

## **Alabama Rules of Evidence**

### Article VIII. Hearsay

#### **Rule 805.**

##### **Hearsay within hearsay.**

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

#### **Advisory Committee's Notes**

Instances arise in which an out-of-court statement by one declarant contains a statement made by yet another declarant. Such instances are variously termed "hearsay within hearsay," "totem pole hearsay," or "multiple hearsay." A may take the stand, for example, to tell what B said C had said. The fact that one statement qualifies as coming within a hearsay exception does not necessarily ensure that the other statement so qualifies. Rule 805 sets out the analysis that is to be applied to whether such multiple hearsay is admissible. Each declarant's statement, considered individually, must satisfy the hearsay concern by either qualifying under a hearsay exception or being, by definition, nonhearsay. Suppose, for example, that the declarant, in an offered statement made under belief of impending death, states what another person was heard to say at the scene of a crime. The declarant's statement may be admissible under the exception specifically created for such statements under belief of impending death. See Ala.R.Evid. 804(b)(2). However, that portion that reveals the statement of another must, in its own right, be admissible over a hearsay objection; the admissibility could come, for example, under the declaration against interest exception if the declarant is unavailable. See Ala.R.Evid. 804(b)(3). Alternatively, and by way of illustration, the second declarant's statement could qualify as an excited utterance. See Ala.R.Evid. 803(2).

The multiple hearsay analysis set forth in this rule is consistent with preexisting Alabama authority. This analysis has been applied to business records containing both double and even triple hearsay. See *Reeves v. King*, 534 So.2d 1107 (Ala.1988). See also C. Gamble, *McElroy's Alabama Evidence* § 254.01(2) (4th ed. 1991).

Rule 805 is identical to its federal counterpart.