

1 **Rule 804. Exceptions to the Rrule Aagainst Hhearsay - Wwhen the Ddeclarant is**

2 uUunavailable as a Wwitness.

3 **(a) Criteria for Bbeing Uunavailable.** A declarant is considered to be unavailable as a

4 witness if the declarant:

5 ~~(a)~~**(1)** is exempted from testifying about the subject matter of the declarant's statement

6 because the court rules that a privilege applies;

7 ~~(a)~~**(2)** refuses to testify about the subject matter despite a court order to do so;

8 ~~(a)~~**(3)** testifies to not remembering the subject matter;

9 ~~(a)~~**(4)** cannot be present or testify at the trial or hearing because of death or a then-

10 existing infirmity, physical illness, or mental illness; or

11 ~~(a)~~**(5)** is absent from the trial or hearing and the statement's proponent has not been

12 able, by process or other reasonable means, to procure the declarant's attendance.

13 But this subdivision (a) does not apply if the statement's proponent procured or

14 wrongfully caused the declarant's unavailability as a witness in order to prevent the

15 declarant from attending or testifying.

16 **(b) The Eexceptions.** The following are not excluded by the rule against hearsay if the

17 declarant is unavailable as a witness:

18 ~~(b)~~**(1) Former ttestimony.** Testimony that:

19 ~~(b)~~**(1)(A)** was given as a witness at a trial, hearing, or lawful deposition, whether

20 given during the current proceeding or a different one; and

21 ~~(b)~~**(1)(B)** is now offered against a party who had — or, in a civil case, whose

22 predecessor in interest had — an opportunity and similar motive to develop it by

23 direct, cross-, or redirect examination.

24 ~~(b)~~**(2) Statement Uunder the Bbelief of Iimminent Ddeath.** In a civil or criminal case,

25 a statement made by the declarant while believing the declarant's death to be

26 imminent, if the judge finds it was made in good faith.

27 ~~(b)~~(3) **Statement aAgainst Interest.** A statement that:

28 ~~(b)~~(3)(A) a reasonable person in the declarant's position would have made only if
29 the person believed it to be true because, when made, it was so contrary to the
30 declarant's proprietary or pecuniary interest or had so great a tendency to
31 invalidate the declarant's claim against someone else or to expose the declarant to
32 civil or criminal liability; and

33 ~~(b)~~(3)(B) if offered in a criminal case as one that tends to expose the declarant to
34 criminal liability, is supported by corroborating circumstances that clearly indicate
35 its trustworthiness after considering the totality of circumstances under which it
36 was made and any evidence that supports or undermines it, ~~if it is offered in a~~
37 ~~criminal case as one that tends to expose the declarant to criminal liability.~~

38 ~~(b)~~(4) **Statement of Personal or Family hHistory.** A statement about:

39 ~~(b)~~(4)(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage,
40 divorce, relationship by blood or marriage, or similar facts of personal or family
41 history, even though the declarant had no way of acquiring personal knowledge
42 about that fact; or

43 ~~(b)~~(4)(B) another person concerning any of these facts, as well as death, if the
44 declarant was related to the person by blood, adoption, or marriage or was so
45 intimately associated with the person's family that the declarant's information is
46 likely to be accurate.

47 **Effective:** ~~--/--/----~~

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49 2026 Advisory Committee Note. The language of subparagraph (b)(3)(B) has been
50 amended based on recent amendments to the federal rule.

51 **2011 Advisory Committee Note.** The language of this rule has been amended as part of
52 the restyling of the Evidence Rules to make them more easily understood and to make

53 class and terminology consistent throughout the rules. These changes are intended to be
54 stylistic only. There is no intent to change any result in any ruling on evidence
55 admissibility.

56 **Original Advisory Committee Note.** Subdivision (a) is comparable to Rule 63(7), Utah
57 Rules of Evidence (1971). Rule 62(7)[(e)], Utah Rules of Evidence (1971), seems to be
58 encompassed in Rule 804(a)(5). Subdivision (a)(5) is a modification of the federal rule
59 which permits judicial discretion to be applied in determining unavailability of a witness.

60 Subdivision (b)(1) is comparable to Rule 63(3), Utah Rules of Evidence (1971), but the
61 former rule is broader to the extent that it did not limit the admission of the testimony to
62 a situation where the party to the action had the interest and opportunity to develop the
63 testimony. Condas v. Condas, 618 P.2d 491 (Utah 1980); State v. Brooks, 638 P.2d 537
64 (Utah 1981).

65 Subdivision (b)(2) is comparable to Rule 63(5), Utah Rules of Evidence (1971), but the
66 former rule was not limited to declarations concerning the cause or circumstances of the
67 impending death nor did it limit dying declarations in criminal prosecutions to homicide
68 cases. The rule has been modified by making it applicable to any civil or criminal
69 proceeding, subject to the qualification that the judge finds the statement to have been
70 made in good faith.

71 Subdivision (b)(3) is comparable to Rule 63(10), Utah Rules of Evidence (1971), though it
72 does not extend merely to social interests.

73 Subdivision (b)(4) is similar to Rule 63(24), Utah Rules of Evidence (1971).

74 Subdivision (b)(5) had no counterpart in Utah Rules of Evidence (1971).

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