

1 Rule 804. Hearsay exceptions; declarant unavailable.

2 (a) Definition of unavailability. "Unavailability as a witness" includes situations in which  
3 the declarant:

4 (a)(1) is exempted by ruling of the court on the ground of privilege from testifying  
5 concerning the subject matter of the declarant's statement; or

6 (a)(2) persists in refusing to testify concerning the subject matter of the declarant's statement  
7 despite an order of the court to do so; or

8 (a)(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

9 (a)(4) is unable to be present or to testify at the hearing because of death or then existing  
10 physical or mental illness or infirmity; or

11 (a)(5) is absent from the hearing and the proponent of the declarant's statement has been  
12 unable to procure the declarant's attendance by process or other reasonable means.

13 A declarant is not unavailable as a witness if the exemption, refusal, claim of lack of  
14 memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the  
15 declarant's statement for the purpose of preventing the witness from attending or testifying.

16 (b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant  
17 is unavailable as a witness:

18 (b)(1) Former testimony. Testimony given as a witness at another hearing of the same or a  
19 different proceeding, or in a deposition taken in compliance with law in the course of the same or  
20 another proceeding, if the party against whom the testimony is now offered, or, in a civil action  
21 or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the  
22 testimony by direct, cross, or redirect examination.

23 (b)(2) Statement under belief of impending death. In a civil or criminal action or proceeding,  
24 a statement made by a declarant while believing that the declarant's death was imminent, if the  
25 judge finds it was made in good faith.

26 (b)(3) Statement against interest. A statement which was at the time of its making so far  
27 contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the  
28 declarant to civil or criminal liability, or to render invalid a claim by the declarant against  
29 another, that a reasonable person in the declarant's position would not have made the statement  
30 unless believing it to be true. A statement tending to expose the declarant to criminal liability and

31 offered to exculpate the accused is not admissible unless corroborating circumstances clearly  
32 indicate the trustworthiness of the statement.

33 (b)(4) Statement of personal or family history. (A) A statement concerning the declarant's  
34 own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption or marriage,  
35 ancestry, or other similar fact of personal or family history, even though the declarant had no  
36 means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the  
37 foregoing matters, and death also, of another person, if the declarant was related to the other by  
38 blood, adoption, or marriage or was so intimately associated with the other's family as to be  
39 likely to have accurate information concerning the matter declared.

40 ~~(b)(5) Other exceptions.—A statement not specifically covered by any of the foregoing~~  
41 ~~exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court~~  
42 ~~determines that (A) the statement is offered as evidence of a material fact; (B) the statement is~~  
43 ~~more probative on the point for which it is offered than any other evidence which the proponent~~  
44 ~~can procure through reasonable efforts; and (C) the general purposes of these rules and the~~  
45 ~~interests of justice will best be served by admission of the statement into evidence. However, a~~  
46 ~~statement may not be admitted under this exception unless the proponent of it makes known to~~  
47 ~~the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with~~  
48 ~~a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the~~  
49 ~~particulars of it, including the name and address of the declarant.~~

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