is substantially the same as that employed in previous restyling projects. Those steps are: 1) draft by Professor Kimble; 2) comments by the Reporter; 3) response by Professor Kimble and changes to the draft where necessary; 4) expedited review by Advisory Committee members and redraft by Professor Kimble if necessary; 5) review by the Style Subcommittee of the Standing Committee; 6) review by the Advisory Committee; and 7) review by the Standing Committee to determine whether to release the restyled rules for public comment.

The Committee agreed that the Evidence Rules will be divided into three parts, and the process described above would therefore be conducted in three separate stages. The Committee also agreed that the entire package of restyled rules should be submitted for public comment at one time.

The Committee has established a working principle for whether a change is one of "style" (in which event the final determination is made by the Style Subcommittee) or one of "substance" (in which event the final decision is for the Committee). A change is "substantive" if:

1. Under the existing practice in any circuit, it could lead to a different result on a question of admissibility; or

2. Under the existing practice in any circuit, it could lead to a change in the procedure by which an admissibility decision is made; or

3. It changes the structure of a rule or method of analysis in a manner that fundamentally changes how courts and litigants have thought about, or argued about, the rule; or

4. It changes what Professor Kimble has referred to as a "sacred phrase" — "phrases that have become so familiar as to be fixed in cement."

At its Spring 2008 meeting the Committee approved the restyling of the first third of the Evidence Rules (Rules 101-415); these proposed restyled rules were approved for release for public comment by the Standing Committee at its June 2008 meeting.

At its Fall 2008 meeting, the Committee reviewed the draft of restyled Rules 501-706. The draft had been reviewed and approved by the Style Subcommittee. The Committee reviewed each rule to determine whether any of the proposed changes were of substance rather than style. The Committee also reviewed each rule to determine whether to recommend that a change, even though one of style, might be reconsidered by the Style Subcommittee of the Standing Committee. The

Committee determined that a number of proposed changes were substantive, including some changes to Rules 604, 606, 609, 611, 613, and 705. The Committee also made style suggestions for Rules 602, 605, 608, 703, 704, and 706. A complete description of the Committee's changes and suggestions can be found in the Minutes of the Fall 2008 Committee meeting, attached to this Report as Appendix B.

After implementing changes of substance and recommending changes of style, the Committee voted unanimously to refer the restyled Rules 501-706 to the Standing Committee, with the recommendation that they be released for public comment when the complete set of Evidence Rules has been restyled.

The Committee also resolved to maintain a list of "global" questions to maintain consistent terminology. Some of the global questions include how to refer to the government and the defendant in a criminal case, and how to use such terms as "case", "proceeding" and "action". Finally, the Committee will consider at its next meeting whether to include a new rule providing definitions for some recurring terms such as "record" and "writing."

The proposed restyled Rules 501-706 are attached to this Report as Appendix A — they are presented in a "side-by-side" version, with the existing rule in the left column and the restyled rule in the right. The restyled rules reflect changes made by the Style Subcommittee in light of suggestions made at the Committee meeting.

The template Committee Note to each of the restyled rules will read as follows:

Committee Note

The language of Rule [ ] has been amended as part of the restyling of the [ ] Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The Committee plans to prepare a more detailed Committee Note to Rule 101, which will provide a short description of the process and the goals of restyling. It will be adapted from the Committee Note to the restyled Civil Rule 1.

Recommendation: The Evidence Rules Committee recommends that the proposed restyled Evidence Rules 501-706 be approved for release for public comment, with the release to occur when all the restyled rules have been prepared.

II. Information Items

A. Proposed Amendment to Evidence Rule 804(b)(3)

The proposed amendment to Rule 804(b)(3) has been released for public comment. The amendment would extend the corroborating circumstances requirement to declarations against penal interest offered by the government in a criminal case. Currently the Rule requires that if a declaration against penal interest is offered by the accused it is not admissible unless "corroborating circumstances clearly indicate the trustworthiness of the statement." But the same statements offered by the government are not subject to that requirement. The purpose of the amendment is to assure that only reliable declarations against penal interest are admitted against the accused.

To date no comments have been received on the proposed amendment to Rule 804(b)(3), but comments are expected by the end of the public comment period.

B. Report on Use of Subcommittees

The Judicial Conference has requested the Standing Committee (as well as other Conference committees) to prepare a report on the use of subcommittees. The Evidence Rules Committee has no subcommittees, and so has no relevant information about best practices. But the Committee does support any suggestions of the Standing Committee and the other Advisory Committees that do use subcommittees.

C. *Crawford v. Washington* and the Hearsay Exceptions

The Committee continues to monitor case law developments after the Supreme Court's decision in *Crawford v. Washington*, in which the Court held that the admission of "testimonial" hearsay violates the accused's right to confrontation unless the accused has an opportunity to cross-examine the declarant. Subsequently the Court in *Davis v. Washington* held that a hearsay statement is not testimonial if the primary motivation for making the statement was for some purpose other than for use in a criminal prosecution. And the Court in *Whorton v. Bockting* held that non-testimonial hearsay is unregulated by the Confrontation Clause.

Crawford and the subsequent case law raises at least the possibility that some of the hearsay exceptions in the Federal Rules of Evidence might be subject to an unconstitutional application in some circumstances. If that possibility becomes a reality, it may become necessary to propose amendments to bring those hearsay exceptions into compliance with constitutional requirements. But the Committee has determined that there is no need to propose any amendment in response to *Crawford* at this time. It is likely that no amendment will be necessary in any event, because the case law is reaching the result that any hearsay statement admissible under a Federal Rules exception is by that fact non-testimonial and therefore admissible under the Confrontation Clause. The admissibility requirements of the Federal Rules hearsay exceptions are being held to screen out "testimonial" hearsay as that term has been construed in *Davis* and by the lower courts. Even if the

Federal Rules hearsay exceptions are not coextensive with the Confrontation Clause, an attempt to to codify *Crawford* is unwise at this point, given the fact that the Supreme Court, this term is considering the admissibility of laboratory reports under *Crawford*. The Committee will continue to monitor case law developments under *Crawford* and *Davis*.

IV. Minutes of the Fall 2008 Meeting

The Reporter's draft of the minutes of the Committee's Fall 2008 meeting is attached to this report as Appendix B. These minutes have not yet been approved by the Committee.

TAB

ARTICLE V. PRIVILEGES **Rule 501. General Rule**	ARTICLE V. PRIVILEGES[1] **Rule 501 — Privilege in General**
Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.	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 provide otherwise: • the United States Constitution; • a federal statute; or • other rules prescribed by the Supreme Court under statutory authority [restore *under statutory authority* to 402]. But in a civil case, state law governs if the privilege relates to a claim or defense for which state law supplies the rule of decision.

[1] The date of this version is December 8, 2008.

ARTICLE VI. WITNESSES **Rule 601. General Rule of Competency**	**ARTICLE VI. WITNESSES** **Rule 601 — Competency to Testify in General**
Every person is competent to be a witness except as otherwise provided in these rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.	Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law on witness competency governs when the witness's testimony relates to a claim or defense for which state law supplies the rule of decision.

Rule 602. Lack of Personal Knowledge	Rule 602 — Need for 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 witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.	A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to testimony by an expert witness under Rule 703.

Rule 603. Oath or Affirmation	Rule 603 — Oath or Affirmation to Testify Truthfully
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.	Before testifying, a witness must give an oath or affirmation to testify truthfully. The oath or affirmation must be in a form designed to impress that duty on the witness's conscience.

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

Rule 605. Competency of Judge as Witness	Rule 605 — Judge's Competency as a Witness
The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.	The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

Rule 606. Competency of Juror as Witness	Rule 606 — Juror's Competency as a Witness
(a) At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. 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.	**(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 an adverse party an opportunity to object outside the jury's presence.
(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith. But a juror may testify about (1) whether extraneous prejudicial information was improperly brought to the jury's attention, (2) whether any outside influence was improperly brought to bear upon any juror, or (3) whether there was a mistake in entering the verdict onto the verdict form. A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying.	**(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 about whether: **(A)** extraneous prejudicial information was improperly brought to the jury's attention; **(B)** any outside influence was improperly brought to bear on a juror; or **(C)** a mistake was made in entering the verdict on the verdict form.

Rule 607. Who May Impeach	Rule 607 — Who May Impeach a Witness
The credibility of a witness may be attacked by any party, including the party calling the witness.	Any party, including the party that called the witness, may attack the witness's credibility.

Rule 608. Evidence of Character and Conduct of Witness	Rule 608 — A Witness's Character for Truthfulness or Untruthfulness
(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.	**(a) Opinion or Reputation Evidence.** A witness's credibility may be attacked or supported by evidence in the form of an opinion about — or a reputation for — having a character for truthfulness or untruthfulness. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.	**(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. **(c) Privilege Against Self-Incrimination.** By testifying about a matter that relates only to a character for truthfulness, a witness does not waive the privilege against self-incrimination.

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 character for truthfulness of a witness, **(1)** evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and **(2)** evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.	**(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, if the witness is not a defendant in a criminal case; and **(B)** must be admitted if the witness is a defendant in a criminal case and the court determines that the probative value of the evidence outweighs its prejudicial effect; 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.
(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. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives 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.	**(b) Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the conviction or the witness's release from confinement for the conviction, whichever is later. Evidence of the conviction is admissible only if the court determines that its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect. But before offering the evidence, the proponent must give an adverse party reasonable written notice, in any form, of the intent to use it so that the party has a fair opportunity to contest its use.

(c) Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime that was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.	(c) **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if: **(1)** the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or **(2)** the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
(d) Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.	(d) **Juvenile Adjudications**. Evidence of a juvenile adjudication is admissible under this rule only if: **(1)** it is offered in a criminal case; **(2)** the adjudication was of a witness other than the defendant; **(3)** a conviction of an adult 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 appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.	(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.

Rule 610. Religious Beliefs or Opinions	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.	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 Interrogation and Presentation	Rule 611 — Mode and Order of Questioning 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 questioning 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 be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.	**(b) Scope of Cross-Examination.** Cross-examination should not go beyond the subject matter of the direct examination and matters affecting a witness's credibility. The court may permit inquiry into additional matters as if on direct examination.
(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.	**(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 permit leading questions on cross-examination. And the court should permit leading questions when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

Rule 612. Writing Used to Refresh Memory	Rule 612 — Writing Used to Refresh a Witness's Memory
Except as otherwise provided in criminal proceedings by section 3500 of title 18, United States Code, if a witness uses a writing to refresh memory for the purpose of testifying, either— **(1)** while testifying, or **(2)** before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing 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 portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.	**(a)** **General Application.** This rule gives an adverse party certain options when a witness uses any form of a writing to refresh memory: **(1)** while testifying; or **(2)** before testifying, if the court decides that justice requires a party to have those options. **(b)** **Adverse Party's Options; Deleting Unrelated Matter.** Unless 18 U.S.C. § 3500 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing 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.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

Rule 613. Prior Statements of Witnesses	Rule 613 — Witness's Prior Statement
(a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.	(a) **Showing or Disclosing the Statement During Questioning.** When questioning a witness about the witness's prior statement, the 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 prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).	(b) **Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to question the witness about it, or if justice so requires. This subdivision (b) does not apply to a party opponent's admission under Rule 801(d)(2).

Rule 614. Calling and Interrogation of Witnesses by Court	Rule 614 — Court's Calling or Questioning a Witness
(a) Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.	**(a) Calling.** The court may call a witness on its own or at a party's suggestion. Each party is entitled to cross-examine the witness.
(b) Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party.	**(b) Questioning.** The court may question a witness regardless of who calls the witness.
(c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.	**(c) Objections.** A party may object to the court's calling or questioning a witness either at that time or at the next opportunity when the jury is not present.

Rule 615. Exclusion of Witnesses	Rule 615 — 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 (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause, or (4) a person authorized by statute to be present.	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; **(b)** an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney; **(c)** a person whose presence a party shows to be essential to presenting the party's claim or defense; or **(d)** a person authorized by statute to be present.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY **Rule 701. Opinion Testimony by Lay Witnesses**	ARTICLE VII. OPINIONS AND EXPERT TESTIMONY **Rule 701 — Opinion Testimony by Lay Witnesses**
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, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.	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 702. Testimony by Experts	Rule 702 — Testimony by Expert Witnesses
If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.	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 703. Bases of Opinion Testimony by Experts	Rule 703 — Bases of an Expert's Opinion Testimony
The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.	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 the court determines that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on Ultimate Issue	Rule 704 — Opinion on an Ultimate Issue
(a) Except as provided in subdivision (b), 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.	**(a) In General.** An opinion is not objectionable just because it embraces an ultimate issue.
(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.	**(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.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion	Rule 705 — Disclosing the Facts or Data Underlying an Expert's Opinion
The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.	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 706. Court Appointed Experts	Rule 706 — Court-Appointed Expert Witnesses
(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.	**(a) Appointment Process.** On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert witness that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act. **(b) Expert's Role.** The court must inform the expert in writing, in any form, of the expert's duties and have a copy filed with the clerk. Or the court may so inform the expert at a conference in which the parties have an opportunity to participate. The expert: **(1)** must advise the parties of any findings the expert makes; **(2)** may be deposed by any party; **(3)** may be called to testify by the court or any party; and **(4)** may be cross-examined by any party, including the party that called the expert.
(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the fifth amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.	**(c) Compensation.** The expert is entitled to whatever reasonable compensation the court allows. The compensation is payable as follows: **(1)** in a criminal case and in a civil action or proceeding involving just compensation under the Fifth Amendment, from any funds that are provided by law; and **(2)** in any other civil action or proceeding, by the parties in the proportion and at the time that the court directs — and the compensation is then charged like other costs.
(c) Disclosure of appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.	**(d) Disclosing the Appointment.** The court may authorize disclosure to the jury that the court appointed the expert.
(d) Parties' experts of own selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.	**(e) Parties' Choice of Their Own Experts.** This rule does not limit a party in calling its own experts.