

## Judicial Branch - Rules of Evidence

### 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 1

#### *Excluding Relevant Evidence that was Acquired Illegally or in Violation of the Aggie Honor Code*

The Court may exclude relevant evidence if it determines that the evidence was obtained illegally or in violation of the Aggie Honor Code. This shall be left to the discretion of the Justices of the Judicial Court.

### Rule 2

#### *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.

### Rule 3

#### *Test for Relevant Evidence*

Evidence is relevant and admissible, unless provided otherwise under these rules or the SGA Code, if:

- (1) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (2) the fact is of consequence in determining the action.

### Rule 4

#### *Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons*

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

### Rule 5

## *Character Evidence*

### (a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

### (b) Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident..

## Rule 5.1

### *Methods of Proving Character*

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow inquiry into relevant specific instances of the person's conduct.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

(c) By Habit or Routine Practice. Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance 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 6

### *Need for Personal Knowledge*

A witness may not testify to a matter 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.

## Rule 7

### *Definitions That Apply to Hearsay; Exclusions from Hearsay*

- (a) Hearsay, as defined, is not admissible unless provided otherwise by these rules.
- (b) Statement. “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (c) Declarant. “Declarant” means the person who made the statement.
- (d) Hearsay. “Hearsay” means a statement that:
- (1) the declarant does not make while testifying at the current trial or hearing; and
  - (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
- (e) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

- (1) An Opposing Party’s Statement. The statement is offered against an opposing party and:
  - (A) was made by the party in an individual or representative capacity;
  - (B) is one the party manifested that it adopted or believed to be true;
  - (C) was made by a person whom the party authorized to make a statement on the subject; or
  - (D) was made by the party’s agent or employee on a matter within the scope of that relationship and while it existed;

### Rule 7.1

#### *Exceptions to the Rule Against Hearsay – Regardless of the Declarant’s Availability*

The following are not excluded by the rule against hearsay, regardless of whether 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 perceived it.
- (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.
- (3) Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant’s then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed.
- (4) Recorded Recollection. A record that:
  - (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.

(5) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

- (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
- (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

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

(8) 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.

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

## Rule 7.2

### *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 court rules that a privilege applies;
- (2) testifies to not remembering the subject matter;
- (3) cannot be present or testify at the trial or hearing because of then-existing infirmity, physical illness, or mental illness; or
- (4) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is

unavailable as a witness:

(1) 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 liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness

(2) Former testimony. Testimony that:

(A) was given as 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 – or, in a civil case, whose predecessor in interest had – an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

### Rule 7.3

#### *Attacking and Supporting the Declarant's Credibility*

When a hearsay statement 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 court 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.