

1 **Rule 801. Definitions That Apply to This Article;**  
2 **Exclusions from Hearsay**

3 \* \* \* \* \*

4 **(d) Statements That Are Not Hearsay.** A statement  
5 that meets the following conditions is not hearsay:

6 \* \* \* \* \*

7 **(2) *An Opposing Party's Statement.*** The  
8 statement is offered against an opposing  
9 party and:

10 **(A)** was made by the party in an  
11 individual or representative capacity;

12 **(B)** is one the party manifested that it  
13 adopted or believed to be true;

14 **(C)** was made by a person whom the party  
15 authorized to make a statement on the  
16 subject;

17 **(D)** was made by the party's agent or  
18 employee on a matter within the

19 scope of that relationship and while it  
20 existed; or

21 (E) was made by the party's  
22 coconspirator during and in  
23 furtherance of the conspiracy.

24 The statement must be considered but  
25 does not by itself establish the declarant's  
26 authority under (C); the existence or scope of  
27 the relationship under (D); or the existence of  
28 the conspiracy or participation in it under (E).

29 If a party's claim, defense, or  
30 potential liability is directly derived from a  
31 declarant or the declarant's principal, a  
32 statement that would be admissible against  
33 the declarant or the principal under this rule  
34 is also admissible against the party.

#### Committee Note

The rule has been amended to provide that when a party stands in the shoes of a declarant or the declarant's

principal, hearsay statements made by the declarant or principal are admissible against the party. For example, if an estate is bringing a claim for damages suffered by the decedent, any hearsay statement that would have been admitted against the decedent as a party-opponent under this rule is equally admissible against the estate. Other relationships that would support this attribution include assignor/assignee and debtor/trustee when the trustee is pursuing the debtor's claims. The rule is justified because if the party is standing in the shoes of the declarant or the principal, the party should not be placed in a better position as to the admissibility of hearsay than the declarant or the principal would have been. A party that derives its interest from a declarant or principal is ordinarily subject to all the substantive limitations applicable to them, so it follows that the party should be bound by the same evidence rules as well.

Reference to the declarant's principal is necessary because the statement may have been made by the agent of the person or entity whose rights or obligations have been succeeded to by the party against whom the statement is offered. The rule does not apply, however, if the statement is admissible against the agent but not against the principal—for example, if the statement was made by the agent after termination of employment. This is because the successor's potential liability is derived from the principal, not the agent.

The rationale of attribution does not apply, and so the hearsay statement would not be admissible, if the declarant makes the statement after the rights or obligations have been transferred, by contract or operation of law, to the party against whom the statement is offered.