



IN THE SUPREME COURT OF ALABAMA

March 3, 2023

ORDER

IT IS ORDERED that Rule 803(10), Alabama Rules of Evidence, be amended to read in accordance with Appendix A to this order;

IT IS FURTHER ORDERED that the Advisory Committee's Notes to Amendment to Rule 803(10) Effective May 1, 2023, be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the amendment to Rule 803(10) and the adoption of the Advisory Committee's Notes thereto are effective May 1, 2023; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 803:

"Note from the reporter of decisions: The order amending Rule 803(10), Alabama Rules of Evidence, and adopting the Advisory Committee's Notes thereto, effective May 1, 2023, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d."

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Witness my hand and seal this 3rd day of March, 2023.

Megan B. Rhodeseck

**Clerk of Court,
Supreme Court of Alabama**

FILED
March 3, 2023
Clerk of Court
Supreme Court of Alabama



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APPENDIX A

Rule 803(10), Ala. R. Evid.

(10) **Absence of Public Record or Entry.** To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry. Provided, however, that this exception to the hearsay rule shall apply in a criminal case only if a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice -- unless the court sets a different time for the notice or the objection.



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APPENDIX B

Advisory Committee's Notes to Amendment to Rule 803(10) Effective May 1, 2023

Rule 803(10) has been amended in response to *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). The *Melendez-Diaz* Court declared that a testimonial certificate could be admitted in a criminal case if the accused is given advance notice and does not timely demand the presence of the official who prepared the certificate. The amendment incorporates, with minor variations, a "notice-and-demand" procedure that was approved by the *Melendez-Diaz* Court.