

Alabama Rules of Evidence

Article VIII. Hearsay

Rule 802.

Hearsay rule.

Hearsay is not admissible except as provided by these rules, or by other rules adopted by the Supreme Court of Alabama or by statute.

Advisory Committee's Notes

This rule tracks Fed.R.Evid. 802, with modifications to adapt it to Alabama practice. It primarily reasserts the principle that hearsay is generally inadmissible. This broad exclusion, however, is subject to exceptions found in other Alabama Rules of Evidence, in other rules promulgated by the Supreme Court of Alabama, and by evidentiary provisions found in statutes. This general hearsay exclusion, as well as the sources from which exceptions to it derive, expresses traditional Alabama law. See, e.g., Ala. Code 1975, § 12-21-5 (exempting certain hospital records from the hearsay exclusion); Ala. Code 1975, § 12-21-30 (providing for the admission of declarations by deceased person as to ancient rights); Ala.R.Civ.P. 32(a) (authorizing the use at trial of depositions). See also C. Gamble, McElroy's Alabama Evidence § 242.01 (4th ed. 1991).

Rule 802 expressly exempts from exclusion those hearsay statements whose admissibility is otherwise provided for by law. By implication, however, the hearsay rule is subject also to rules or laws excluding statements that might otherwise be exempted from the hearsay ban. A statement may be admissible as an admission under the definitional exception of Rule 801(d), for example, and yet be excluded because it constitutes an offer of compromise as defined under Rule 408. Likewise, statutory provisions may exclude statements that would otherwise be admissible, either as nonhearsay or as falling within an exception to the hearsay rule. See *O'Daniel v. O'Daniel*, 515 So.2d 1248 (Ala.Civ.App. 1986), rev'd and remanded, 515 So.2d 1250 (Ala.1987) (excluding evidence, otherwise satisfying traditional evidence rules, because it violated federal wiretapping statute, 18 U.S.C. §§ 2510-2520 (1988)). Compare C. Gamble & F. James III, *Perspectives on the Evidence Law of Alabama: A Decade of Evolution, 1977-1987*, 40 Ala.L.Rev. 95, 119 (1988) (containing a treatment of the interaction between traditional evidence principles and statutory rules of admission and exclusion).

While Rule 802 does not expressly mention this fact, questions of admissibility under the hearsay rule, regarding exclusion or admission, may be determined by constitutional requirements. Cf. *Chambers v. Mississippi*, 410 U.S. 284 (1973); *Arthers v. State*, 459 So.2d 972 (Ala.Crim.App.1984) (hospital record exception to hearsay rule may be inapplicable if it violates the accused's constitutional right to confront witnesses); *Ashurst v. State*, 462 So.2d 999 (Ala.Crim.App.1984) (admissions may be excluded if to admit them would violate the privilege against self-incrimination).