

(C) a statute authorizes recording documents of that kind in that office.

(15) *Statements in Documents that Affect an Interest in Property.* A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in Ancient Documents.* A statement in a document that is at least 20 years old and whose authenticity is established.

(17) *Market Reports and Similar Commercial Publications.* Market quotations, lists (including government price lists), directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) *Statements in Learned Treatises, Periodicals, or Pamphlets.* A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) *Reputation Concerning Personal or Family History.* A reputation among a person's family by blood, adoption, or marriage – or among a person's associates or in the community – concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) *Reputation Concerning Boundaries or General History.* A reputation in a community – arising before the controversy – concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, State, or nation.

(21) *Reputation Concerning Character.* A reputation among a person's associates or in the community concerning the person's character.

(22) *Judgment of a Previous Conviction.* Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death, dishonorable discharge, or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor for a purpose other than impeachment, the judgment was against the accused.

The pendency of an appeal may be shown but does not affect admissibility. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment for more than one year, the maximum punishment prescribed by the President under Article 56 of the Uniform of Military Justice at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

(23) *Judgments Involving Personal, Family, or General History, or a Boundary.* A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

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

(a) *Criteria for Being Unavailable.* A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the military judge rules that a privilege applies;

(2) refuses to testify about the subject matter despite the military judge's order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under subdivision (b)(1) or (b)(5);

(B) the declarant's attendance or testimony, in the case of a hearsay exception under subdivision (b)(2), (b)(3), or (b)(4); or

(6) is unavailable within the meaning of Article 49(d)(2).

Subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) *The Exceptions*. The following are exceptions to the rule against hearsay, and are not excluded by that rule if the declarant is unavailable as a witness:

(1) *Former Testimony*. Testimony that:

(A) was given by a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

Subject to the limitations in Articles 49 and 50, a record of testimony given before a court-martial, court of inquiry, military commission, other military tribunal, or pretrial investigation under Article 32 is admissible under subdivision (b)(1) if the record of the testimony is a verbatim record.

(2) *Statement under the Belief of Imminent Death*. In a prosecution for any offense resulting in the death of the alleged victim, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) *Statement against Interest*. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it tends to expose the declarant to criminal liability and is offered to exculpate the accused.

(4) *Statement of Personal or Family History*. A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) *Other Exceptions*. [Transferred to Mil.R.Evid. 807]

(6) *Statement Offered against a Party that Wrongfully Caused the Declarant's Unavailability*. A statement offered against a party that wrongfully caused or acquiesced in wrongfully causing the declarant's unavailability as a witness, and did so intending that result.

Rule 805. Hearsay Within Hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception or exclusion to the rule.

Rule 806. Attacking and Supporting the Declarant's Credibility

When a hearsay statement – or a statement described in Mil. R. Evid. 801(d)(2)(C), (D), or (E) – has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The military judge may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Rule 807. Residual Exception

(a) *In General*. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Mil. R. Evid. 803 or 804:

(1) the statement has equivalent circumstantial guarantees of trustworthiness;

(2) it is offered as evidence of a material fact;