

Rule Change #1998(16)

Chapter 33. Colorado Rules of Evidence

Article VII. Hearsay

Rule 801. Definitions

**Rule 803. Hearsay Exceptions: Availability of
Declarant Immaterial**

**Rule 804. Hearsay Exceptions: Declarant
Unavailable Rule**

Rule 807. Residual Exception

Rule 801. Definitions

(a)through (c) * * * * [NO CHANGE]

(d) Statements which are not hearsay.

(1) * * * * [NO CHANGE]

(2) Admission by party-opponent. The statement is offered against a party and is (A) THE PARTY'S own statement in either AN individual or a representative capacity or (B) a statement of which THE PARTY has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by THE PARTY to make a statement concerning the subject, or (D) a statement by THE PARTY'S agent or servant concerning a matter within the scope of THE agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy. THE CONTENTS OF THE STATEMENT SHALL BE CONSIDERED BUT ARE NOT ALONE SUFFICIENT TO ESTABLISH THE DECLARANT'S AUTHORITY UNDER SUBDIVISION (C), THE AGENCY OR EMPLOYMENT RELATIONSHIP AND SCOPE THEREOF UNDER SUBDIVISION (D), OR THE EXISTENCE OF THE CONSPIRACY AND THE PARTICIPATION THEREIN OF THE DECLARANT AND THE PARTY AGAINST WHOM THE STATEMENT IS OFFERED UNDER SUBDIVISION (E).

COMMITTEE COMMENT

The last sentence of this Rule was added to track a corresponding change in F.R.E. 801(d)(2).

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:

(1) through (23) * * * * [NO CHANGE]

(24) [Transferred to Rule 807]

COMMITTEE COMMENT

The contents of Rule 803(24) and Rule 804(b)(5) have been combined and transferred to Rule 807. This was done to facilitate additions to Rules 803 and 804. No change in meaning is intended.

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) * * * * [NO CHANGE]

(b) Hearsay exceptions.

(1) through (4) * * * * [NO CHANGE]

(5) [Transferred to Rule 807]

COMMITTEE COMMENT

The contents of Rule 803(24) and Rule 804(b)(5) have been combined and transferred to Rule 807. This was done to facilitate additions to Rules 803 and 804. No change in meaning is intended.

Rule 807. RESIDUAL EXCEPTION

A statement not specifically covered by RULE 803 OR 804 but having equivalent circumstantial guarantees of trustworthiness, IS NOT EXCLUDED BY THE HEARSAY RULE, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

C.R.E. 801, 803, 804, and 807 are amended and adopted by the court, En Banc, November 25, 1998, effective January 1, 1999.

BY THE COURT:

**Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court**