

Empirion Evidence Ordinance



Recognized Objections

I. Authority

| RULE | OBJECTION | PAGE | RULE | OBJECTION | PAGE |
|------|-------------------------------|------|------|-----------------------|------|
| 003 | Leading | 3 | 004 | Asked & Answered | 3 |
| 005 | Argumentative | 3 | 006 | Badgering the Witness | 3 |
| 007 | Vague | 4 | 008 | Compound | 4 |
| 009 | Assumes Facts Not in Evidence | 4 | 010 | Narrative | 4 |
| 011 | Non-responsive | 4 | 012 | Voir Dire | 4 |
| 013 | Procedural Violation | 4 | | | |

II. Rules of Form

| RULE | OBJECTION | PAGE |
|---------|------------------------------------|------|
| 001/002 | Outside the Scope of the Ordinance | 3 |

III. Rules of Evidence

| RULE | OBJECTION | PAGE | RULE | OBJECTION | PAGE |
|------|---|------|------|-----------------------|------|
| 101 | Scope; Definitions | 5 | 104 | Preliminary Questions | 5 |
| 106 | Completeness | 6 | 402 | Relevance | 6 |
| 403 | More Prejudicial Than Probative | 6 | 403 | Confusing the Issues | 6 |
| 403 | Misleading the Jury / Misstating Evidence | 6 | 403 | Cumulative | 6 |

2024 Evidence Ordinance (Spring Leagues)

| | | | | | |
|------------|--|----|------|--|----|
| 404 | Improper Character Evidence | 6 | 405 | Improper Method of Proving Character | 7 |
| 406 | Habit; Routine Practice | 7 | 407 | Subsequent Remedial Measures | 8 |
| 602 | Lack of Personal Knowledge | 8 | 602 | Speculation | 8 |
| 602 | Lack of Foundation | 8 | 608 | Improper Bolstering | 8 |
| 608 | Improperly Attacking Credibility | 9 | 609 | Improper Impeachment by Evidence of Prior Conviction | 9 |
| 610 | Improperly Attacking or Supporting Credibility | 10 | 611 | Outside the Scope of Examination | 10 |
| 613 | Improper Impeachment | 10 | 615 | Violation of Sequestration | 10 |
| 701 | Improper Opinion | 11 | 702 | Improper Expert Opinion | 11 |
| 704 (b) | Ultimate Issue | 11 | 802 | Hearsay | 13 |
| 805 | Hearsay Within Hearsay | 16 | 1002 | Best Evidence | 16 |

I. Authority

Rule 001 - Raising Objections

An objection may not be raised in any Court in Empirion unless it is listed as a Recognized Objection on pages 1-2 of this Ordinance.¹

Rule 002 - Responding to Objections

An objection response may be supported by any rule contained within the Empirion Rules of Evidence.²

II. Rules of Form

Rule 003 - Leading

A question asked of a witness that implies its own answer is a leading question. A leading question may generally not be asked during direct examinations, but are permitted during cross examination. The Court, at its discretion, may allow leading questions on direct examination where they are necessary for the purpose of laying foundation. See EEO 611 (c).

Rule 004 - Asked & Answered

A question that has been asked previously by an attorney on direct or cross examination may not be repeated during the same examination. This does not necessarily prohibit the re-asking of a question on cross examination where the court deems that the witness is non-responsive to the original asking of the question.

Rule 005 - Argumentative

An attorney may not ask a witness to make or agree with a conclusion that is reserved for the judge or the jury, such as a legal conclusion. Nor may an attorney offer the attorney's conclusions during an examination, instead of asking questions.

Rule 006 - Badgering the Witness

An attorney is deemed to be badgering a witness on cross examination where they cause undue pressure or strain on the witness during the examination. This includes, but is not limited to:

1. Repeatedly cutting off the witness as they attempt to answer the attorney's question;
2. Shouting at the witness;
3. Asking the witness intentionally inappropriate or hostile questions.

¹ With schools coming from so many jurisdictions, our goal is to ensure that teams are using a common language when arguing objections. An objection response may be supported by any rule contained within the Empirion Rules of Evidence.

² As an example, if one school objects hearsay under the Rules of Evidence, another may respond with an 803 exception, even though 803 is not a grounds by which a team can object.

2024 Evidence Ordinance (Spring Leagues)

Badgering of a witness is not allowed. Where an attorney is deemed to be badgering a witness, the court, subject to its discretion, may allow the examining attorney to re-ask the question in an appropriate fashion.

Rule 007 - Vague

A question that is so unclear that a witness cannot understand its meaning may not be asked.

Rule 008 - Compound

A question that seeks to elicit multiple facts may not be asked. Where an attorney is deemed to be asking a compound question, the court, subject to its discretion, may allow the examining attorney to re-ask the question in parts, such that each question only elicits one fact at a time in compliance with this rule. The court may, at its discretion, choose to allow summary questions.

Rule 009 - Assumes Facts Not in Evidence

A question may not be asked where it asserts facts that are not on the record at the time it is posed. A fact that is “on the record” is one that has been offered at trial through witness testimony, an exhibit or by reading an order or stipulation.

Rule 010 - Narrative

A question may not be asked where it is overly broad of questions or seeks information about an indefinite period of time.

Rule 011 - Non-Responsive

A witness may not answer a question with facts or information that does not answer the question posed to them.

Rule 012 - Voir Dire

A *voir dire* is improper where an attorney asks questions that go beyond challenging the competency of the expert witness to testify at trial, as outlined in Rule of Procedure 5.5.

Rule 013 - Procedural Violation

Any 'time sensitive' violation of the Empire Rules of Procedure, as prescribed by Rule of Procedure 6.2.8, should be immediately raised to the presiding judge, who will determine, with the assistance of the Empire staff, whether to proceed with the trial or seek tab room intervention.³ All potential Rule of Procedure violations that are not 'time sensitive' should be reported to the Tab Room, as prescribed by the Tabulation Manual.

³ Comment: This objection should be used sparingly. Teams need to keep in mind that a Tab Officer will ultimately rule on how a Rule of Procedure violation will impact the trial itself so, whenever possible, we encourage a team's coach or non-competing student to report a violation directly to their Blue Shirt or to the Tab Room rather than raising an in-trial objection. Furthermore, this objection only provides a remedy for a 'time-sensitive' issue as defined by Rule of Procedure 1.7 (e.g. the same attorney is objecting to more than one direct). Please carefully review this rule in conjunction with the Rules of Procedure.

III. Rules of Evidence

The following rules are excerpted from the [United States Federal Rules of Evidence](#). If you notice that a rule is missing (e.g. we skip from 104 to 106), it is not a mistake! We have omitted select rules and articles, but kept the real numbering the same.

Article I

General Provisions

Rule 101 - Scope; Definitions

- (a) **Scope.** These rules apply to proceedings in the courts of the United States and the State of Empirion⁴.
- (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 Empirion Supreme Court” means a rule adopted by the Empirion Supreme Court under statutory authority; and
 - (6) a reference to any kind of written material or any other medium (includes electronically stored information).

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) **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 106 - Remainder of or Related Writings or Recorded Statements⁵

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.

⁴ Empirion is recognized as being in the United States and governed by the U.S. Constitution.

⁵ Applies only to material provided in the case packet. This rule does not reference any material not provided in the case packet.

Article IV

Relevancy and its Limits

Rule 401 - Definition of “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 Relevance Evidence

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

- the United States Constitution;
- these rules; or
- other rules prescribed in Empirion. Irrelevant evidence is not admissible.

Rule 403 - Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time

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 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 a Defendant or Victim in a Criminal Case.** The following exceptions apply in a criminal case:
 - (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;
 - (B) a defendant may offer evidence of an alleged victim’s pertinent trait, and if the evidence is admitted, the prosecutor may:
 - i. offer evidence to rebut it; and
 - 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.
- (3) **Exceptions for a Witness.** Evidence of a witness’s character may be admitted under Rules 607, 608, and 609.

(b) **Crimes, Wrongs, or Other Acts.**

2024 Evidence Ordinance (Spring Leagues)

- (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. The prosecution in a criminal case shall provide written notice of such intent prior to witness selection in the Pre-Trial Conference.

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 inquiry into 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.

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

Where 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 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.
- (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.

Article V

Privileges

Rule 501 - Privileges in General

Only privileges granted by a statute of the state of Empirion or by Empirion case law shall be recognized.

Article VI

Witnesses

Rule 601 - Competency to Testify in General

Every person is competent to be a witness unless these rules provide otherwise.

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 shall be presumed to have been sworn in, by an oath or affirmation to testify truthfully administered in a form designed to impress that duty on the witness's conscience.

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

2024 Evidence Ordinance (Spring Leagues)

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.

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;
 - (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) **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 opportunity to contest its use.
- (c) *Omitted.*
- (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) 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) *Omitted.*

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. *Omitted.*
- b. **Scope of Cross-Examination.** Cross examination is not limited to the subject matter of the direct examination. This rule does not apply to Re-cross, see 611
- 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.
- d. **Redirect/Re-cross.** After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on re-cross, but such questions must be limited to matters raised on redirect and should avoid repetition.

Rule 612 - Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.

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) *Omitted.*

Rule 615 - Excluding Witnesses⁶

- (a) At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. But this rule does not authorize excluding:
 - (1) a party who is a natural person;
 - (2) an officer or employee of a party that is not a natural person, after being designated as the party's representative; or
 - (3) any person whose presence a party shows to be essential to presenting the party's claim or defense; or
 - (4) a person authorized by a statute provided in the case materials to be present.
- (b) *Omitted.*

⁶ This rule does not permit the actual exclusion of students portraying witnesses. Rather, it allows for the constructive exclusion of some witnesses.

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;
- (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 Expert Witnesses⁷

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 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 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.

⁷ A party seeking to introduce expert testimony must raise a motion to enter the witness as an expert before the expert opinion can be offered. This should be done after the appropriate 702 foundation is laid. Once a motion is requested, the judge will first determine if sufficient foundation of the witness's expertise has been established. If the judge feels that such foundation has been established, the judge will then ask opposing counsel if he/she has any objection to the admission of the expert. The court may then permit opposing counsel to voir dire the expert in accordance with Empire Rules of Procedure Rule 5.5.

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.

Article VIII

Hearsay

Rule 801 - Definitions that Apply to this Article: Exclusions from Hearsay

The following definitions apply under this article:

- (a) **Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) **Declarant.** “Declarant” means the person who made the statement.
- (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) **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, hearing, or other proceeding or in a deposition;
 - (B) is consistent with the declarant’s testimony and is offered:
 - i. 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
 - ii. to rehabilitate the declarant’s credibility as a witness when attacked on another ground; 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.

The statement must be considered but does not by itself establish the 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).

Rule 802 - The Rule Against Hearsay

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

- an Empirion statute;
- these rules; or
- other rules prescribed by the Empirion Supreme Court.

Rule 803 - Exceptions to the Rule Against Hearsay

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.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 Rule 902(11) or (12) or with a statute permitting certification; and
 - (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

2024 Evidence Ordinance (Spring Leagues)

- (7) **Absence of a Record of 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 does not 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 does not show that the source of information or other circumstances indicate 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.
- (16) **Statements in Ancient Documents.** Statements in a document in existence twenty years or more the authenticity of which is established.
- (17) *Omitted.*
- (18) **Statements in Learned Treatises, Periodicals, or Pamphlets.**⁸ 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 *[Omitted]*.
- If admitted, the statement may be read into evidence but not received as an exhibit.
- (19) *Omitted.*
- (20) *Omitted.*
- (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.

⁸ **Comment:** This rule concerns published treatises, periodicals, or pamphlets that have been provided in the case packet. Mere reference to a title in the packet is insufficient; the entirety of the item must be provided in the case packet for this rule to be applicable.

(23) *Omitted.*

(24) *Omitted.*

Rule 804 - Hearsay Exceptions: Declarant Unavailable

- (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;
 - (5) *Omitted.*

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) 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.
 - (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 declarant's death to be imminent, made about its cause or circumstances.
 - (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.
 - (4) *Omitted.*
 - (5) *Omitted.*
 - (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.

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(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.

Article X

Contents of Writing, 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”⁹ 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) *Omitted.*

Rule 1002 - Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules or an Empirion statute provide otherwise.

⁹ In the state of Empirion, all documents that are provided in the case materials are considered to be originals for purposes of this Rule.