

Order

Michigan Supreme Court
Lansing, Michigan

March 22, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2021-10

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendments
of the Michigan Rules
of Evidence

On order of the Court, this is to advise that the Court is considering amendments of the Michigan Rules of Evidence. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 101. Scope; Definitions

- (a) Scope. These rules govern proceedings in Michigan~~the courts of this state to the extent and.~~ The specific courts and proceedings to which the rules apply, along with the exceptions, are set out~~stated~~ in Rule 1101.
- (b) Statutory Rules. A statutory rule of evidence not in conflict with these rules or other rules adopted by the Supreme Court is effective until superseded by a Supreme Court rule or decision~~of the Supreme Court~~.
- (c) 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 Michigan Supreme Court; and
- (6) a reference to any kind of written material or any other medium includes electronically stored information.

Rule 102. Purpose

These rules ~~should be construed so as are intended to secure fairness in administration every proceeding fairly, eliminate or of unjustifiable expense and delay, and promote or the growth and development of evidence the law of evidence, to the end of ascertaining that the truth may be ascertained and securing a proceedings justly determinationed.~~

Rule 103. Rulings on Evidence

- (a) Preserving a Claim of Error~~Effect of Erroneous Ruling. A party may claim error in~~ Error may not be predicated upon a ruling to which admits or excludes evidence only if the error affects unless a substantial right of the party is affected, and:
- (1) if~~Objection. In case the ruling is one admitting~~ Objection. In case the ruling is one admitting evidence, a party, on the record:
- (A) timely objection or motion to strike appears of record; and
- (B) stating the specific ground of objection, unless it if the specific ground was not apparent from the context; or
- (2) if~~Offer of proof. In case the ruling is one excluding~~ Offer of proof. In case the ruling is one excluding evidence, a party informs the court of its the substance by an offer of proof, unless the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.
- (b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules makes a definitively ruling on the record admitting or excluding evidence, — either before or at or before trial; — a party need not renew an objection or offer of proof to preserve a claim of error for appeal.
- (c) Court’s Statement About the Ruling; Directing an Offer of Proof.~~Record of Offer and Ruling. The court may make add any other or further statement about which shows the character or of the evidence, the form of the evidence in which it was offered, the objection made, and the ruling thereon. The court it may direct that the making of an offer of proof be made in question-and-answer form.~~

- (de) Preventing the Jury from Hearing Inadmissible Evidence~~Hearing of Jury~~. In jury cases, ~~proceedings shall be conducted, ¶~~To the extent practicable, the court must conduct a jury trial so that~~so as to prevent~~ inadmissible evidence is not~~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.~~
- (ed) Taking Notice of Plain Error. ~~A court may~~Nothing in this rule precludes taking notice of a plain errors affecting a substantial rights, even if the claim of error was not properly preserved~~although they were not brought to the attention of the court.~~

Rule 104. Preliminary Questions

- (a) ~~In~~Questions of Admissibility Generally. The court must decide any p~~Preliminary questions about whether a witness is qualified~~concerning the qualification of a person to be a witness, the existence of a privilege exists, or the admissibility of evidence is admissible~~shall be determined by the court, subject to the provisions of subdivision (b). In so deciding, the court~~making its determination it is not bound by the Rules of Eevidence rules, except those on~~with respect to privileges.~~
- (b) Relevancey That Depends~~Conditioned~~ on a Fact. When the relevancy of evidence depends upon whether a fact exists~~the fulfillment of a condition of fact~~, proof must be~~the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding that the fact does exist~~of the fulfillment of the condition. The court may admit the proposed evidence on the condition that the proof be introduced later.
- (c) Conducting a Hearing So That the~~of~~ Jury Cannot Hear It. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:~~Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness, and so requests.~~
- (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.
- (d) Cross-Examining a Defendant in a Criminal Case~~Testimony by Accused~~. The accused does not, bBy testifying upon a preliminary question~~matter, a defendant in a criminal case does not become subject to cross-examination on~~become subject to cross-examination as to other issues in the case.

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

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

~~If the court admits~~ When evidence that ~~which~~ is admissible against ~~as to one~~ party or for one purpose ~~—~~ but not against ~~admissible as to~~ another party or for another purpose ~~—~~ is admitted, the court, upon timely request, must ~~shall~~ restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or Related Writings or Recorded Statements

~~If a party introduces all~~ When a writing or recorded statement ~~or part of a writing or recorded statement, thereof is introduced by a party,~~ an adverse party may require the introduction, at that time, of any other part ~~—~~ or any other writing or recorded statement — that in fairness ~~which~~ ought in fairness ~~to be considered at the same time~~ contemporaneously with it.

Rule 201. Judicial Notice of Adjudicative Facts

- (a) ~~Scope of Rule.~~ This rule governs ~~only~~ judicial notice of an adjudicative facts only, ~~and does not preclude judicial notice of legislative facts.~~
- (b) Kinds of Facts That May Be Judicially Noticed. ~~The~~ A court may judicially noticed a fact that is ~~must be one~~ not subject to reasonable dispute because ~~in that it is either:~~
- (1) is generally known within the trial court's territorial jurisdiction of the trial court; or
 - (2) can be ~~capable of~~ accurately and readily determined ~~from~~ by resort to sources whose accuracy cannot reasonably be questioned.
- (c) Taking Notice ~~When Discretionary.~~ The ~~A~~ court may take judicial notice on its own, ~~whether requested or not,~~ and may require a party to supply the necessary information.
- (~~d~~e) Timing of Taking Notice. ~~The court~~ Judicial notice may be taken judicial notice at any stage of the proceeding.

- (~~e~~) Opportunity to Be Heard. ~~On timely request, a~~A party is entitled ~~upon timely request to an opportunity to be heard~~ on as to the propriety of taking judicial notice and the nature of the fact to be ~~tender of the matter~~ noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.~~In the absence of prior notification, the request may be made after judicial notice has been taken.~~
- (f) Instructing the Jury. In a civil ~~case~~~~action or proceeding~~, the court ~~must~~shall instruct the jury to accept the noticed fact as conclusive ~~any fact judicially noticed~~. In a criminal case, the court ~~must~~shall instruct the jury that it may or may not, ~~but is not required to~~, accept the noticed fact as conclusive ~~any fact judicially noticed~~.

Rule 202. Judicial Notice of Law

- (a) When Discretionary. A court may take judicial notice on its own~~without request by a party of the following~~:
- (1) [Unchanged.]
 - (2) private acts and resolutions of the United States Congress ~~of the United States and of the Michigan Legislature of Michigan, and~~;
 - (3) ordinances and regulations of Michigan governmental subdivisions or agencies ~~of Michigan~~; and
 - (3) [Renumbered (4) but otherwise unchanged.]
- (b) When Conditionally Mandatory. A court ~~must~~shall take judicial notice of each matter ~~specified in paragraph (a) of this rule~~ if a party so requests ~~it~~ and:
- (1) supplies~~furnishes~~ the court with sufficient information to enable it to properly ~~to~~ comply with the request; and
 - (2) gives~~has given~~ each adverse party such notice as the court may require to enable the adverse party ~~to prepare~~ to meet the request.

Rule 301. Presumptions in Civil Cases~~Actions and Proceedings~~

In all civil ~~case~~~~actions and proceedings not otherwise provided for by~~, unless a statute or ~~by these rules provide otherwise~~, the party against whom a presumption ~~imposes on the party against whom it is directed~~ has the burden of producing~~going forward with~~ evidence to rebut ~~or meet~~ the presumption.; But this rule does not shift ~~to such party~~ the burden of

~~proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party who had it on whom it was originally cast.~~

Rule 302. Presumptions in Criminal Cases

- (a) ~~Scope. In a criminal cases, this rule governs a presumptions against a defendant that is an accused, recognized at common law or is created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.~~
- (b) ~~Instructing the Jury. Whenever the existence of a presumed fact against an accused is submitted defendant is submitted to the jury, the court must shall instruct the jury that:~~
- (1) ~~it may or may not conclude from the basic facts that the presumed fact is true; it may, but need not, infer the existence of the presumed fact from the basic facts and~~
 - (2) ~~that the prosecution still bears the burden of proof beyond a reasonable doubt of all the elements of the offense.~~

Rule 401. Test for 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.

~~"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 402. ~~Relevant Evidence Generally Admissibility; of Irrelevant Evidence Inadmissible~~

~~All r~~Relevant evidence is admissible, except as unless any of the following provides otherwise; provided by the

- ~~the United States Constitution of the United States;~~
- ~~the Michigan Constitution of the State of Michigan;~~

- these rules; or
- other rules ~~prescribed~~^{adopted} by the Supreme Court.

~~Evidence which is not Irrelevant evidence~~ is not admissible.

Rule 403. ~~Exclusion of Relevant Evidence for~~ Grounds of Prejudice, Confusion, or Waste of Time, or Other Reasons

~~The court may exclude. Although relevant, evidence may be excluded if its probative value is substantially outweighed by at the danger of one or more of the following: unfair prejudice, confusing of the issues, or misleading the jury, or by considerations of undue delay, wasting of time, or needlessly presenting of cumulative evidence.~~

Rule 404. ~~Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes, Wrongs, or Acts~~

(a) ~~Character Evidence Generally.~~

(1) Prohibited Uses. Evidence of a person's character or ~~a trait of character~~ trait is not admissible ~~to prove that for the purpose of proving action in conformity therewith on a particular occasion the person acted in accordance with the character or trait.~~, except:

(2) Exceptions for a Defendant or Victim in a Criminal Case ~~Character of accused.~~ The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's a pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it; of character offered by an accused, or by the prosecution to rebut the same; or if evidence of a trait of character of the alleged victim of the crime is offered by the accused and admitted under subdivision (a)(2), evidence of a trait of character for aggression of the accused offered by the prosecution;

(B) in a homicide case, Character of alleged victim of homicide. When self-defense is an issue in a charge of homicide, the defendant may offer evidence of the alleged victim's trait a trait of character for aggression, and if the evidence is admitted, the prosecution may: of the alleged victim of the crime offered by an accused, or evidence offered by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the

~~prosecution in a charge of homicide to rebut evidence that the alleged victim was the first aggressor;~~

(i) offer evidence of the defendant's same trait; and

(ii) offer evidence of the alleged victim's trait for peacefulness to rebut evidence that the alleged victim was the first aggressor; and

~~(C3) in a criminal-sexual-conduct case, the defendant may offer evidence of: Character of alleged victim of sexual conduct crime. — In a prosecution for criminal sexual conduct, evidence of~~

(i) the alleged victim's past sexual conduct with the defendant; and

(ii) evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.;

~~(34) Exceptions for a Character of witness. Evidence of the character of a witness's character may be admitted under, as provided in Rules 607, 608, and 609.~~

(b) Other Crimes, Wrongs, or Acts.

(1) Prohibited Uses. Evidence of any other crimes, wrongs, or acts is not admissible to prove the character of a person's character in order to show that on a particular occasion the person acted in accordance with the characteraction in conformity therewith.

(2) Permitted Uses. If it is material, the evidence mayIt may, however, be admissible for anotherother purposes, such as provingproof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake, or lack of accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

~~(32) Notice in a Criminal Case. The prosecution iIn a criminal case, the prosecutor must:shall~~

(A) provide written notice in writing at least 14 days beforein advance of trial; — or in any form during trialorally on the record later if the

court, for good cause, excuses lack of pretrial notice — on good cause shown, of the general nature of any such evidence that the prosecutor intends to offer introduce at trial, so that the defendant has a fair opportunity to meet it; and

- (B) articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and the rationale, whether or not mentioned in subparagraph (b)(1), for admitting the evidence.

If necessary to a determination of the admissibility of the evidence under this rule, the defendant shall be required to state the theory or theories of defense, limited only by the defendant's privilege against self-incrimination.

Rule 405. Methods of Proving Character

- (a) By Reputation or Opinion. When in all cases in which evidence of a person's character or a trait of character trait of a person is admissible, its proof may be proved made by testimony about the person's as to reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry is allowable into reports of relevant specific instances of the person's conduct.
- (b) By Specific Instances of Conduct. When a person's In cases in which character or a trait of character trait of a person is an essential element of a charge, claim, or defense, the character or trait proof may also be proved by relevant made of specific instances of the at person's conduct.

Rule 406. Habit; Routine Practice

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

Rule 407. Subsequent Remedial Measures

When, after an event, measures are taken that which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. But the court may

~~admit this evidence. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as impeachment or – if disputed – proving ownership, control, or the feasibility of precautionary measures, if controverted, or impeachment.~~

Rule 408. ~~Compromise and Offers and Negotiations to Compromise~~

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

- (1) ~~furnishing, or offering or promising to furnish, or offering – or (2) accepting, or offering or promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.~~
- (2) ~~Evidence of conduct or a statements made during in compromise negotiations is likewise not admissible.~~

(b) Exceptions. ~~If this~~ This rule does not require the exclusion of any evidence is otherwise discoverable, it need not be excluded merely because it is presented during in the course of compromise negotiations. And it need not be excluded if admitted This rule also does not require exclusion when the evidence is offered for another purpose, such as proving a witness's bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Offers to Payment of Medical and Similar Expenses

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

Rule 410. ~~Inadmissibility of Pleas, Plea Discussions, and Related Statements~~

(a) Prohibited Uses. ~~In a civil or criminal case~~ Except as otherwise provided in this rule, evidence of the following is not, ~~in any civil or criminal proceeding,~~ admissible against the defendant who made the plea or participated ~~was a participant~~ in the plea discussions:

- (1) a plea of guilty plea that ~~which~~ was later withdrawn;

- (2) ~~a~~ A plea of nolo contendere plea, — except that, to the extent that evidence of a guilty plea would be admissible, evidence of a plea of nolo contendere plea to a criminal charge may be admitted in a civil proceeding to support a defense against a claim asserted by the person who entered the plea;
- (3) ~~a~~ Any statement made during in the course of any proceedings on either of those pleas under MCR 6.302, aor comparable state or federal procedure or Fed R Crim P 11 regarding either of the foregoing pleas; or
- (4) ~~a~~ Any statement made duringin the course of plea discussions with an attorney for the prosecuting authority if the discussions didwhich do not result in a plea of guilty plea or theywhich resulted in a later-withdrawnplea of guilty plealater withdrawn.
- (b) Exceptions. The court may admit a statement described in (a)(3) or (4):However, such a statement is admissible
- (1+) in any proceeding wherein which another statement made duringin the course of the same plea or plea discussions has been introduced, ifand the statement ought in fairness the statements ought to be considered togetherontemporaneously with it; or
- (2ii) in a criminal proceeding for perjury or false statement, if the defendant made the statement was made by the defendant under oath, on the record, and in the presence ofwith counsel present.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to proveupon the issue whether the person acted negligently or otherwise wrongfully. But the court may admit this evidenceThis rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as provingof a witness's bias or prejudice or — if controverted — provingof agency, ownership, or control,—if controverted, or bias or prejudice of a witness.

Rule 501. Privilege; in General-Rule

~~Privilege is governed by t~~The common law governs a claim of privilege, unless aexcept as modified by statute or court rule provides otherwise.

Rule 601. ~~Witnesses; General Rule of Competency to Testify in General~~

Every person is competent to be a witness uUnless:

- (a) ~~the court finds, after questioning, a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably; or, every person is competent to be a witness except as otherwise provided in these rules.~~
- (b) these rules provide otherwise.

Rule 602. Need for~~Lack of~~ Personal Knowledge

A witness may ~~not~~ testify to a matter only if~~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's own testimony. This rule ~~does not apply to a witness's expert testimony under is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.~~

Rule 603. Oath or Affirmation to Testify Truthfully

Before testifying, ~~a every witness must give an shall be required to declare that the witness will testify truthfully, by oath or affirmation to testify truthfully. It must be administered in a form designede calculated to awaken the witness' conscience and impress that the witness' mind with the duty on the witness's conscience to do so.~~

Rule 604. Interpreters

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

Rule 605. Judge's Competency of Judge as a Witness

The presiding judge ~~presiding at the trial~~ may not testify ~~in that trial~~ as a witness at the trial. A party need not~~No objection need be made in order to preserve the issue~~point.

Rule 606. Juror's Competency of Juror as a Witness

- (a) At the Trial. A ~~member of the jury~~ may not testify as a witness before the other jurors at the trial~~that jury in the trial of the case in which the juror is sitting.~~ A party need not~~No objection need be made in order to preserve the issue~~point.
- (b) During an Inquiry into the Validity of a Verdict or Indictment.

- (1) Prohibited Testimony or Other Evidence. ~~During~~^{Upon} an inquiry into the validity of a verdict or indictment, a juror may not testify ~~about any~~^{as to any} ~~matter or~~ statement made or incident that occurred during the course of the jury's deliberations; ~~or to the effect of anything upon that juror's or another~~^{any other} juror's vote; or ~~any~~^{mind or emotions} as influencing the juror's to assent to or dissent from the verdict or indictment or concerning the juror's mental processes concerning the verdict or indictment in connection therewith. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.
- (2) Exceptions. ~~A~~^{But} a juror may testify about whether:
- (A) ~~whether~~ extraneous prejudicial information was improperly brought to the jury's attention;;
- (B) ~~whether any~~^{an} outside influence was improperly brought to bear upon any juror; or
- (C) ~~whether there was a mistake~~^{was made} 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.~~

Rule 607. Who May Impeach a Witness

~~The credibility of a witness may be attacked by a~~^{Any} party, including the party that calling the witness, may attack the witness's credibility.

Rule 608. A Witness's Character for Truthfulness or Untruthfulness~~Evidence of Character and Conduct of Witness~~

- (a) Reputation or Opinion~~and Reputation~~ Evidence of Character. A witness's~~The~~ credibility ~~of a witness~~ may be attacked or supported by testimony about the witness's~~evidence in the form of opinion or reputation for having a,~~ but subject to these limitations: (1) ~~the evidence may refer only to~~ character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. ~~and~~ (2) But evidence of truthful character is admissible only after the witness's character ~~of the witness~~ for truthfulness has been attacked ~~by opinion or reputation evidence or otherwise.~~
- (b) Specific Instances of Conduct. Except for a criminal conviction under~~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 proved by 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~~ They may, however, in the discretion of the court, if ~~probative of truthfulness or untruthfulness, be inquired into on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:~~ of the witness

- (1) ~~concerning the witness's~~ character for truthfulness or untruthfulness, or
- (2) ~~concerning the character for truthfulness or untruthfulness of another witness whose~~ as to which character the witness being cross-examined has testified about.

~~By testifying on another matter, a~~ The giving of testimony whether by an accused or by any other witness, does not operate as a waiver any of the accused's or the witness' privilege against self-incrimination for testimony that when examined with respect to matters which relate only to the witness's character for truthfulness ~~credibility~~.

Rule 609. Impeachment by Evidence of a Criminal Conviction of Crime

- (a) In General Rule. This rule applies to attacking a witness's character for truthfulness by evidence of a criminal conviction. The evidence is admissible if it has, during cross-examination, been elicited from the witness or established by public record and the following conditions are also met: ~~For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross-examination, and~~
 - (1) the crime contained an element of dishonesty or false statement; or
 - (2) the crime contained an element of theft; and
 - (A) in the convicting jurisdiction, the crime was punishable by imprisonment for more than ~~in excess of~~ one year or by death; ~~under the law under which the witness was convicted,~~ and
 - (B) the court determines that the evidence has significant probative value on character for truthfulness and ~~the issue of credibility and,~~ if the witness is the defendant in a criminal trial , ~~the court further determines that the probative value of the evidence outweighs any~~ its prejudicial effect.

- (b) Determining Probative Value and Prejudicial Effect. ~~In determining~~ For purposes of the probative value, ~~determination required by subrule (a)(2)(B),~~ the court ~~must~~ shall consider only the age of the conviction and the degree to which it indicates character for truthfulness ~~a conviction of the crime is indicative of veracity~~. If a determination of prejudicial effect is required, the court ~~must~~ shall consider only the conviction's similarity to the charged offense and the possible effects on the decisional process if admitting the evidence causes the defendant to elect not to testify. The court must articulate, on the record, the analysis of each factor.
- (c) Time Limit. Evidence of a conviction under this rule is not admissible if ~~a period of more than ten years have passed~~ has elapsed since the date of the conviction or of the witness's release of the witness from the confinement for it, whichever is later ~~imposed for that conviction, whichever is the later date~~.
- (d) Effect of a 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 that the person has been rehabilitated, and the person of the rehabilitation of the person convicted, and that person has not been convicted of a later subsequent crime which was punishable by death or imprisonment for more than ~~an~~ 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.
- (e) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule if it is offered in a later case against that same child in the family division of circuit court. Otherwise, the evidence is admissible only if: ~~generally not admissible under this rule, except in subsequent cases against the same child in the juvenile division of a probate court. The court may, however,~~
- (1) it is offered in a criminal case or in a juvenile proceeding against the child;
 - (2) the ~~allow~~ evidence of a juvenile adjudication was of a witness other than the child; ~~accused if~~
 - (3) an adult's conviction for that of the offense would be admissible to attack the adult's credibility; ~~of an adult and~~
 - (4) admitting the evidence ~~the court is satisfied that admission is necessary to fairly determine~~ for a fair determination of the case or proceeding.

- (f) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. ~~The pendency of an appeal therefrom does not render evidence of a conviction inadmissible.~~ Evidence of the pendency of an appeal is also admissible.

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious ~~the beliefs or opinions of a witness on matters of religion~~ is not admissible to attack or support ~~for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced.~~

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence ~~Interrogation and Presentation~~

- (a) Control by the Court; Purposes. The court ~~must~~ shall exercise reasonable control over the mode and order of examining ~~interrogating~~ witnesses and presenting evidence so as to:
- (1) make those procedures ~~the interrogation and presentation~~ effective for determining ~~the ascertainment of the truth;~~
 - (2) avoid wasting ~~needless consumption of time;~~ and
 - (3) protect witnesses from harassment or undue embarrassment.
- (b) Appearance of Parties and Witnesses. The court ~~must~~ shall exercise reasonable control over the appearance of parties and witnesses so as to:
- (1) ensure that the fact-finder can see and assess their demeanor; ~~of such persons may be observed and assessed by the fact finder and~~
 - (2) ensure their accurate identification of such persons.
- (c) Scope of Cross-Examination. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. But ~~t~~ The judge may limit cross-examination regarding ~~with respect to~~ matters not testified to on direct examination.
- (d) Leading Questions.
- (1) When Allowed. Leading questions should not be used on the direct examination except as necessary of a witness except as may be necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

~~(A2) Ordinarily leading questions should be permitted on cross-examination; and-~~

~~(B3) When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.~~

(2) Intent to Ask Not Required. It is not necessary to declare the intent to ask leading questions before the questioning begins or before the questioning moves beyond preliminary inquiries.

Rule 612. Writing or Object Used to Refresh a ~~Witness~~Memory

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

(1) ~~While t~~estifying; or-

(2) before testifying, if practicable and the court decides that justice requires the party to have those options~~If, while testifying, a witness uses a writing or object to refresh memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.~~

(b) Adverse Party's Options; Deleting Unrelated Matter~~Before Testifying.~~ If, before testifying, a witness uses a writing or object to refresh memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, An adverse party is entitled to have the writing or object produced, to inspect it, to cross-examine the witness about it, and to introduce in evidence – for their bearing on credibility only unless otherwise admissible under these rules – any portion that relates to the witness's testimonyif practicable, at the trial, hearing, or deposition in which the witness is testifying. If the producing party claims that the writing or object includes unrelated matter, the court must examine it in camera, remove any unrelated portion, and order that the rest be delivered to the adverse party. Any portion removed over objection must be preserved for the record.

(c) Failure to Produce or Deliver the Writing or Object~~Terms and Conditions of Production and Use.~~ A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross examine the witness thereon, and to introduce in evidence, for their bearing on credibility only unless otherwise admissible under these rules for another purpose, those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing,

~~or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony the court shall examine the writing or object 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 or object is not produced made available for inspection, or is not delivered pursuant to as ordered under this rule, the court may issueshall make any appropriate order. But if justice requires, except that in criminal cases when the prosecution doesselects not to comply in a criminal case, the court must strikeorder shall be one striking the witness's testimony or, – if justice so requires – if the court in its discretion determines that the interests of justice so require, declaring a mistrial.~~

Rule 613. Witness's Prior Statements of Witnesses

- (a) Showing or Disclosing the Statement During Examination~~Examining Witness Concerning Prior Statement.~~ When~~In~~ examining a witness about the witness's~~se~~concerning a prior statement made by the witness, whether written or not, a party~~the~~statement need not be shown it or disclosed~~or its contents disclosed to the witness, at that time,~~ But the party must, on request, it shall be shown it or disclosed its contents to an adverse party's attorney or opposing counsel ~~and the witness.~~
- (b) Extrinsic Evidence of a Prior Inconsistent Statement of Witness. Extrinsic evidence of a witness's prior inconsistent statement ~~by a witness is not admissible only if~~unless the witness is given~~afforded~~ an opportunity to explain or deny the statements~~same~~ and an adverse~~the opposite~~ party is given~~afforded~~ an opportunity to examine~~interrogate~~ the witness about it~~thereon~~, or if~~the interests of justice so~~otherwise requires. This subdivision (b)~~provision~~ does not apply to an opposing~~admissions of a party's statement under opponent as defined in Rule 801(d)(2).~~

Rule 614. Court's Calling or Examining and Interrogation of Witnesses by Court

- (a) Calling by Court. The court may, call a witness on its own ~~motion~~ or at the suggestion of a party's request. Each party is, call witnesses, and all parties are entitled to cross-examine the witnesses thus called.
- (b) Examining~~Interrogation by Court.~~ The court may examine~~interrogate~~ a witness, regardless of who calls the witness~~whether called by itself or by a party.~~

- (c) Objections. ~~A party may o~~Objections to the court's calling or examining of a witnesses ~~either by the court or to interrogation by it may be made at that~~the time or at the next ~~available~~ opportunity when the jury is not present.

Rule 615. ~~Excluding~~Exclusion of Witnesses

At ~~a party's~~the request, ~~of a party~~the court may order witnesses excluded so that they cannot hear ~~other witnesses'~~the testimony. ~~Or the court may do so on its own~~of other witnesses, and it may make the order of its own motion. ~~But t~~This rule does not authorize excluding:~~exclusion of~~

- (~~a~~1) a party who is a natural person;~~;~~ or
- (~~b~~2) an officer or employee of a party ~~that~~which is not a natural person, after being designated as the party's representative by its attorney;~~;~~ or
- (~~c~~3) a person whose presence ~~a party~~is shown ~~by a party~~to be essential to the presentation~~of the party's~~ claim or defense~~cause.~~

Rule 701. Opinion Testimony by Lay Witnesses

If ~~the~~ witness is not testifying as an expert, ~~the witness'~~testimony in the form of an opinions or inferences is limited to one that is:~~those opinions or inferences which are~~

- (a) rationally based on the witness's perception;~~of the witness~~ and
- (b) helpful to a clearly understanding ~~of~~the witness's testimony or tothe determination~~of a fact in issue.~~

Rule 702. Testimony by Experts Witnesses

If ~~the court determines that 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 who is qualified as an expert by knowledge, skill, experience, training, or education may testify ~~thereto~~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~~1) the testimony is based on sufficient facts or data;~~;~~
- (~~c~~2) the testimony is the product of reliable principles and methods;~~;~~ and

- (d3) the expert witness has reliably applied the principles and methods reliably to the facts of the case.

Rule 703. Bases of an Opinion Testimony by Experts

An expert may base an opinion on the facts or data in the particular case that the expert has been made aware of or personally observed upon which an expert bases an opinion or inference shall be in evidence. The facts or data must be in evidence – or, in the court’s This rule does not restrict the discretion, of the court to receive expert opinion testimony subject to the condition that the factual bases of the opinion be admitted in evidence later hereafter.

Rule 704. Opinion on an Ultimate Issue

Testimony in the form of An opinion or inference otherwise admissible is not objectionable just because it embraces an ultimate issue to be decided by the trier of fact.

Rule 705. Disclosing the Facts or Data Underlying an Expert’s Opinion

Unless the court orders otherwise, an The expert may state an testify in terms of opinion – or inference and give the reasons for it – therefor without first testifying to prior disclosure of the underlying facts or data, unless the court requires otherwise. But t The expert may in any event be required to disclose those the underlying facts or data on cross-examination.

Rule 706. Court-Appointed Experts Witnesses

- (a) Appointment Process. On a party’s The court may on its own motion or on its own, the court may motion of any party enter an order the parties to show cause why expert witnesses should not be appointed; and may ask request the parties to submit nominations. The court may appoint any expert that witnesses agreed upon by the parties agree on and any of its own choosing, and may appoint expert witnesses of its own selection. But An expert witness shall not be appointed by the court may only appoint someone who 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.
- (b) Expert’s Role. The court must inform the expert of the expert’s duties. The court may do so in writing and have a copy filed with the clerk or may do so orally 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.
- (c**b**) Compensation. ~~The expert witnesses so appointed are~~ entitled to a reasonable compensation, as set by in whatever sum the court may allow. The compensation is payable as follows:
- (1) ~~in a criminal case or in a civil case 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, from any funds that are provided by law; and-~~
 - (2) ~~in any other civil case, actions and proceedings by the parties in the proportion and at the time that the court directs – and the compensation is then charged 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.~~
- (d**e**) ~~Disclosure of Appointment to the Jury. In the exercise of its discretion, T~~ the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.
- (e**d**) ~~Parties' Choice of Their Own Experts of Own Selection. Nothing in T~~ this rule does not limits at the parties in calling its own experts witnesses of their own selection.

Rule 707. Use of Learned Treatises for Impeachment

To the extent called to an expert witness's ~~the attention of an expert witness upon~~ cross-examination, a statements is admissible for impeachment purposes only if:

- the statement is contained in a published treatises, periodicals, or pamphlets;
- the publication is on a subject of history, medicine, or other science or art; and
- the publication is established as a reliable authority by the testimony or admission of the witness, or by other expert testimony, or by judicial notice are admissible for impeachment purposes only.

If admitted, the statements may be read into evidence but ~~must~~ may not be received as exhibits.

Rule 801. ~~Hearsay;~~ Definitions That Apply to Rules 801–807; Exclusions from Hearsay;

The following definitions apply under Rules 801–807~~this article~~:

- (a) Statement. A “~~S~~statement” ~~means~~ ~~(1) a person’s~~ oral assertion, ~~or~~ written assertion, ~~or~~ (2) nonverbal conduct if ~~the~~ of a person, ~~if it is intended by the person~~ it as an assertion.
- (b) Declarant. A “~~D~~declarant” ~~means~~ ~~the~~ a person who made ~~makes~~ the a statement.
- (c) Hearsay. “Hearsay” ~~means~~ a statement that; ~~other than the one made by~~
 - (1) the declarant does not make while testifying at the current trial or hearing; and
 - (2) a party ~~offered~~ in evidence to prove the truth of the matter asserted in the statement.
- (d) Statements That ~~Which~~ Are Not Hearsay. A statement that meets the following conditions is not hearsay: ~~if~~
 - (1) A Declarant-Witness’s Prior Statement of witness. The declarant testifies ~~at the trial or hearing~~ and is subject to cross-examination about a prior ~~concerning the statement, and the statement;~~ is
 - (A) is inconsistent with the declarant’s testimony, and was given under ~~oath subject to the penalty of perjury at a trial, hearing, or other proceeding; or in a deposition;~~ ~~or~~
 - (B) is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that ~~against~~ the declarant ~~of~~ recently fabricated ~~on it~~ or acted from a recent improper influence or motive; in so testifying; or
 - (C) ~~one of~~ identification of a person as someone the declarant ~~made after~~ perceiving earlier ~~the person;~~ ~~or~~
 - (2) An Opposing Party’s Statement ~~Admission by party opponent~~. The statement is offered against an opposing party and; ~~is~~

- (A) ~~was made by the party's own statement~~, in either an individual or a representative capacity, except a statements made in connection with:
- (i) a guilty plea to a misdemeanor motor-vehicle violation; or
 - (ii) an admission of responsibility for a civil infraction under alaws pertaining to motor-vehicles law; or
- (B) ~~is onea statement of which the party has manifested that itan adopted~~ or ~~believed~~ to be true in its truth, or
- (C) ~~was madea statement~~ by a person whom authorized by the party authorized to make a statement one concerning the subject; or
- (D) ~~was madea statement~~ by the party's agent or employee onservant concerning a matter within the scope of that the agency or employment, ~~made during the existence of the relationship and while it existed;~~ or
- (E) ~~was made by the party'sa statement by a~~ coconspirator of a party during ~~the course and~~ in furtherance of the conspiracy, if there is or independent proof of the conspiracy.

Rule 802. The Rule Against Hearsay ~~Rule.~~

Hearsay is not admissible unlessexcept as provided by these rules provide otherwise.

Rule 803. Hearsay Exceptions to the Rule Against Hearsay; ~~Availability of Declarant Immaterial.~~

The following are not excluded by the rule against hearsay rule, regardless of whether even ~~though~~ 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 was perceived ing it the event or condition, or immediately thereafter.
- (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 ~~by the event or condition.~~

- (3) ~~Then—Existing Mental, Emotional, or Physical Condition.~~ A statement of the declarant’s ~~then—existing state of mind, or emotional, sensory~~ 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 validity, execution, revocation, identification, or terms of declarant’s will.
- (4) ~~Statements Made for Purposes of Medical Treatment or Medical Diagnosis in Connection with Treatment.~~ A sStatements that:made for purposes of medical treatment or medical diagnosis in connection with 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 necessary to such diagnosis and treatment.
- (A) is made for – and is reasonably necessary to – medical treatment or diagnosis in connection 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 that:concerning a matter about which a witness once had 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. 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.~~
- (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 ~~memorandum, report, record, or data compilation, in any form, of an acts, transactions, occurrences, events, conditions, opinions, or diagnoses if:, 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 certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.~~

- (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 a rule prescribed by the Supreme Court 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.
- (7) ~~Absence of a~~Entry in Records of a Regularly Conducted Activity~~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 described in paragraph (6) if; 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.~~
- (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 and Reports.~~ A rRecords, reports, or statements, or data compilations, in any form, of a public offices if it sets out; or agencies, setting forth

- (A) the office's activities of the office or agency; or
- (B) a matters observed while under a legal pursuant to duty to report, but not including; imposed by law as to which matters there was a duty to report, excluding, however,
- (i) in a criminal cases, a matters observed by police officers and other law-enforcement personnel; and
- (ii) information to which subject to the limitations in of MCL 257.624 apply.
- (9) Public Records of Vital Statistics. A rRecords or data compilations, in any form, of a births, fetal deaths, deaths, or marriages, if the reported thereof was made to a public office in accordance with a legal duty pursuant to requirements of law.
- (10) Absence of a Public Record or Entry. Testimony – or a certification under 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 a the public record, or report, statement if the testimony or certification is admitted to prove that; or data compilation, or entry.
- (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 sStatements of births, legitimacy, ancestry, 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.
- (12) Certificates of Marriage, Baptismal, and Similar CeremoniesCertificates. A sStatements 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.

- (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 s~~Statements of fact about~~concerning personal or family history contained in a family record, such as a Bibles, genealogies, charts, engravings on rings, inscriptions on a family portraits, or engravings on an urns, or burial marker crypts, or tombstones, or the like.
- (14) Records of Documents That Affecting an Interest in Property. The record of a document that purportsing to establish or affect an interest in property if;
- (A) the record is admitted to prove as proof of the content of the original recorded document, along with and its signing execution and its delivery by each person who by whom it purports to have signed it; been executed,
- (B) if the record is a record of a public office; and
- (C) an applicable statute authorizes the recording of documents of that kind in that office.
- (15) Statements in Documents That Affecting an Interest in Property. A statement contained in a document that purportsing to establish or affect an interest in property if the matter stated was relevant to the document's purpose of the document, — unless later dealings with the property are since the document was made have been inconsistent with the truth of the statement or the purport of the document.
- (16) Statements in Ancient Documents. A s~~Statements in a document that is at least 20 in existence twenty years older more the and whose authenticity of which is established.~~
- (17) Market Reports, and Similar Commercial Publications. Market quotations, ~~tabulations,~~ lists, directories, or other ~~published~~ compilations; that are generally used and relied upon by the public or by persons in particular occupations.
- (18) Deposition Testimony of an Expert. A~~Testimony given as a witness's testimony given in a lawful deposition during taken in compliance with law in the course of the~~

same proceeding if the court finds that the deponent is an expert witness and if the deponent is not a party to the proceeding.

- (19) Reputation Concerning Personal or Family History. ~~A r~~Reputation among ~~members~~ of a person's family by blood, adoption, or marriage; ~~_~~ or among a person's associates; or in the community; ~~_~~ concerning ~~the~~ a person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ~~ancestry,~~ or ~~other~~ similar facts of personal or family history.
- (20) Reputation Concerning Boundaries or General History. ~~A r~~Reputation in a community; ~~_~~ arising before the controversy; ~~_~~ ~~concerning~~as to boundaries of ~~or~~ ~~eustoms~~ affecting lands in the community or customs that affect the land, or concerning and reputation as to events of general historicaly events important to ~~that~~the community, ~~or~~ state, or nation ~~in which located~~.
- (21) Reputation ~~Concerning~~as to Character. ~~A r~~Reputation ~~among~~of a person's ~~character~~ among 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 upon a plea of guilty, but not (or upon a plea of nolo contendere plea unless allowed if evidence of the plea is not excluded by MRE 410);
 - (B) the conviction was for adjudging a person guilty of a crime punishable by death or by imprisonment for more than in excess of a one year;
 - (C) the evidence is admitted to prove any fact essential to sustain the judgment; and
 - (D) but not including, when offered by the prosecutorstate in a criminal case prosedution for a purposes other than impeachment, the judgments was against the defendantpersons other than the accused.

The pendency of an appeal may be shown but does not affect admissibility.

- (23) Judgments ~~Involving~~as to Personal, Family, or General History, or a Boundaryies. ~~A j~~Judgments that is admitted to prove aas proof of matters of personal, family, or general history, or boundaries, if the matter:
- (A) was essential to the judgment; and,
 - (B) could be proved if the same would be provable by evidence of the reputation.

- (24) ~~Other Exceptions.—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, 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 that 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 the statement 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.~~

Rule 803A. Hearsay Exception; Child’s Statement About a Sexual Act.

- (1) Scope. This rule applies in criminal and delinquency proceedings only.
- (2) Conditions. A statement describing an incident that included a sexual act performed with or on the declarant by the defendant or an accomplice is admissible to the extent that it corroborates testimony given by the declarant during the same proceeding if, provided:
 - (A) the declarant was under the age of ten when the statement was made;
 - (B) the statement is shown to have been spontaneous and without indication of manufacture;
 - (C) either the declarant made the statement immediately after the incident or any delay is excusable as having been caused by fear or other equally effective circumstance; ~~and~~
 - (D) the statement is introduced through the testimony of someone other than the declarant; and;
 - (E) the proponent of the statement makes known to the adverse party the intent to offer it and its particulars sufficiently before the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it.

If the declarant made more than one corroborative statement about the incident, only the first is admissible under this rule.

~~A statement may not be admitted under this rule unless the proponent of the statement makes known to the adverse party the intent to offer the statement, and the particulars of the statement, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the statement.~~

~~This rule applies in criminal and delinquency proceedings only.~~

Rule 804. Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a Witness.

- (a) Criteria for Being Unavailable~~Definition of Unavailability.~~ A declarant is considered to be unavailable as a witness if “Unavailability as a witness” includes situations in which the declarant:–
- (1) is exempted by ruling of the court on the ground of privilege from testifying about~~concerning~~ the subject matter of the declarant’s statement because the court rules that a privilege applies; or
 - (2) refuses~~persists in refusing~~ to testify about~~concerning~~ the subject matter of the declarant’s statement despite an court order of the court to do so; ~~or~~
 - (3) testifies to not remembering~~has a lack of memory~~ of the subject matter of the declarant’s statement; ~~or~~
 - (4) cannot~~is unable to~~ be present or ~~to~~ testify at the trial or hearing because of death or a then–existing infirmity, physical illness, or mental illness~~or infirmity~~; or
 - (5) is absent from the trial or hearing and
 - (A) the statement’s proponent of a statement has not been unable, by process or other reasonable means, to procure:
 - (i) the declarant’s attendance, ~~(or in the case of a hearsay exception under (b)(1) or (6); or~~
 - (ii) subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony, ~~in the case of a hearsay exception under (b)(2), (3), or (4); and~~ by process or other reasonable means, and in a criminal case, due diligence is shown.

(B) in a criminal case, the proponent shows due diligence.

~~But this subdivision (a) does not apply. A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the statement's proponent procured or wrongfully caused the declarant's unavailability as of a statement for the purpose of preventing the witness in order to prevent the declarant from attending or testifying.~~

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

(1) Former testimony. Testimony that:

(A) was given as a witness at a trial or hearing whether given during another hearing of the same or a different proceeding, if the current party against whom the testimony is now offered, or, in a civil action or proceeding, or a different one; and predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(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, or cross, or redirect examination.

(2) Deposition Testimony. A witness's testimony given in a lawful deposition during the same or another proceeding, if the party against whom the testimony is now offered had – or in a civil case, a predecessor in interest had – an opportunity and similar motive to develop the testimony by direct, or cross-, or redirect examination. For this paragraph (2) only, “unavailability of a witness” also includes situations in which:

(A) the witness is more than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the witness's absence was procured by the party offering the deposition; or

(B) on motion and notice, exceptional circumstances make it desirable – in the interests of justice and with due regard to the importance of presenting witnesses' testimony orally in open court – to allow the deposition to be used.

- (32) Statement Under the Belief of Imminent impending Death. In a prosecution for homicide or in a civil ~~caseaction or proceeding~~, a statement ~~that themade by a declarant, while believing that the declarant's death to bewas imminent, made about itseoneering the cause or circumstances of what the declarant believed to be impending death.~~
- (43) Statement Against Interest. A statement ~~that:which~~
- (A) ~~a reasonable person inwas at the time of its making so far contrary to 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'specuniary or proprietary or pecuniary interest, or had so great a tendencyfar tended to subject the declarant to civil or criminal liability, or to render invalidate the declarant'sa claim against someone else orby the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to civil or criminal liability; and~~
- (B) ~~is offered to exculpate the accused, but only if supported byis not admissible unless corroborating circumstances that clearly indicate its the trustworthiness of the statement.~~
- (54) Statement of Personal or Family History. A statement ~~about:oneering~~
- (A) ~~the declarant's own birth, adoption, marriage, divorce, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, ancestry, or other similar facts of personal or family history, even though the declarant had no waymeans of acquiring personal knowledge about that factof the matter stated; or~~
- (B) ~~another persona statement concerning any of these factsthe foregoing matters, as well asand death also, of another person, if the declarant was related to the personother by blood, adoption, or marriage or was so intimately associated with the person'sother's family that the declarant'sas to be likely to have accurate information is likely to be accurateoneering the matter declared.~~
- (5) Deposition Testimony. ~~Testimony given as a witness in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. For~~

purposes of this subsection only, “unavailability of a witness” also includes situations in which:

- (A) ~~The witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or~~
 - (B) ~~On motion and notice, such exceptional circumstances exist as to make it desirable, in the interests of justice, and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.~~
- (6) Statement Offered Against a Party That Wrongfully Caused or Encouraged theby Declarant’s Unavailabilitymade unavailable by opponent. A statement offered against a party that wrongfully caused – or encouragedhas engaged in the declarant’sor encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness, and did so intending that result.
- (7) Other Exceptions.—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, 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 that 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 the statement 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.~~

Rule 805. Hearsay Within Hearsay:

Hearsay ~~included~~ within hearsay is not excluded ~~by~~ under the hearsay rule against hearsay if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806. Attacking and Supporting ~~the~~ Credibility of Declarant.

When a hearsay statement, ~~—~~ or a statement ~~described~~ defined in Rule 801(d)(2)(C), (D), or (E), ~~—~~ has been admitted in evidence, the declarant's credibility ~~of the declarant~~ may be attacked, and ~~then if attacked may be~~ supported, by any evidence ~~that~~ which would be admissible for those purposes if 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 by the declarant had at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to explain or deny it or explain. If the party against whom ~~thea~~ hearsay statement ~~washas been~~ admitted calls the declarant as a witness, the party ~~mayis~~ entitled to examine the declarant on the statement as if ~~on~~ under cross-examination.

Rule 807. Residual Exception

- (a) In General. Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under 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 serve the purposes of these rules and the interests of justice.
- (b) Notice. The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement – including its substance and the declarant's name and address – so that the party has a fair opportunity to meet it.

Rule 901. Authenticating or Identifying Evidence ~~Requirement of Authentication or Identification.~~

- (a) In General Provision. To satisfy tThe requirement of authenticating ~~ion~~ or identifying ~~ication~~ an item ~~of~~ as a condition precedent to admissibility is satisfied by

evidence, the proponent must produce evidence sufficient to support a finding that the item ~~matter in question~~ is what its proponent claims it is.

- (b) Examples ~~Illustrations~~. ~~By way of illustration only, and not by way of limitation,~~
The following are examples only – not a complete list – of evidence that
~~satisfies authentication or identification conforming with the requirements of this~~
~~rule:~~
- (1) Testimony of W ~~witness~~ with K ~~knowledge~~. Testimony that an item ~~matter~~ is what it is claimed to be.
 - (2) Nonexpert O ~~opinion~~ A ~~bout~~ H ~~andwriting~~. ~~A n~~ Nonexpert's opinion that as
~~to the genuineness of handwriting is genuine, based upon a familiarity with~~
~~it that was not acquired for purposes of the current litigation.~~
 - (3) Comparison by an Expert Witness or the T ~~rier of Fact~~ expert witness. A
~~c~~ Comparison with an authenticated ~~by the trier of fact or by expert witnesses~~
~~with specimens by an expert witness or the trier of fact which have been~~
~~authenticated.~~
 - (4) Distinctive C ~~haracteristics~~ and the L ~~ike~~. The a ~~Appearance~~, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together ~~in conjunction~~ with all the circumstances.
 - (5) Opinion About a Voice ~~identification~~. An opinion i ~~dentifying~~ ication ~~of a~~
person's voice, ~~–~~ whether heard firsthand or through mechanical or electronic transmission or recording, ~~–~~ by opinion based upon hearing the voice at any time under circumstances that ~~connecting~~ it with the alleged speaker.
 - (6) Evidence About a Telephone C ~~onversations~~. For a t ~~Telephone~~ conversations, by evidence that a call was made to the number assigned at the time to: ~~by the telephone company to a particular person or business, if~~
 - (A) ~~in the case of a particular person, if~~ circumstances, including self-identification, show that the person was ~~answering to be~~ the one called; or
 - (B) ~~in the case of a particular business, if~~ the call was made to a place ~~of~~ business and the call ~~conversation~~ related to business reasonably transacted over the telephone.
 - (7) Evidence About Public R ~~ecords or reports~~. Evidence that:

- (A) ~~a document was writing authorized by law to be recorded or filed and in fact recorded or filed in a public office as authorized by law;~~ or
- (B) ~~a purported public record, report, or statement, or data compilation, in any form, is from the public office where items of this kind nature are kept.~~
- (8) Evidence About Ancient Documents or Data Compilation. ~~For Evidence that a document or data compilation, evidence that it: in any form,~~
- (A) ~~is in asuch condition thata to creates no suspicion about concerning its authenticity;~~
- (B) ~~was in a place where it, if authentic, it would likely be; and~~
- (C) ~~is at least has been in existence 20 years old when or more at the time it is offered.~~
- (9) Evidence About a Process or System. Evidence describing a process or system ~~used to produce a result and showing that it the process or system produces an accurate result.~~
- (10) Methods Provided by a Statute or Rule. Any method of authentication or identification ~~allowed provided by the Supreme Court of Michigan or by a Michigan statute or a rule prescribed by the Supreme Court.~~

Rule 902. Evidence That Is Self-Authenticating ~~on.~~

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted as a condition precedent to admissibility is not required with respect to the following:

- (1) Domestic Public Documents That Are Under Sealed and Signed. A document that bears ~~ing;~~
- (A) ~~a seal purporting to be that of the United States; or of any state, district, commonwealth, territory, or insular possession of the United States; thereof, or the former Panama Canal Zone; or the Trust Territory of the Pacific Islands; or of a political subdivision of any of these entities; or a department, officer, or agency thereof, or officer of any entity named above; and~~
- (B) ~~a signature purporting to be an execution or attestation or execution.~~

- (2) Domestic Public Documents That Are Not Under Sealed but Are Signed and Certified. A document ~~that purporting to~~ bears no seal if:
- (A) it bears the signature in the official capacity of an officer or employee of any entity ~~named~~included in Rule paragraph 902(1)(A); and hereof;
 - (B) another having no seal, if a public officer who has having a seal and having official duties within that same entity~~the district or political subdivision of the officer or employee~~ 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 purportsing to be signed~~executed or attested in an official capacity by a person who is authorized by the laws of a foreign country's laws to do so~~make the execution or attestation, and~~ The document must be accompanied by a final certification that certifies as to the genuineness of the signature and official position (A) ~~of the signer~~executing or attesting person, – or (B) ~~of any foreign official whose certificate of genuineness of signature and official position relates to the signature execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the signature execution or attestation.~~ The final certification may be made by a secretary of a United States embassy or legation; by a consul general, consul, 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 ~~has been given to all parties to investigate the document's authenticity and accuracy of official documents,~~ the court may, for good cause, either: shown;
- (A) order that ~~it~~they be treated as presumptively authentic without final certification; or
 - (B) allow ~~it~~permit them to be evidenced by an attested summary with or without final certification.
- (4) Certified Copies of Public Records. A copy of an official record – or a copy~~report or entry therein,~~ or of a document that was authorized by law to be recorded or filed and actually recorded or filed in a public office, as authorized by law – including data compilations in any form, if the copy is certified as correct by:
- (A) the custodian or another person authorized to make the certification; or
 - (B) aby certificate that complies~~ing~~ with Rule 902~~paragraph~~ (1), (2), or (3) or a Michigan or federal statute~~complying with any law of the United States or of this state.~~

- (5) Official Publications. A bBooks, pamphlets, or other publications purporting to be issued by a public authority.
- (6) Newspapers and Periodicals. Printed materials purporting to be a newspapers or periodicals.
- (7) Trade Inscriptions and the Like. An inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating origin, ownership, or control, or origin.
- (8) Acknowledged Documents. A dDocuments accompanied by a certificate of acknowledgment that is lawfully executed in the manner provided by law by a notary public or another officer who is authorized by law to take acknowledgments.
- (9) Commercial Paper and Related Documents. Commercial paper, a signatures on it thereon, and related documents, relating thereto to the extent allowed provided by general commercial law.
- (10) Presumptions Under Created By Law. Any signature, document, or anything else that a Michigan or federal statute or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.
- (11) Certified Domestic or Foreign Records of a Regularly Conducted Activity. The original or a copy duplicate of a domestic or foreign record, whether domestic or foreign, of regularly conducted business activity that meets the requirements of would be admissible under Rule 803(6)(A)-(C), as shown by a certification of their accompanied by a written declaration under oath by its custodian or another qualified person certifying that complies with a Michigan 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.
 - (A) ~~The record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;~~
 - (B) ~~The record was kept in the course of the regularly conducted business activity; and~~
 - (C) ~~It was the regular practice of the business activity to make the record~~

~~A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.~~

Rule 903. ~~Subscribing Witness' Testimony Unnecessary.~~

~~The testimony of a subscribing witness's testimony is not necessary to authenticate a writing only if unless required by the laws of the jurisdiction that whose laws governs its the validity of the writing.~~

Rule 1001. ~~Contents of Writings, Recordings, and Photographs; Definitions That Apply to Rules 1001–1008.~~

~~In Rules 1001–1008 For purposes of this article the following definitions are applicable:~~

- (a1) ~~A Writings and Recordings. “w Writings” and “recordings” consists of letters, words, or numbers, or their equivalent, set down in any by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.~~
- (b) ~~A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.~~
- (c2) ~~A Photographs. “p Photographs” means a photographic image or its equivalent stored in any form include still photographs, x ray films, video tapes, and motion pictures.~~
- (d3) ~~Original. An “original” of a writing or recording means is the writing or recording itself or any counterpart intended to have the same effect by the person who executed ing or issued ing 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 any print from it 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.”~~
- (e4) ~~Duplicate. A “duplicate” means is a counterpart produced by a mechanical, photographic, chemical, 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 process or techniques, that which accurately reproduces the original.~~

Rule 1002. Requirement of the Original.

~~An original~~To prove the content of a writing, recording, or photograph, ~~the original writing, recording, or photograph~~ is required in order to prove its content unless, except as otherwise provided in these rules or by statute provides otherwise.

Rule 1003. Admissibility of Duplicates.

A duplicate is admissible to the same extent as ~~the~~an original unless (1) a genuine question is raised aboutas to the original's authenticity of ~~the original~~ or (2) ~~in the circumstances make it would be unfair to admit the duplicate in lieu of the original.~~

Rule 1004. Admissibility of Other Evidence of Contents.

~~An~~The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:–

- (a1) ~~Originals Lost or Destroyed.~~ aAll the originals are lost or ~~have been~~ destroyed, and not byunless the proponent actinglost or destroyed them in bad faith; ~~or~~
- (b2) ~~Original Not Obtainable.~~ anNo original cannot be obtained by any available judicial process ~~or procedure~~; ~~or~~
- (c3) ~~Original in Possession of Opponent.~~ the party against whom theAt a time when an original would be offered hadwas under the control of the original;party against whom offered, that party was at that time put on notice, by the pleadings or otherwise, that the originalcontents would be a subject of proof at the trial or hearing; and fails tothat party does not produce itthe original at the trial or hearing; or
- (d4) ~~Collateral Matters.~~ tThe 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 contents of an official record, – or of a document that wasauthorized to be recorded or filed ~~and actually~~ recorded or filed, in a public office as authorized by law – if these conditions are met: the record or document isincluding data compilations in any form, if otherwise admissible; and theymay be proved by 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 sucha copy ~~which complies with~~

~~the foregoing cannot be obtained by the exercise of reasonable diligence, then the proponent may use other evidence to prove of the contents may be given.~~

Rule 1006. Summaries to Prove Content:

~~The proponent may use contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a summary, chart, summary, 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, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. And tThe court may order the proponent to that they be produced them in court.~~

Rule 1007. Testimony or Statement~~Written Admission~~ of a Party to Prove Content:

~~The proponent may prove the cContents of a writings, recordings, or photographs may be proved by the testimony, or deposition, or written statement of the party against whom the evidence is offered. The proponent need not by that party's written admission, without accounting for the nonproduction of the original.~~

Rule 1008. Functions of the Court and Jury:

~~Ordinarily, the court determines whetherWhen the proponent hasadmissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfilledment theof a condition of factual, the question whether the conditions for admitting other evidence of the content of a writing, recording, or photograph underhas been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 1004 or 1005. But in a jury trial, the jury determines – in accordance with Rule 104(b) – any issue about whether:However, when an issue is raised~~

- (a) ~~anwhether the~~ the asserted writing, recording, or photograph ever existed; ~~or~~
- (b) ~~whether another onewriting, recording, or photograph produced at the trial or hearing is the original;~~ or
- (c) ~~whether other evidence of contents accuratelycorrectly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.~~

Rule 1101. Applicability of the Rules:

- (a) Rules Applicable. Except as otherwise provided in ~~subdivision (b) or in a rule prescribed by the Supreme Court~~, these rules apply to all Michigan court actions and proceedings in the courts of this state.
- (b) Rules Inapplicable. The rules ~~– except for~~ – except for ~~other than those on~~ – except for ~~with respect to privileges – do not apply to~~ – do not apply to ~~in the following situations and proceedings:~~
- (1) Preliminary Questions of Fact. ~~The court’s determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a), on a preliminary question of fact governing admissibility.~~
 - (2) Grand Jury. Proceedings before grand juries.
 - (3) Miscellaneous Criminal Proceedings. Proceedings for extradition or rendition; sentencing; ~~or~~ granting or revoking probation; ~~issuing~~ issuing ~~of warrants for arrest, criminal summonses, arrest warrants, and search warrants; and proceedings for~~ issuing ~~with respect to~~ release on bail or otherwise.
 - (4) Contempt Proceedings. Contempt proceedings in which the court may act summarily.
 - (5) Small Claims. Proceedings in the sSmall claims division of the district court.
 - (6) In Camera Custody Hearings. In camera proceedings in child–custody matters to determine a child’s custodial preference.
 - (7) Proceedings Involving Juveniles. Proceedings in the family division of the circuit court ~~when~~ when ~~ever~~ MCR subchapter 3.900 states that the Michigan Rules of Evidence do not apply.
 - (8) Preliminary Examinations – Property Matters. At a preliminary examinations in a criminal cases, during which hearsay is admissible to prove, with regard to property, the ownership, authority to use, value, or possession of and entry – or right to use or enter – property.
 - (9) Domestic Relations Matters. The court’s consideration of a report or recommendation submitted by the friend of the court ~~under~~ under ~~pursuant to~~ MCL 552.505(1)(g) or (h).
 - (10) Mental-Health Hearings – Opinion Testimony. In hearings under Chapters 4, 4A, 5, and 6 of the Mental Health Code, MCL 330.1400 *et seq.*, during

which the court may consider hearsay data that are part of the basis for the opinion presented by a testifying mental health expert.

Rule 1102. Title-

These rules are named the Michigan Rules of Evidence and may be cited as MRE.

Staff Comment (ADM File No. 2021-10): The proposed amendments of the Michigan Rules of Evidence (MRE) reflect the work of the Michigan Rules of Evidence Committee established by Administrative Order No. 2021-8. The Committee was tasked with restyling the MREs in an effort to remain as consistent as possible with the 2011 restyling of the Federal Rules of Evidence. Major reorganization of the rules appears in MRE 803 and MRE 804 where the residual exceptions found in both rules are moved into a new MRE 807, and in MRE 804 where the exception regarding deposition testimony is moved up from subrule (b)(5) to proposed subrule (b)(2).

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by July 1, 2023 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2021-10. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 22, 2023

Handwritten signature of Larry S. Royster in black ink.

Clerk