

**SUPPLEMENT TO TOPICAL OUTLINE BY RUSSELL H. HIPPE, III**

**SUMMARY OF REFERENCED SECTIONS OF THE "NEW" EVIDENCE CODE AND  
REFERENCE TO 2013 AND OTHER AUTHORITY**

**24-1-1 - Objective of Legal Investigation**

The object of all legal investigation is the discovery of truth. Rules of evidence shall be construed to secure fairness in administration, eliminate unjustifiable expense and delay, and promote the growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

It is important to rely upon the new evidence code, as well as its accompanying case law, in addressing evidentiary issues arising after the new code's effective date. [Patch v. State, 2016, 337 Ga.App. 233, 786 S.E.2d 882.](#)

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State law policy is to admit evidence, even if its admissibility is doubtful, because it is more dangerous to suppress the truth than to allow a loophole for falsehood. [Hand v. South Georgia Urology Center, P.C., 2015, 332 Ga.App. 148, 769 S.E.2d 814.](#)

Given the similarity between state evidence code and the Federal Rules of Evidence, Court of Appeals gives consideration and great weight to constructions placed on the federal rules of evidence by the federal courts when interpreting the state evidence code. [Williams v. State, 2014, 328 Ga.App. 876, 763 S.E.2d 261.](#)

Where a provision of the new Evidence Code is borrowed from the Federal Rules of Evidence, state courts look to decisions of the federal appellate courts construing and applying the Federal Rules, especially the decisions of the Supreme Court of the United States and the Eleventh Circuit. [Dublin v. State, 2017, 2017 WL 4017919.](#)

Given the similarity between Georgia's evidence code and the Federal Rules of Evidence, it is proper that a court, in interpreting the state code, gives consideration and great weight to constructions placed on the Federal Rules by the federal courts. [Amah v. Whitefield Academy, Inc., 2015, 331 Ga.App. 258, 770 S.E.2d 650.](#)

**24-1-104 - Preliminary Questions**

(a) Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subsection (b) of this Code section. In making its determination, the court shall not be bound by the rules of evidence except those with respect to privileges. Preliminary questions shall be resolved by a preponderance of the evidence standard.

(b) When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on

other preliminary matters shall be conducted out of the hearing of the jury when the interests of justice require or when an accused is a witness and requests a hearing outside the presence of the jury.

(d) The accused shall not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the proceeding.

(e) This Code section shall not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

#### **24-1-105 - Limited Admissibility**

When evidence which is admissible as to one party or for one purpose but which is not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

#### Parol Evidence:

#### **24-3-1 - Admissibility of parol contemporaneous evidence**

Parol contemporaneous evidence shall be generally inadmissible to contradict or vary the terms of a valid written instrument.

See 24-3-2 through 24-3-9.

Letters which did not attempt to vary terms of disputed agreements but merely stated basis for bringing the lawsuits were relevant and admissible as facts to explain conduct and ascertain motive. [Cook Farms, Inc. v. Bostwick, 1983, 165 Ga.App. 692, 302 S.E.2d 574.](#)

#### Judicial Notice:

#### **24-2-220 - Matters judicially recognized**

The existence and territorial extent of states and their forms of government; all symbols of nationality; the laws of nations; all laws and resolutions of the General Assembly and the journals of each branch thereof as published by authority; the laws of the United States and of the several states thereof as published by authority; the uniform rules of the courts; the administrative rules and regulations filed with the Secretary of State pursuant to Code Section 50-13-6; the general customs of merchants; the admiralty and maritime courts of the world and their seals; the political makeup and history of this state and the federal

government as well as the local divisions of this state; the seals of the several departments of the government of the United States and of the several states of the union; and all similar matters of legislative fact shall be judicially recognized without the introduction of proof. Judicial notice of adjudicative facts shall be governed by Code Section 24-2-201.

#### Relevance:

#### **24-4-401 - Definition of Relevant Evidence**

As used in this chapter, the term "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

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In interpreting new rule of evidence defining relevant evidence, courts properly look to the decisions of federal appellate courts, particularly the United States Supreme Court and the Eleventh Circuit, interpreting federal rule of evidence outlining test for relevant evidence, rather than to cases discussing relevance under the old Evidence Code. [Smith v. State, 2016, 299 Ga. 424, 788 S.E.2d 433.](#)

In the event of any conflicting interpretations regarding rules of evidence between the Eleventh Circuit and other federal circuit courts, the Georgia courts must follow the Eleventh Circuit rule when interpreting new Georgia rules of evidence that mirror their federal counterparts. [Amey v. State, 2015, 331 Ga.App. 244, 770 S.E.2d 321.](#)

#### **24-4-402 - Relevant Evidence Generally Admissible**

All relevant evidence shall be admissible, except as limited by constitutional requirements or as otherwise provided by law or by other rules, as prescribed pursuant to constitutional or statutory authority, applicable in the court in which the matter is pending. Evidence which is not relevant shall not be admissible.

*"Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." O.C.G.A. § 24-4-401. This standard is a liberal one." Gerbert v. State, 339 Ga. App. 164, 175-76, 793 S.E.2d 131, 143 (2016)*

Trial court's prohibition of defendant's cross-examination of victim's father, as to whether he suffered sexual abuse as a child, was not abuse of discretion, in prosecution for aggravated child molestation, child molestation, and aggravated sexual battery; evidence that victim's father suffered sexual abuse was irrelevant, and there was no logical link between fact that victim had father who also claimed to be victim of sexual abuse and conclusion that victim might therefore be unreliable witness whose testimony regarding defendant's actions was not worthy of belief. [Morris v. State, 2017, 341 Ga.App. 568, 802 S.E.2d 13.](#)

Prosecutor's line of questioning regarding why and where defendant got his tattoos during cross-examination of defendant was not relevant in trial for felony murder in connection with the death of defendant's two-month-old daughter; tattoos were not relevant to determination of perpetrator's identity, although prosecutor may have had concerns that jury had seen tattoos on defendant's arm when he showed jury his right arm and hand during direct examination and that tattoos could have depicted words or images that might have influenced jury, such concerns were reduced when prosecutor demanded that defendant show prosecutor his arm before asking defendant any questions about tattoos, and prosecutor's questions about what was symbolized by tattoos elicited evidence that benefited defendant, at which

point it was clear that line of questioning would not develop relevant evidence. [Smith v. State, 2016, 299 Ga. 424, 788 S.E.2d 433.](#)

### **24-4-403 - Exclusion of Relevant Evidence Due to Prejudice Confusion or Waste of Time**

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Civil Cases:

Although evidence of collateral matters may throw some remote light on the main issues of a case, it is nevertheless necessary that trial judges be vested with some discretion as to the admissibility of this type of evidence. [Interfinancial Midtown, Inc. v. Choate Construction Company, 2017, 806 S.E.2d 255.](#)

Trial court did not abuse its discretion by precluding oncoming driver from introducing evidence of her financial condition when calculating amount of punitive damages to award in action by second driver to recover for personal injuries sustained in motor vehicle accident, on basis of substantial prejudice; decision was consistent with court's decision to preclude second driver from introducing evidence on oncoming driver's financial condition. [Dagne v. Schroeder, 2016, 336 Ga.App. 36, 783 S.E.2d 426.](#)

The court is permitted to balance the relevancy of photographs against their tendency to be inflammatory and prejudicial. [O.C.G.A. § 24-2-1. Cornelius v. Macon-Bibb County Hosp. Authority, 2000, 243 Ga.App. 480, 533 S.E.2d 420.](#) (Pre new code authority – persuasive only).

In general:

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The application of the statute excluding otherwise relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or is misleading to the jury is a matter committed principally to the discretion of the trial courts, and the exclusion of relevant evidence under the statute is an extraordinary remedy that should be used only sparingly. [Smith v. State, 2017, 2017 WL 6272364.](#)

The exclusion of evidence under rule governing exclusion of relevant evidence due to prejudice, confusion, or waste of time, is an extraordinary remedy which should be used only sparingly. [Whaley v. State, 2017, 2017 WL 4984969.](#)

The major function of the rule governing exclusion of relevant evidence due to prejudice, confusion, or waste of time is to exclude matter of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect. [Pierce v. State, 2017, 2017 WL 4870991.](#)

Simply because the evidence is damaging or prejudicial to a defendant's case does not mean that the evidence should be excluded under the rule governing the exclusion of relevant evidence due to prejudice, confusion, or waste of time. [Carter v. State, 2017, 2017 WL 4341385.](#)

Photographs:

Trial court did not abuse its discretion by determining that potential for prejudice did not substantially outweigh probative value of photograph depicting contents of trunk of murder victim's car, including victim's body wrapped in a comforter, gasoline-soaked towel, several articles of clothing, and a photograph of an unidentified young girl; photograph showed how items in the trunk were arranged in multiple layers around victim's body in an attempt to sustain a fire, photograph was of particular importance because it showed how victim's body was located in relation to gasoline-soaked towel and to bottom of trunk, and photograph presented little danger of prejudice. [Cheley v. State, 2016, 299 Ga. 88, 786 S.E.2d 642.](#)

The court is permitted to balance the relevancy of photographs against their tendency to be inflammatory and prejudicial. [O.C.G.A. § 24-2-1. Cornelius v. Macon-Bibb County Hosp. Authority, 2000, 243 Ga.App. 480, 533 S.E.2d 420.](#) (Pre code authority – persuasive only).

Character Evidence:

**24-4-404 - Character Evidence Not Admissible to Prove Actions  
Exceptions; Other Crimes<sup>1</sup>**

(a) Evidence of a person's character or a trait of character shall not be admissible for the purpose of proving action in conformity therewith on a particular occasion, except for:

~~(1) Evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same; or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under paragraph (2) of this subsection, evidence of the same trait of character of the accused offered by the prosecution; (criminal cases only)~~

~~(2) Subject to the limitations imposed by § 24-4-412, evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused or by the prosecution to rebut the same; or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor; or (criminal cases only)~~

(3) Evidence of the character of a witness, as provided in § 24-6-607, 24-6-608, and 24-6-609.

[§ 24-6-607 - Who May Impeach; § 24-6-608 - Character and Conduct of Witnesses; 24-6-609 - Impeachment by Evidence of Conviction of Crime]

(b) Evidence of other crimes, wrongs, or acts shall not be admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The prosecution in a criminal

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<sup>1</sup> Compare the Federal Rules of Evidence:

Rule 404. Character Evidence; Crimes or Other Acts

**(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.

proceeding shall provide reasonable notice to the defense in advance of trial, unless pretrial notice is excused by the court upon good cause shown, of the general nature of any such evidence it intends to introduce at trial. Notice shall not be required when the evidence of prior crimes, wrongs, or acts is offered to prove the circumstances immediately surrounding the charged crime, motive, or prior difficulties between the accused and the alleged victim.

#### **24-4-405 - Proving Character**

(a) In all proceedings in which evidence of character or a trait of character of a person is admissible, proof shall be made by testimony as to reputation or by testimony in the form of an opinion.

(b) In proceedings in which character or a trait of character of a person is an essential element of a charge, claim, or defense or when an accused testifies to his or her own character, proof may also be made of specific instances of that person's conduct. ~~The character of the accused, including specific instances of the accused's conduct, shall also be admissible in a presentencing hearing subject to the provisions of Code Section 17-10-2.~~

#### **24-4-406 - Habit or Routine**

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with such habit or routine practice.

#### **24-4-407 - Subsequent Remedial Measures**

#### **24-4-408 - Offers of Compromise**

#### **24-4-409 - Furnishing, Offering, or Promising to Pay Medical Bills or Similar Expenses**

Evidence of furnishing, offering, or promising to pay medical, hospital, or similar expenses occasioned by an injury shall not be admissible to prove liability for the injury.

#### **24-4-411 - Liability Insurance**

In all civil proceedings involving a claim for damages, evidence that a person was or was not insured against liability shall not be admissible except as provided in this Code section. This Code

section shall not require the exclusion of evidence of insurance against liability in proceedings under Code Section 40-1-112 or when such evidence is offered for a relevant purpose, including, but not limited to, proof of agency, ownership, or control, and the court finds that the danger of unfair prejudice is substantially outweighed by the probative value of the evidence.

#### **24-4-416 - Conduct of Health Care Providers in Civil Proceedings**

(b) In any claim or civil proceeding brought by or on behalf of a patient allegedly experiencing an unanticipated outcome of medical care, any and all statements, affirmations, gestures, activities, or conduct expressing regret, apology, sympathy, commiseration, condolence, compassion, mistake, error, or a general sense of benevolence which is made by a health care provider or an employee or agent of a health care provider to the patient, a relative of the patient, or a representative of the patient and which relates to the unanticipated outcome shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest.

#### PRIVILEGE:

#### **24-5-501 - Confidential Communications Excluded on Grounds of Public Policy**

(a) There are certain admissions and communications excluded from evidence on grounds of public policy, including, but not limited to, the following:

- (1) Communications between husband and wife;
- (2) Communications between attorney and client;
- (3) Communications among grand jurors;
- (4) Secrets of state;
- (5) Communications between psychiatrist and patient;
- (6) Communications between licensed psychologist and patient as provided in Code Section 43-39-16;

- (7) Communications between a licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed professional counselor and patient;

- (8) Communications between or among any psychiatrist, psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, and licensed professional counselor who are rendering psychotherapy or have rendered psychotherapy to a

patient, regarding that patient's communications which are otherwise privileged by paragraph (5), (6), or (7) of this subsection; and

(9) Communications between accountant and client as provided by Code Section 43-3-29.

**24-5-502 - Communications to ministers, priests and rabbis**

**24-5-503 - Husband and wife as witnesses for and against each other in criminal proceedings**

**24-5-505 - Privilege of Party or Witness**

(a) No party or witness shall be required to testify as to any matter which may incriminate or tend to incriminate such party or witness or which shall tend to bring infamy, disgrace, or public contempt upon such party or witness or any member of such party or witness's family.

*Simpson v. Simpson, 233 Ga. 17 (1974) establishes that this privilege may be asserted as to any question of adultery in family law cases, subject to inference that, but for the assertion, the witness would have admitted the question.*

**24-5-508 - Qualified privilege for persons, companies or other entities engaged in new gathering or dissemination**

**24-5-509 - Privilege for Agents (Social Workers Family Violence Cases)**

WITNESSES

**24-6-601 - Rule of Competency**

Except as otherwise provided in this chapter, every person is competent to be a witness.

**24-6-602 - Personal Knowledge of Witness**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of such matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. The provisions of this Code section are subject to Code Section 24-7-703 and shall not apply to party admissions.

[24-7-703 - Bases of Opinion Testimony by Experts]

**24-6-603 - Oath or Affirmation**

(a) Before testifying, every witness shall be required to declare that he or she will testify truthfully by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so.

(b) Notwithstanding the provisions of subsection (a) of this Code section, in all proceedings involving dependency as defined by Code Section 15-11-2 and in all criminal proceedings in which a child was a victim of or witness to any crime, the child shall be competent to testify, and the child's credibility shall be determined as provided in this chapter.

#### **24-6-607 - Who May Impeach**

The credibility of a witness may be attacked by any party, including the party calling the witness.

#### **24-6-608 - Character and Conduct of Witness**

(a) The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to the following limitations:

(1) The evidence may refer only to character for truthfulness or untruthfulness; and

(2) Evidence of truthful character shall be admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, other than a conviction of a crime as provided in Code Section 24-6-609, or conduct indicative of the witness's bias toward a party may not be proved by extrinsic evidence. Such instances may however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness [24-6-609 - Impeachment by Evidence of Conviction of Crime]:

(1) Concerning the witness's character for truthfulness or untruthfulness; or

(2) Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(c) The giving of testimony, whether by an accused or by any other witness, shall not operate as a waiver of the accused's or the

witness's privilege against self-incrimination when examined with respect to matters which relate only to character for truthfulness.

#### **24-6-609 - Impeachment by Evidence of Conviction of Crime**

(a) **General rule.** For the purpose of attacking the character for truthfulness of a witness:

(1) Evidence that a witness other than an accused has been convicted of a crime shall be admitted subject to the provisions of Code Section 24-4-403 if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting the evidence outweighs its prejudicial effect to the accused [24-4-403 - Exclusion of Relevant Evidence Due to Prejudice, Confusion, or waste of time]; or

(2) Evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of such crime required proof or admission of an act of dishonesty or making a false statement.

(b) **Time limit.** Evidence of a conviction under this Code section shall not be admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for such conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old, as calculated in this subsection, shall not be admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) **Effect of pardon, annulment, certificate of rehabilitation, or discharge from a first offender program.** Evidence of a final adjudication of guilt and subsequent discharge under any first offender statute shall not be used to impeach any witness and evidence of a conviction shall not be admissible under this Code section if:

(1) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent

crime which was punishable by death or imprisonment in excess of one year; or

(2) The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) **Nolo contendere pleas and juvenile adjudications.** A conviction based on a plea of nolo contendere shall not be admissible to impeach any witness under this Code section. Evidence of juvenile adjudications shall not generally be admissible under this Code section. The court may, however, in a criminal proceeding allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence of the accused.

(e) **Pendency of appeal.** The pendency of an appeal shall not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal shall be admissible.

#### **24-6-610 - Religious Beliefs or Opinions**

#### **24-6-611 - Mode and Order of Interrogation and Presentation**

(a) The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(b) A witness may be cross-examined on any matter relevant to any issue in the proceeding. The right of a thorough and sifting cross-examination shall belong to every party as to the witnesses called against the party. If several parties to the same proceeding have distinct interests, each party may exercise the right to cross-examination.

(c) Leading questions shall not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily leading questions shall be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

#### **24-6-612 - Writing Used to Refresh Memory**

(a) If a witness uses a writing to refresh his or her memory while testifying, an adverse party shall be entitled to have the writing produced at the hearing or trial, to inspect it, to cross-examine the witness on such writing, and to introduce in evidence those portions of such writing which relate to the testimony of the witness.

(b) If a witness uses a writing to refresh his or her memory before testifying at trial and the court in its discretion determines it is necessary in the interests of justice, an adverse party shall be entitled to have the writing produced at the trial, to inspect it, to cross-examine the witness on such writing, and to introduce in evidence those portions of such writing which relate to the testimony of the witness. If the writing used is protected by the attorney-client privilege or as attorney work product under Code Section 9-11-26, use of the writing to refresh recollection prior to testifying shall not constitute a waiver of that privilege or protection. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions of such writing not so related, and order delivery of the remainder of such writing to the party entitled to such writing. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to an order under this Code section, the court shall make any order justice requires; provided, however, that in criminal proceedings, when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial. [9-11-26 - General provisions governing discovery]

#### **24-6-613 - Prior Statement of Witness**

(a) In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time; provided, however, upon request the same shall be shown or disclosed to opposing counsel.

(b) Except as provided in Code Section 24-8-806, extrinsic evidence of a prior inconsistent statement by a witness shall not be admissible unless the witness is first afforded an opportunity to explain or deny the prior inconsistent statement and the opposite party is afforded an opportunity to interrogate the witness on the prior inconsistent statement or the interests of

justice otherwise require. This subsection shall not apply to admissions of a party-opponent as set forth in paragraph (2) of subsection (d) of Code Section 24-8-801. [24-8-801 - Definitions of hearsay]

(c) A prior consistent statement shall be admissible to rehabilitate a witness if the prior consistent statement logically rebuts an attack made on the witness's credibility. A general attack on a witness's credibility with evidence offered under Code Section 24-6-608 or 24-6-609 shall not permit rehabilitation under this subsection. If a prior consistent statement is offered to rebut an express or implied charge against the witness of recent fabrication or improper influence or motive, the prior consistent statement shall have been made before the alleged recent fabrication or improper influence or motive arose. [608 - Character and Conduct of Witnesses; 609 - Impeachment by Evidence of Conviction of crime]

**24-6-615 - Exclusion of Witnesses** (*Rule of Sequestration*)

Except as otherwise provided in Code Section 24-6-616, at the request of a party the court shall order witnesses excluded so that each witness cannot hear the testimony of other witnesses, and it may make the order on its own motion. This Code section shall not authorize exclusion of: [24-6-616 - Victim of Criminal Offenses Entitled to be Present During Prosecution]

- (1) A party who is a natural person;
- (2) An officer or employee of a party which is not a natural person designated as its representative by its attorney; or
- (3) A person whose presence is shown by a party to be essential to the presentation of the party's cause.

**24-6-620 - Determining Credibility of Witnesses**

The credibility of a witness shall be a matter to be determined by the trier of fact, and if the case is being heard by a jury, the court shall give the jury proper instructions as to the credibility of a witness.

**24-6-621 - Impeaching Witness**

A witness may be impeached by disproving the facts testified to by the witness.

**24-6-622 - Witness's Feelings and Relationship to Parties**

The state of a witness's feelings towards the parties and the witness's relationship to the parties may always be proved for the consideration of the jury.

Statute providing for admissibility of evidence of witness' feelings about parties and statute requiring exclusion of irrelevant evidence should be considered in pari materia; thus, even if testimony sought to be admitted relates to feelings witness has toward party, if that particular feeling would have no relevance to questions being tried by jury, then such evidence may be excluded in sound discretion of trial court. O.C.G.A. §§ 24-2-1, 24-9-68. *Lockett v. State*, 1995, 217 Ga.App. 328, 457 S.E.2d 579.

#### **24-6-623 - Protection of Witnesses**

It shall be the right of a witness to be examined only as to relevant matters and to be protected from improper questions and from harsh or insulting demeanor.

#### Expert Witnesses:

- 24-7-701 - Layperson Testimony; Market Value Testimony**
- 24-7-702 - Expert Testimony; Qualifications as Experts**
- 24-7-703 - Bases of Opinion Testimony by Experts**
- 24-7-704 - Opinion Embracing Ultimate Issue**
- 24-7-705 - Disclosure of Underlying Facts or Data to Expert**
- 24-7-706 - Court Appointed Experts**

#### HEARSAY:

#### **24-8-801 - Definitions**

As used in this chapter, the term:

- (a) "Statement" means:
  - (1) An oral or written assertion; or
  - (2) Nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) "Declarant" means a person who makes a statement.
- (c) "Hearsay" means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (d) "Hearsay" shall be subject to the following exclusions and conditions:

- (1) **Prior statement by witness.**

- (A) An out-of-court statement shall not be hearsay if the declarant testifies at the trial or hearing, is subject to cross-examination concerning the statement, and the statement is admissible as a prior inconsistent statement or a prior consistent statement under Code Section 24-6-613 or is otherwise admissible under this chapter.

- (B) If a hearsay statement is admitted and the declarant does not testify at the trial or hearing, other out-of-court statements of the declarant shall be admissible for the limited use of impeaching or rehabilitating the credibility of the

declarant, and not as substantive evidence, if the other statements qualify as prior inconsistent statements or prior consistent statements under Code Section 24-6-613 [Prior Statement of Witness].

(C) A statement shall not be hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is one of identification of a person made after perceiving the person; and

(2) **Admissions by party-opponent.** Admissions shall not be excluded by the hearsay rule. An admission is a statement offered against a party which is:

(A) The party's own statement, in either an individual or representative capacity;

(B) A statement of which the party has manifested an adoption or belief in its truth;

(C) A statement by a person authorized by the party to make a statement concerning the subject;

(D) A statement by the party's agent or employee, but not including any agent of the state in a criminal proceeding, concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy, including a statement made during the concealment phase of a conspiracy. A conspiracy need not be charged in order to make a statement admissible under this subparagraph.

The contents of the statement shall be considered but shall not alone be sufficient to establish the declarant's authority under subparagraph (C) of this paragraph, the agency or employment relationship and scope thereof under subparagraph (D) of this paragraph, or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subparagraph (E) of this paragraph.

(e) "Public office" means:

(1) Every state department, agency, board, bureau, commission, division, public corporation, and authority;

(2) Every county, municipal corporation, school district, or other political subdivision of this state;

(3) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of this state; and

(4) Every city, county, regional, or other authority established pursuant to the laws of this state.

(f) "Public official" means an elected or appointed official.

(g) "Public record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and created in the course of the operation of a public office.

Admission by party opponent, for purposes of rule concerning nonhearsay statements, should not be confused with statement against interest, under rule concerning hearsay exceptions when declarant is unavailable; former must only be contrary to trial position of the party against whom it is offered, whereas latter is assessed by its effect "at the time of its making." [O'Donnell v. Georgia Osteopathic Hosp., Inc., 1984, 748 F.2d 1543.](#)

In action by automobile buyer against dealership for fraud, and violations of the Fair Business Practices Act and the Georgia odometer statute, saleswoman's statements to buyer regarding automobile's low mileage and prior ownership were not hearsay, where they were offered not for their truth, but for the fact that they were made. [Alvear v. Sandy Springs Toyota, Inc., 2015, 332 Ga.App. 798, 775 S.E.2d 172.](#)

Statement contained in affidavit of parties' attorney in support of motion to set aside summary judgment, that attorney first became aware of the summary judgment ruling when party called and told him that a garnishment action had been served upon his employer, was not inadmissible hearsay, since it was not offered for the truth of the matter asserted; statement was not offered to prove that a garnishment action had been served on party's employer, but was offered solely to explain when attorney first became aware of the summary judgment order. [C & R Financial Lenders, LLC v. State Bank & Trust Co., 2013, 320 Ga.App. 660, 740 S.E.2d 371,](#) on remand [2013 WL 9055977.](#)

A vague public relations apology for the "disruption" caused by a fire in a storage facility was insufficient to be construed as an admission of negligence in causing the fire, for purposes of the hearsay exception for out-of-court statements offered against a party by a party's agent or employee if the statement constitutes an admission, absent any evidence that the statement concerned subject matter that the speaker would have known by virtue of his duties as a vice president of the storage facility's owner. [Law v. BioLab, Inc., 2013, 325 Ga.App. 500, 753 S.E.2d 446.](#)

Deposition testimony of neurosurgeon that pathologists told him they that they did not notice any foreign body material in specimen removed from lesion located on patient's brain at site where benign tumor had previously been removed was inadmissible hearsay, in medical malpractice action against clinic where initial surgery was performed, as testimony rested its value upon credibility of pathologists. [Thomas v. Emory Clinic, Inc., 2013, 321 Ga.App. 457, 739 S.E.2d 138,](#) reconsideration denied.

Purchase and assumption agreement and assignment of security instruments and other loan documents, which were executed by Federal Deposit Insurance Corporation (FDIC) as receiver for failed bank and by bank obtaining failed bank's loans, were not inadmissible hearsay on bank's motion for summary judgment for breach of promissory note and guaranty; documents defined terms of contractual relationship between FDIC and bank, and documents constituted "verbal acts." [Patrick Malloy Communities, LLC v. Community & Southern Bank, 2015, 334 Ga.App. 76, 778 S.E.2d 242.](#)

## **24-8-802 - Hearsay Rule**

Hearsay shall not be admissible except as provided by this article; provided, however, that if a party does not properly object to hearsay, the objection shall be deemed waived, and the hearsay evidence shall be legal evidence and admissible.

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By failing to object at trial, city transit authority waived its challenge, on appeal, to admission of hearsay statement by motorist to effect that, after she described bus driver's appearance and clothing to transit authority supervisor who responded to scene, the supervisor told her that all transit authority bus drivers wear white shirts and black pants, in motorists' action against transit authority for vicarious liability for negligence of unidentified bus driver in striking motorists' vehicle. [Metropolitan Atlanta Rapid Transit Authority v. Morris, 2015, 334 Ga.App. 565, 779 S.E.2d 726,](#) certiorari denied.

Alleged facts regarding the size of septic tank, which were clearly within the personal knowledge of the affiants, would be considered on appeal of the trial court's denial of property owner's motion for summary judgment on her counterclaim against plumbing and heating contractor for fraud, even though the affiants failed to recite that they

were made on the affiants' personal knowledge, where there were no objections raised below. [Shuford v. Aames Plumbing and Heating, Inc., 2014, 327 Ga.App. 844, 761 S.E.2d 395.](#)

Hearsay evidence is that which does not derive its value solely from the credit of the witness but rests mainly on the veracity and competency of other persons, and is inadmissible unless it falls within a permissible exception to the hearsay rule. [HWA Properties, Inc. v. Community & Southern Bank, 2013, 320 Ga.App. 334, 739 S.E.2d 770.](#)

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Where identified and explained by expert testimony, industry standards relied upon by persons in the witness's particular occupation are admissible, and are not excluded by the hearsay rule. [Morrison v. Kicklighter, 2014, 329 Ga.App. 630, 765 S.E.2d 774.](#)

Automobile repair shop manager's testimony identifying published industry standards for collision repair, automobile manufacturer repair standards, and paint manufacturer standards, and stating that repair work performed on truck owners' truck complied with those standards, was admissible in owners' negligence action against motorist who backed into truck while it was parked, over motorist's hearsay objection. [Morrison v. Kicklighter, 2014, 329 Ga.App. 630, 765 S.E.2d 774.](#)

### **24-8-803 – Hearsay Exceptions – Availability of Declarant Immaterial**

The following shall not be excluded by the hearsay rule, even though the declarant is available as a witness:

(1) **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter;

(2) **Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

(3) **Then existing mental, emotional, or physical condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless such statements relate to the execution, revocation, identification, or terms of the declarant's will and not including a statement of belief as to the intent of another person;

(4) **Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment;

(5) **Recorded recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but shall not itself be received as an exhibit unless offered by an adverse party;

(6) **Records of regularly conducted activity.** Unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness and subject to the provisions of Chapter 7 of this title, a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, if (A) made at or near the time of the described acts, events, conditions, opinions, or diagnoses; (B) made by, or from information transmitted by, a person with personal knowledge and a business duty to report; (C) kept in the course of a regularly conducted business activity; and (D) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or by certification that complies with paragraph (11) or (12) of Code Section 24-9-902 or by any other statute permitting certification. The term "business" as used in this paragraph includes any business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. Public records and reports shall be admissible under paragraph (8) of this Code section and shall not be admissible under this paragraph; [24-9-902 - Self-Authentication.]

(7) **Absence of entry in records kept in accordance with paragraph (6) of this Code section.** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6) of this Code section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness;

(8) **Public records and reports.** Except as otherwise provided by law, public records, reports, statements, or data compilations, in any form, of public offices, setting forth:

(A) The activities of the public office;

(B) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, against the accused in criminal proceedings, matters observed by police officers and other law enforcement personnel in connection with an investigation; or

(C) In civil proceedings and against the state in criminal proceedings, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness;

(9) **Records of vital statistics.** Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law;

(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, evidence in the form of a certification in accordance with Code Section 24-9-902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry; [24-9-902 - Self-Authentication]

(11) **Records of religious organizations.** Statements of birth, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization;

(12) **Marriage, baptismal, and similar certificates.** Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified and purporting to have been issued at the time of the act or within a reasonable time thereafter;

(13) **Family records.** Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like;

(14) **Records of documents affecting an interest in property.** The record of a document purporting to establish or affect an interest

in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable law authorizes the recording of documents of that kind in such office;

(15) **Statements in documents affecting an interest in property.** A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document;

(16) **Statements in ancient documents.** Statements in a document in existence 20 years or more the authenticity of which is established;

(17) **Market reports and commercial publications.** Market quotations, tabulations, lists, directories, or other published compilations generally used and relied upon by the public or by persons in the witness's particular occupation;

(18) **Learned treatises.** To the extent called to the attention of an expert witness upon cross-examination, statements contained in published treatises, periodicals, or pamphlets, whether published electronically or in print, on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, by other expert testimony, or by judicial notice. If admitted, the statements may be used for cross-examination of an expert witness and read into evidence but shall not be received as exhibits;

(19) **Reputation concerning personal or family history.** Reputation among members of a person's family by blood, adoption, or marriage or among a person's associates or in the community concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of the person's personal or family history;

(20) **Reputation concerning boundaries or general history.** Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community or state or nation in which such lands are located;

(21) **Reputation as to character.** Reputation of a person's character among associates or in the community;

(22) **Judgment of previous conviction.** Evidence of a final judgment, entered after a trial or upon a plea of guilty but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but shall not affect admissibility; or

(23) **Judgment as to personal, family, or general history or boundaries.** Judgments as proof of matters of personal, family, or general history or boundaries essential to the judgment, if the same would be provable by evidence of reputation.

#### **24-8-804 - Hearsay Exceptions - Declarant Unavailable**

(a) As used in this Code section, the term "unavailable as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

(3) Testifies to a lack of memory of the subject matter of the declarant's statement;

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance or, in the case of exceptions under paragraph (2), (3), or (4) of subsection (b) of this Code section, the declarant's attendance or testimony, by process or other reasonable means.

A declarant shall not be deemed unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) The following shall not be excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. If deposition testimony is admissible under either the rules stated in Code Section 9-11-32 or this Code section, it shall be admissible at trial in accordance with the rules under which it was offered;

(2) In a prosecution for homicide or in a civil proceeding, a statement made by a declarant while believing that his or her death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death;

(3) A statement against interest. A statement against interest is a statement:

(A) Which 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 a claim by the declarant against another or to expose the declarant to civil or criminal liability; and

(B) Supported by corroborating circumstances that clearly indicate the trustworthiness of the statement if it is offered in a criminal case as a statement that tends to expose the declarant to criminal liability;

(4) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated or a statement concerning the foregoing matters and death also of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared; or

(5) A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

**24-8-805 - Hearsay within Hearsay**

Hearsay included within hearsay shall not be excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule.

#### **24-8-806 - Credibility of Declarant**

#### **24-8-807 - Residual Exceptions**

A statement not specifically covered by any law but having equivalent circumstantial guarantees of trustworthiness shall not be excluded by the hearsay rule, if the court determines that:

- (1) The statement is offered as evidence of a material fact;
- (2) The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
- (3) The general purposes of the rules of evidence and the interests of justice will best be served by admission of the statement into evidence.

However, a statement may not be admitted under this Code section unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Residual hearsay exception was intended to be used only rarely, and was not intended to provide a broad license for trial judges to admit hearsay statements that do not fall within one of the other exceptions contained in the evidence rules. [Rabun v. Rabun, 2017, 341 Ga.App. 878, 802 S.E.2d 296.](#)

### DOCUMENTS - AUTHENTICATION

#### **24-9-901 Requirements of Authentication or Identification**

(a) The requirement of authentication or identification as a condition precedent to admissibility shall be satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Code section:

- (1) Testimony of a witness with knowledge that a matter is what it is claimed to be;

(2) Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation;

(3) Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated. Such specimens shall be furnished to the opposite party no later than ten days prior to trial;

(4) Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances;

(5) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker;

(6) Telephone conversations, by evidence that a call was made to the number assigned at the time by a telephone service provider to a particular person or business, if:

(A) In the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(B) In the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone;

(7) Evidence that a document authorized by law to be recorded or filed and in fact recorded or filed in a public office or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept;

(8) Evidence that a document or data compilation, in any form:

(A) Is in such condition as to create no suspicion concerning its authenticity;

(B) Was in a place where it, if authentic, would likely be; and

(C) Has been in existence 20 years or more at the time it is offered;

(9) Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result; or

(10) Any method of authentication or identification provided by law.

#### **24-9-902 Self Authentication**

Extrinsic evidence of authenticity as a condition precedent to admissibility shall not be required with respect to the following:

(1) through (3) see statute (*confusing language concerning out of state public record documents - simple rule is that all out of state public documents must bear seal as well as a "certification"*).

(4) A duplicate of an official record or report or entry therein or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification by certificate complying with paragraph (1), (2), or (3) of this Code section or complying with any law of the United States or of this state, including Code Section 24-9-920; [Exemplification of public records]

(5) Books, pamphlets, or other publications purporting to be issued by a public office;

(6) Printed materials purporting to be newspapers or periodicals;

(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin;

(8) Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments;

(9) Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law;

(11) The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under paragraph (6) of Code Section 24-8-803 if accompanied by a written declaration of its custodian or other qualified person certifying that the record: [803 - Hearsay exceptions]

(A) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of such matters;

(B) Was kept in the course of the regularly conducted activity; and

(C) Was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph shall provide written notice of such intention to all adverse parties and shall make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge such record and declaration; or

(12) In a civil proceeding, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under paragraph (6) of Code Section 24-8-803 if accompanied by a written declaration by its custodian or other qualified person certifying that the record:

(A) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) Was kept in the course of the regularly conducted activity; and

(C) Was made by the regularly conducted activity as a regular practice.

The declaration shall be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph shall provide written notice of such intention to all adverse parties and shall make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge such record and declaration.

#### **24-9-903 Subscribing Witnesses' Testimony Unnecessary**

#### **24-9-920 Exemplification**

The certificate or attestation of any public officer either of this state or any county thereof or any clerk or keeper of county, consolidated government, or municipal records in this state shall give sufficient validity or authenticity to any copy or transcript of any record, document, paper or file, or other matter or thing in such public officer's respective office, or pertaining thereto, to admit the same in evidence.

#### **24-9-921 Competency to Identify Medical Bills**

(a) Upon the trial of any civil proceeding involving injury or disease, the patient or the member of his or her family or other person responsible for the care of the patient shall be a competent

witness to identify bills for expenses incurred in the treatment of the patient upon a showing by such a witness that the expenses were incurred in connection with the treatment of the injury, disease, or disability involved in the subject of litigation at trial and that the bills were received from:

- (1) A hospital;
- (2) An ambulance service;
- (3) A pharmacy, drugstore, or supplier of therapeutic or orthopedic devices; or
- (4) A licensed practicing physician, dentist, orthodontist, podiatrist, physical or occupational therapist, doctor of chiropractic, psychologist, advanced practice registered nurse, social worker, professional counselor, or marriage and family therapist.

(b) Such items of evidence need not be identified by the one who submits the bill, and it shall not be necessary for an expert witness to testify that the charges were reasonable and necessary. However, nothing in this Code section shall be construed to limit the right of a thorough and sifting cross-examination as to such items of evidence.

#### **24-9-922 Laws and Judicial Proceedings of Other States**

The acts of the legislature of any other state, territory, or possession of the United States, the records and judicial proceedings of any court of any such state, territory, or possession, and the nonjudicial records or books kept in the public offices in any such state, territory, or possession, if properly authenticated, shall have the same full faith and credit in every court within this state as they have by law or usage in the courts of such state, territory, or possession from which they are taken.

#### **24-9-923 Admissibility of Photographs, Motion Pictures, Video Recordings, and Audio Recordings when Necessitated by Unavailability**

(a) As used in this Code section, the term "unavailability of a witness" includes situations in which the authenticating witness:

- (1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the authentication;

(2) Persists in refusing to testify concerning the subject matter of the authentication despite an order of the court to do so;

(3) Testifies to a lack of memory of the subject matter of the authentication;

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of the authentication has been unable to procure the attendance of the authenticating witness by process or other reasonable means.

An authenticating witness shall not be deemed unavailable as a witness if his or her exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of an authentication for the purpose of preventing the witness from attending or testifying.

(b) Subject to any other valid objection, photographs, motion pictures, video recordings, and audio recordings shall be admissible in evidence when necessitated by the unavailability of a witness who can provide personal authentication and when the court determines, based on competent evidence presented to the court, that such items tend to show reliably the fact or facts for which the items are offered.

(c) Subject to any other valid objection, photographs, motion pictures, video recordings, and audio recordings produced at a time when the device producing the items was not being operated by an individual person or was not under the personal control or in the presence of an individual operator shall be admissible in evidence when the court determines, based on competent evidence presented to the court, that such items tend to show reliably the fact or facts for which the items are offered, provided that, prior to the admission of such evidence, the date and time of such photograph, motion picture, or video recording shall be contained on such evidence, and such date and time shall be shown to have been made contemporaneously with the events depicted in such photograph, motion picture, or video recording.

(d) This Code section shall not be the exclusive method of introduction into evidence of photographs, motion pictures, video recordings, and audio recordings but shall be supplementary to any other law and lawful methods existing in this state.

**24-9-924 (Driving Records in Georgia and Other States)**

NEW BEST EVIDENCE RULE:

**24-10-1001 Definitions**

(1) and (2) see statute;

(3) "Original" means the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.

(4) "Duplicate" means a counterpart produced by the same impression as the original or from the same matrix or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, chemical reproduction, or other equivalent techniques which accurately reproduce the original.

**24-10-1002 Requirements of Original**

To prove the contents of a writing, recording, or photograph, the original writing, recording, or photograph shall be required.

**24-10-1003 Admissibility of Duplicates**

A duplicate shall be admissible to the same extent as an original unless:

- (1) A genuine question is raised as to the authenticity of the original; or
- (2) A circumstance exists where it would be unfair to admit the duplicate in lieu of the original.

**24-10-1004 Admissibility of Other Evidence of Contents**

The original shall not be required and other evidence of the contents of a writing, recording, or photograph shall be admissible if:

- (1) All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;
- (2) No original can be obtained by any available judicial process or procedure;
- (3) At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of

proof at the hearing, and that party does not produce the original at the hearing; or

(4) The writing, recording, or photograph is not closely related to a controlling issue.

#### **24-10-1005 Public Records**

The contents of a public record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by duplicate, certified as correct in accordance with Code Section 24-9-902 or Code Section 24-9-920 or testified to be correct by a witness who has compared it with the original. If a duplicate which complies with this Code section cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

#### **24-10-1006 Summaries of Voluminous Works**

The contents of otherwise admissible voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that the contents of such writings, recordings, or photographs be produced in court.

#### **24-10-1007 Proving Contents by Testimony, Deposition, or Written Admissions**

The contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

#### **24-10-1008 Functions of Courts and Jury**

When the admissibility of other evidence of the contents of writings, recordings, or photographs under the rules of evidence depends upon the fulfillment of a condition of fact, the question of whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Code Section 24-1-104; provided, however, that when an issue is raised as to:

(1) Whether the asserted writing, recording, or photograph ever existed;

- (2) Whether another writing, recording, or photograph produced at the trial is the original; or
- (3) Whether other evidence of the contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Lost Documents:

- 24-11-2 Establishment of Lost, Stolen, or Destroyed Public Records**
- 24-11-3 Auditor to Hear Evidence**
- 24-11-20 Duplicate of Office Papers Established Instanter on Motions**

(a) Upon the loss of any original pleading, declaration, bill of indictment, special presentment, accusation, or other office paper, a duplicate may be established instanter on motion.

(b) As used in this article, the term "office paper" means the instrument upon which a proceeding has been brought after the case has gone to trial.

- 24-11-21 Summary Establishment; Petition; Citation or Notice; Order; Defense; Record; Appeal; Bond for Costs**
- 24-11-23 Establishment in Superior Court; How Other Papers Established; Petition; Rule NISI**
- 24-11-26 Certified Endorsement of Duplicate**
- 24-11-27 Proceeding on Lost Paper**

Medical Records Disclosure:

- 24-12-1 Physicians and Pharmacists**
- 24-12-10 Definitions**
- 24-12-11 Confidential or Privileged Character Not Destroyed**

The disclosure of confidential or privileged medical matter constituting all or part of a record kept by a health care facility, a nurse, or a physician, pursuant to laws requiring disclosure or pursuant to limited consent to disclosure, shall not serve to destroy or in any way abridge the confidential or privileged character thereof, except for the purpose for which such disclosure is made.