

RULE CHANGE 2011(02)

COLORADO RULES OF EVIDENCE

Rule 804. Hearsay Exceptions: Declarant Unavailable

(a) [NO CHANGE]

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

(1) [NO CHANGE]

(2) [NO CHANGE]

(3) **Statement against interest.** A statement ~~which that: was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.~~

(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.

(Federal Rule Identical.)

COMMITTEE COMMENT

The rule was revised, consistent with recent amendments to FRE 804(b)(3), only to clarify that corroborating circumstances are required regardless of whether a statement is offered to inculcate or exculpate an accused. See People v. Newton, 966 P.2d 563 (Colo.1998) (prosecutors seeking to admit statements against the accused must satisfy the corroboration requirement solely by reference to the circumstances surrounding its making).

~~Colorado precedent concerning statements against interest is sparse, with possible limitation to statements against declarant's pecuniary or proprietary interest. Colorado had not applied this hearsay exception in criminal cases prior to the adoption of this rule. Moya v. People, 79 Colo. 104, 244 P. 69 (1926).~~

(4) [NO CHANGE]

(5) [NO CHANGE]

Amended by the Court, En Banc January 13, 2011, effective immediately.

By the Court:

**Nathan B. Coats
Justice, Colorado Supreme Court**