

# FEDERAL RULES OF EVIDENCE

== 2021 ==

WITH CROSS REFERENCES



GULF COAST LEGAL  
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# **FEDERAL RULES OF EVIDENCE 2021**

With Cross References

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## **About the Book**

Formatted and compiled with the practitioners and law students in mind, this edition of the Federal Rules of Evidence 2021 has easy to read text on letter size pages that reads across the whole page (no dual columns) and a detailed table of contents that allows you to quickly access the provision you need. Besides the rules, internal cross references and a tables of cross references between the FRE and FRCP are included.

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## ARTICLE I. GENERAL PROVISIONS

### Rule 101. Scope; Definitions

(a) **Scope.** These rules apply to proceedings in United States courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.

(b) **Definitions.** In these rules:

- (1) “civil case” means a civil action or proceeding;
- (2) “criminal case” includes a criminal proceeding;
- (3) “public office” includes a public agency;
- (4) “record” includes a memorandum, report, or data compilation;
- (5) a “rule prescribed by the Supreme Court” means a rule adopted by the Supreme Court under statutory authority; and
- (6) a reference to any kind of written material or any other medium includes electronically stored information.

*Cited by FRE 502*

### Rule 102. Purpose

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

### Rule 103. Rulings on Evidence

(a) **Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

- (1) if the ruling admits evidence, a party, on the record:
  - (A) timely objects or moves to strike; and
  - (B) states the specific ground, unless it was apparent from the context; or
- (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) **Not Needing to Renew an Objection or Offer of Proof.** Once the court rules definitively on the record — either before or at 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.** The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) **Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) **Taking Notice of Plain Error.** A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

*Cited by FRCP 30*

## **Rule 104. Preliminary Questions**

**(a) In General.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

**(b) Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

**(c) Conducting a Hearing So That the Jury Cannot Hear It.** The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

- (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.** By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

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

*Cited by FRE 1008 & 1101*

## **Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes**

If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must 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 or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time.



to state proceedings and to federal court-annexed and federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if state law provides the rule of decision.

**(g) Definitions.** In this rule:

(1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and

(2) “work-product protection” means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

*Cited by FRCP 16, 26*

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## **ARTICLE VI. WITNESSES**

### **Rule 601. Competency to Testify in General**

Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness's competency regarding a claim or defense for which state law supplies the rule of decision.

### **Rule 602. Need for Personal Knowledge**

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

### **Rule 603. Oath or Affirmation to Testify Truthfully**

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

*Cited by FRCP 30*

### **Rule 604. Interpreter**

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

### **Rule 605. Judge's Competency as a Witness**

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

### **Rule 606. Juror's Competency as a Witness**

**(a) At the Trial.** A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

**(b) During an Inquiry into the Validity of a Verdict or Indictment.**

**(1) Prohibited Testimony or Other Evidence.** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred

during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

**(2) Exceptions.** A juror may testify about whether:

**(A)** extraneous prejudicial information was improperly brought to the jury's attention;

**(B)** an outside influence was improperly brought to bear on any juror; or

**(C)** a mistake was made in entering the verdict on the verdict form.

## **Rule 607. Who May Impeach a Witness**

Any party, including the party that called the witness, may attack the witness's credibility.

*Cited by FRE 404*

## **Rule 608. A Witness's Character for Truthfulness or Untruthfulness**

**(a) Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

**(b) Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

**(1)** the witness; or

**(2)** another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

*Cited by FRE 404*

## **Rule 609. Impeachment by Evidence of a Criminal Conviction**

**(a) In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

**(1)** for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

**(A)** must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

**(B)** must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

**(2)** for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.

**(b) Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

**(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible 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 has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

**(d) Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

**(e) Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

*Cited by FRE 404, 609*

## **Rule 610. Religious Beliefs or Opinions**

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

## **Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence**

**(a) Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

**(b) Scope of Cross-Examination.** Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

**(c) Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

### **Rule 612. Writing Used to Refresh a Witness's Memory**

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

- (1) while testifying; or
- (2) before testifying, if the court decides that justice requires the party to have those options.

(b) **Adverse Party's Options; Deleting Unrelated Matter.** Unless 18 U.S.C. § 3500 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing *in camera*, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) **Failure to Produce or Deliver the Writing.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

### **Rule 613. Witness's Prior Statement**

(a) **Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) **Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

### **Rule 614. Court's Calling or Examining a Witness**

(a) **Calling.** The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) **Examining.** The court may examine a witness regardless of who calls the witness.

(c) **Objections.** A party may object to the court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

## **Rule 615. Excluding Witnesses**

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

- (a) a party who is a natural person;
- (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;
- (c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or
- (d) a person authorized by statute to be present.

*Cited by FRCP 30*

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## ARTICLE XI. MISCELLANEOUS RULES

### Rule 1101. Applicability of the Rules

**(a) To Courts and Judges.** These rules apply to proceedings before:

- United States district courts;
- United States bankruptcy and magistrate judges;
- United States courts of appeals;
- the United States Court of Federal Claims; and
- the district courts of Guam, the Virgin Islands, and the Northern Mariana Islands.

**(b) To Cases and Proceedings.** These rules apply in:

- civil cases and proceedings, including bankruptcy, admiralty, and maritime cases;
- criminal cases and proceedings; and
- contempt proceedings, except those in which the court may act summarily.

**(c) Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding.

**(d) Exceptions.** These rules — except for those on privilege — do not apply to the following:

(1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;

(2) grand-jury proceedings; and

(3) miscellaneous proceedings such as:

- extradition or rendition;
- issuing an arrest warrant, criminal summons, or search warrant;
- a preliminary examination in a criminal case;
- sentencing;
- granting or revoking probation or supervised release; and
- considering whether to release on bail or otherwise.

**(e) Other Statutes and Rules.** A federal statute or a rule prescribed by the Supreme Court may provide for admitting or excluding evidence independently from these rules.

*Cited by FRE 101 & 502*

### Rule 1102. Amendments

These rules may be amended as provided in 28 U.S.C. § 2072.

### Rule 1103. Title

These rules may be cited as the Federal Rules of Evidence.

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