

## ADMISSION OF THE EVALUATION INTO EVIDENCE

Below are statutory and case law authorities for admission of an Evaluation into evidence when the other party will not agree to its admission.

I. TRIAL TO THE COURT: In a trial to the Court, there may be no need to mark the Evaluation as an exhibit and admit it into evidence. Green v. Remling, 608 S.W.2d 905 (Tex. 1980), makes it clear that the trial judge may take judicial notice of the court-ordered and filed study and may read and consider same without requiring it to be formally introduced into evidence. It is a part of the “record” of the case.

However, if the case is appealed, different weight may be given to a document for which judicial notice has been taken and a document which is admitted into evidence. See Section A below.

II. TRIAL BY JURY: Only those portions of an Evaluation which are admissible under the rules of evidence may be disclosed to the jury.

A. The easiest method for admitting an Evaluation into evidence is using the hearsay exceptions found in Texas Rules of Evidence 803(8) or 705.

1. Texas Rules of Evidence 803(8) - The most common way to have the report admitted is Rule 803(8) “public record and report.” This is the governmental records exception to hearsay.

2. Texas Rules of Evidence 705 – If you have successfully introduced the investigator as an expert, you may be able to introduce the study into evidence using Rule 705 “disclosure of facts or data underlying expert opinion.

B. However, because a study usually contains lots of statements made to the investigator that would otherwise be hearsay, those statements can be admissible under one of two basic principles:

1. NOT hearsay: Statements meeting the definition of admission by a party-opponent under TRE 801 (e) (2) (A)-(E) are NOT hearsay and are admissible.

**Evaluation – Admission into Evidence**  
**Page 2**

2. EXCEPTIONS to hearsay: A court-ordered Evaluation, once filed with the clerk of the court, may be an exception to hearsay by:
  - (i) fitting the definition of a “public record and report” under TRE 803(8);
  - (ii) reporting statements that reflect a then-existing mental, emotional or physical condition, under TRE 803 (3);
  - (iii) containing disclosures that constitute reputation concerning personal or family history per TRE 803 (19);
  - (iv) containing statements that constitute reputation as to character, fitting the exception in TRE 803 (21); or
  - (v) containing statements that constitute statements against interest, for purposes of the exception in TRE 803 (24).
  
3. It is possible for a redacted Evaluation, eliminating any hearsay statements that do not meet an exception under TRE 803, to be submitted to the jury.