

RULE CHANGE 2014(3)

Colorado Rules of Evidence

Rule 803. Hearsay Exceptions: Availability of Declarant Immaterial

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

(1) through (9) [NO CHANGE]

(10) **Absence of a public record or entry.** Testimony - or a certification under Rule 902 - that a diligent search failed to disclose a public record or statement if:

(A) the testimony or certification is admitted to prove that
(i) the record or statement does not exist; or
(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) in a criminal case, 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.

~~To prove the absence of a record, report, statement, or data compilation, in any form, or the non-occurrence or non-existence 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.~~

~~(Federal Rule Identical.)~~

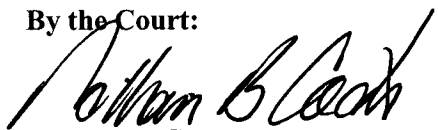
COMMITTEE COMMENT

The Committee recommended adoption of this amended version of C.R.E. 803(10) to follow the identical amendment to F.R.E. 803(10) which took effect on December 1, 2013.

(11) through (18) [NO CHANGE]

Amended and Adopted by the Court, En Banc, February 18, 2014, effective immediately.

By the Court:



**Nathan B. Coats
Justice, Colorado Supreme Court**