

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2019

In the Matter of Amendments to the)
Wyoming Rules of Evidence)

**ORDER AMENDING RULES 701, 702, 703, 704, 705, 803 AND 902 OF
THE WYOMING RULES OF EVIDENCE**

The Permanent Rules Advisory Committee, Evidence Division, has recommended that this Court amend Rules 701, 702, 703, 704, 705, 803, and 902 of the Wyoming Rules of Evidence. This Court finds the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Rules 701, 702, 703, 704, 705, 803, and 902 of the Wyoming Rules of Evidence, attached hereto, be and hereby are adopted by the Court to be effective August 1, 2019; and it is further

ORDERED that this order and the attached amendments shall be published in the advance sheets of the Pacific Reporter; the attached amendments shall be published in the Wyoming Court Rules Volume; and that this order and the attached amendments shall be published online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The amendments shall also be recorded in the journal of this Court.

DATED this 20th day of May, 2019.

BY THE COURT:

/S/

MICHAEL K. DAVIS
Chief Justice

Wyoming Rules of Evidence

Rule 701. Opinion testimony by lay witnesses.

~~If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.~~

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue;

and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Rule 702. Testimony by experts.

~~If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.~~

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

Rule 703. Bases of opinion testimony by experts.

~~The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.~~

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on ultimate issue.

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

(a) In General--Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.

(b) Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged. Nothing in this rule prohibits admission of testimony that would otherwise be admissible under Wyo.Stat.Ann. § 7-11-303 and § 7-11-304.

Rule 705. Disclosure of facts or data underlying expert opinion.

~~The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.~~

Unless the court orders otherwise, an expert may state an opinion--and give the reasons for it--without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

Rule 803. Hearsay exceptions; availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(6) *Records of Regularly Conducted Activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, 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 a certification that complies with Rule 902(a)(11) through (14) or with a statute or other court rule permitting certification; or the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. ~~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.

Rule 902. Self-authentication.

(a) Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Rule 803(6), as shown by a certification of the custodian or another qualified person that complies with a state or federal statute, or a rule prescribed by the Wyoming Supreme Court, that if falsely made would subject the maker to a criminal penalty. 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 the party has a fair opportunity to challenge them.

(12) Certified Foreign Records of a Regularly Conducted Activity. In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(a)(11), modified as follows: the certification, rather than complying with a state or federal statute or Wyoming Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(a)(11).

(13) Certified Records Generated by an Electronic Process or System. A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(a)(11) or (12). The proponent must also meet the notice requirements of Rule 902(a)(11).

(14) Certified Data Copied from an Electronic Device, Storage Medium, or File. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(a)(11) or (12). The proponent also must meet the notice requirements of Rule 902(a)(11).

(b) *Lack of Record.* A written statement that after diligent search no record or reeorder entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivisions (a)(1) and (a)(2) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(3) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry, including records generated by an electronic process or system and data copied from an electronic device.
