

RULES OF SUPREME COURT OF VIRGINIA  
PART TWO  
VIRGINIA RULES OF EVIDENCE

ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

**Rule 2:404 CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT;  
EXCEPTIONS; OTHER CRIMES**

(a) *Character evidence generally.* Evidence of a person's character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character trait of accused. Evidence of a pertinent character trait of the accused offered by the accused, or by the prosecution to rebut the same;

(2) Character trait of victim. Except as provided in Rule 2:412, evidence of a pertinent character trait or acts of violence by the victim of the crime offered by an accused who has adduced evidence of self defense, or by the prosecution (i) to rebut defense evidence, or (ii) in a criminal case when relevant as circumstantial evidence to establish the death of the victim when other evidence is unavailable; or

(3) Character trait of witness. Evidence of the character trait of a witness, as provided in Rules 2:607, 2:608, and 2:609.

(b) *Other crimes, wrongs, or acts.* Except as provided in Rule 2:413 or by statute, evidence of other crimes, wrongs, or acts is generally not admissible to prove the character trait of a person in order to show that the person acted in conformity therewith. However, if the legitimate probative value of such proof outweighs its incidental prejudice, such evidence is admissible if it tends to prove any relevant fact pertaining to the offense charged, such as where it is relevant to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, accident, or if they are part of a common scheme or plan.

**Last amended by Order dated July 2, 2014; effective immediately.**

RULES OF SUPREME COURT OF VIRGINIA  
PART TWO  
VIRGINIA RULES OF EVIDENCE

ARTICLE VIII. HEARSAY

**Rule 2:803 Hearsay Exceptions Applicable Regardless of Availability of the Declarant**  
(Rule 2:803(10)(a) derived from Code § [8.01-390\(B\)\(C\)](#); Rule 2:803(10)(b) derived from Code § [19.2-188.3](#); Rule 2:803(17) derived from Code § [8.2-724](#); and Rule 2:803(23) is derived from Code § [19.2-268.2](#))

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

(0) *Admission by party-opponent.* A statement offered against a party that is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or employee, made during the term of the agency or employment, concerning a matter within the scope of such agency or employment, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

(1) *Present sense impression.* A spontaneous statement describing or explaining an event or condition made contemporaneously with, or while, the declarant was perceiving the event or condition.

(2) *Excited utterance.* A spontaneous or impulsive statement prompted by a startling event or condition and made by a declarant with firsthand knowledge at a time and under circumstances negating deliberation.

(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 it relates to the execution, revocation, identification, or terms of the declarant's will.

(4) *Statements for purposes of medical 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.* Except as provided by statute, a memorandum or record concerning a matter about which a witness once had firsthand knowledge made or adopted by the witness at or near the time of the event and while the witness had a clear and accurate memory of it, if the witness lacks a present recollection of the event, and the witness vouches for the accuracy of the written memorandum. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) *Business records.* A memorandum, report, record, or data compilation, in any form, of acts, events, calculations or conditions, made at or near the time by, or from information

transmitted by, a person with knowledge in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, organization, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Reserved.*

(8) *Public records and reports.* In addition to categories of government records made admissible by statute, records, reports, statements, or data compilations, in any form, prepared by public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed within the scope of the office or agency's duties, as to which the source of the recorded information could testify if called as a witness; generally excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel when offered against a criminal defendant.

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

(10) *Absence of entries in public records and reports.*

(a) *Civil Cases.* An affidavit signed by an officer, or the deputy thereof, deemed to have custody of records of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same, other than those located in a clerk's office of a court, stating that after a diligent search, no record or entry of such record is found to exist among the records in such office is admissible as evidence that the office has no such record or entry.

(b) *Criminal Cases.* In any criminal hearing or trial, an affidavit signed by a government official who is competent to testify, deemed to have custody of an official record, or signed by such official's designee, stating that after a diligent search, no record or entry of such record is found to exist among the records in such official's custody, is admissible as evidence that the office has no such record or entry, provided that if the hearing or trial is a proceeding other than a preliminary hearing the procedures set forth in subsection G of § [18.2-472.1](#) for admission of an affidavit have been satisfied, mutatis mutandis, and the accused has not objected to the admission of the affidavit pursuant to the procedures set forth in subsection H of § [18.2-472.1](#), mutatis mutandis. Nothing in this subsection (b) shall be construed to affect the admissibility of affidavits in civil cases under subsection (a) of this Rule.

(11) *Records of religious organizations.* Statements of births, 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 statute authorizes the recording of documents of that kind in that 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 generally acted upon as true by persons having an interest in the matter, and contained in a document in existence 30 years or more, the authenticity of which is established.

(17) *Market quotations.* Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown.

(18) *Learned treatises.* See Rule 2:706.

(19) *Reputation concerning boundaries.* Reputation in a community, arising before the controversy, as to boundaries of lands in the community, where the reputation refers to monuments or other delineations on the ground and some evidence of title exists.

(20) *Reputation as to a character trait.* Reputation of a person's character trait among his or her associates or in the community.

(21) *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.

(22) *Statement of identification by witness.* 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.

(23) *Recent complaint of sexual assault.* In any prosecution for criminal sexual assault under Article 7 (§ [18.2-61](#) *et seq.*) of Chapter 4 of Title 18.2, a violation of §§ [18.2-361](#), [18.2-366](#), [18.2-370](#) or § [18.2-370.1](#), the fact that the person injured made complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.

(24) *Price of goods.* In shoplifting cases, price tags regularly affixed to items of personalty offered for sale, or testimony concerning the amounts shown on such tags.

**Last amended by Order dated July 2, 2014; effective immediately.**

RULES OF SUPREME COURT OF VIRGINIA  
PART TWO  
VIRGINIA RULES OF EVIDENCE

ARTICLE IX. AUTHENTICATION

**Rule 2:902 Self-Authentication (Rule 2:902(6) derived from Code § 8.01-390.3 and Code § 8.01-391(D))**

Additional proof of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic public records offered in compliance with statute.* Public records authenticated or certified as provided under a statute of the Commonwealth.

(2) *Foreign public documents.* A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the executing or attesting person, or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certification of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may for good cause shown order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(3) *Presumptions created by law.* Any signature, document, or other matter declared by any law of the United States or of this Commonwealth, to be presumptively or prima facie genuine or authentic.

(4) *Medical records and medical bills in particular actions.* Where authorized by statute, medical records and medical bills, offered upon the forms of authentication specified in the Code of Virginia.

(5) *Specific certificates of analysis and reports.* Certificates of analysis and official reports prepared by designated persons or facilities, when authenticated in accordance with applicable statute.

(6) *Certified Records of a Regularly Conducted Activity.*

(a) In any civil proceeding where a business record is material and otherwise admissible, authentication of the record and the foundation required by subdivision (6) of Rule 2:803 may be laid by (i) witness testimony, (ii) a certification of the authenticity of and foundation for the record made by the custodian of such record or other qualified witness either by affidavit or by

declaration pursuant to Code § 8.01-4.3, or (iii) a combination of witness testimony and a certification.

(b) The proponent of a business record shall (i) give written notice to all other parties if a certification under this section will be relied upon in whole or in part in authenticating and laying the foundation for admission of such record and (ii) provide a copy of the record and the certification to all other parties, so that all parties have a fair opportunity to challenge the record and certification. The notice and copy of the record and certification shall be provided no later than 15 days in advance of the trial or hearing, unless an order of the court specifies a different time. Objections shall be made within five days thereafter, unless an order of the court specifies a different time. If any party timely objects to reliance upon the certification, the authentication and foundation required by subdivision (6) of Rule 2:803 shall be made by witness testimony unless the objection is withdrawn.

(c) A certified business record that satisfies the requirements of this section shall be self-authenticating and requires no extrinsic evidence of authenticity.

(d) A copy of a business record may be offered in lieu of an original upon satisfaction of the requirements of Code § 8.01-391(D) by witness testimony, a certification, or a combination of testimony and a certification.

**Last amended by Order dated July 2, 2014; effective immediately.**

RULES OF SUPREME COURT OF VIRGINIA  
PART TWO A  
APPEALS PURSUANT TO THE  
ADMINISTRATIVE PROCESS ACT

**Rule 2A:2. Notice of Appeal.**

(a) Any party appealing from a regulation or case decision shall file with the agency secretary, within 30 days after adoption of the regulation or after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel. With respect to appeal from a regulation, the date of adoption or readoption shall be the date of publication in the Register of Regulations. In the event that a case decision is required by § [2.2-4023](#) or by any other provision of law to be served by mail upon a party, 3 days shall be added to the 30-day period for that party. Service under this Rule shall be sufficient if sent by registered or certified mail to the party's last address known to the agency.

(b) The notice of appeal shall identify the regulation or case decision appealed from, shall state the names and addresses of the appellant and of all other parties and their counsel, if any, shall specify the circuit court to which the appeal is taken, and shall conclude with a certificate that a copy of the notice of appeal has been mailed to each of the parties. Any copy of a notice of appeal that is sent to a party's counsel or to a party's registered agent, if the party is a corporation, shall be deemed adequate and shall not be a cause for dismissal of the appeal; provided, however, sending a notice of appeal to an agency's counsel shall not satisfy the requirement that a notice of appeal be filed with the agency secretary. The omission of a party whose name and address cannot, after due diligence, be ascertained shall not be cause for dismissal of the appeal.

(c) Any final agency case decision as described in § [2.2-4023](#) shall advise the party of the time for filing a notice of appeal under this Rule.

**Last amended by Order dated July 2, 2014; effective immediately.**

RULES OF SUPREME COURT OF VIRGINIA  
PART THREE A  
CRIMINAL PRACTICE AND PROCEDURE

**Rule 3A:8. Pleas.**

(a) *Pleas by a Corporation.* A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

(b) *Determining Voluntariness of Pleas of Guilty or Nolo Contendere.*

(1) A circuit court shall not accept a plea of guilty or nolo contendere to a felony charge without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea.

(2) A circuit court shall not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

(c) *Plea Agreement Procedure.*

(1) The attorney for the Commonwealth and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon entry by the defendant of a plea of guilty, or a plea of nolo contendere, to a charged offense, or to a lesser or related offense, the attorney for the Commonwealth will do any of the following:

(A) Move for nolle prosequi or dismissal of other charges;

(B) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding on the court;

(C) Agree that a specific sentence is the appropriate disposition of the case.

In any such discussions under this Rule, the court shall not participate.

(2) If a plea agreement has been reached by the parties, it shall, in every felony case, be reduced to writing, signed by the attorney for the Commonwealth, the defendant, and, in every case, his attorney, if any, and presented to the court. The court shall require the disclosure of the agreement in open court or, upon a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (c) (1) (A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report. If the agreement is of the type specified in subdivision (c) (1) (B), the court shall advise



the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw his plea, unless the Commonwealth fails to perform its part of the agreement. In that event, the defendant shall have the right to withdraw his plea.

(3) If the court accepts the plea agreement, the court shall inform the defendant that it will embody in its judgment and sentence the disposition provided for in the agreement.

(4) If the agreement is of the type specified in subdivision (c) (1) (A) or (C) and if the court rejects the plea agreement, the court shall inform the parties of this fact, and advise the defendant personally in open court or, on a showing of good cause, in camera, that the court will not accept the plea agreement. Thereupon, neither party shall be bound by the plea agreement. The defendant shall have the right to withdraw his plea of guilty or plea of nolo contendere and the court shall advise the defendant that, if he does not withdraw his plea, the disposition of the case may be less favorable to him than that contemplated by the plea agreement; and the court shall further advise the defendant that, if he chooses to withdraw his plea of guilty or of nolo contendere, his case will be heard by another judge, unless the parties agree otherwise.

(5) Upon rejecting a plea agreement, a judge shall immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

(6) Except as otherwise provided by law, evidence of a plea of guilty later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged, or any other crime, or of statements made in connection with and relevant to any of the foregoing pleas or offers, is not admissible in the case-in-chief in any civil or criminal proceeding against the person who made the plea or offer. But evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, a plea of nolo contendere, or any offer to plead guilty or nolo contendere to the crime charged or to any other crime, is admissible in any criminal proceeding for perjury or false statement, if the statement was made by the defendant under oath and on the record. In the event that a plea of guilty or a plea of nolo contendere is withdrawn in accordance with this Rule, the judge having received the plea shall take no further part in the trial of the case, unless the parties agree otherwise.

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RULES OF SUPREME COURT OF VIRGINIA  
PART SEVEN C  
GENERAL DISTRICT COURTS –CRIMINAL AND TRAFFIC

**Rule 7C:6. Pleas.**

(a) A court shall not accept a plea of guilty or nolo contendere to any misdemeanor charge punishable by confinement in jail without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea. Before accepting a plea to such a charge, the court shall inform the accused that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(b) Upon rejecting a plea agreement, a judge shall immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

(c) A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

**Last amended by Order dated July 2, 2014; effective immediately.**

RULES OF SUPREME COURT OF VIRGINIA  
PART EIGHT  
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

**Rule 8:18. Pleas.**

(a) *Permissible Pleas by Child.* A child may admit the allegations of the petition or summons by pleading guilty, or the child may plead not guilty, nolo contendere, or enter no plea. If the child enters no plea, the court will proceed as if a denial were entered to the allegations of the petition or summons.

(b) *Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by a Juvenile.* The court shall not accept a plea of guilty or nolo contendere to a charge of delinquency by a child without first determining that the plea is made voluntarily with an understanding of the nature of the allegations in the petition or summons and the consequences of the plea, including that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(c) *Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by an Adult.* In any case involving an adult charged with a crime, the court shall not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

(d) Upon rejecting a plea agreement in any criminal or delinquency matter, a judge shall immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

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RULES OF SUPREME COURT OF VIRGINIA  
PART TWO  
VIRGINIA RULES OF EVIDENCE

ARTICLE IV. RELEVANCY, POLICY, AND CHARACTER TRAIT PROOF

**Rule 2:413. Evidence of similar crimes in child sexual offense cases (derived from Code § 18.2-67.7:1)**

(a) In a criminal case in which the defendant is accused of a felony sexual offense involving a child victim, evidence of the defendant's conviction of another sexual offense or offenses is admissible and may be considered for its bearing on any matter to which it is relevant.

(b) The Commonwealth shall provide to the defendant 14 days prior to trial notice of its intention to introduce copies of final orders evidencing the defendant's qualifying prior criminal convictions. Such notice shall include (i) the date of each prior conviction, (ii) the name and jurisdiction of the court where each prior conviction was obtained, and (iii) each offense of which the defendant was convicted. Prior to commencement of the trial, the Commonwealth shall provide to the defendant photocopies of certified copies of the final orders that it intends to introduce.

(c) This Rule shall not be construed to limit the admission or consideration of evidence under any other rule of court or statute.

(d) For purposes of this Rule, "sexual offense" means any offense or any attempt or conspiracy to engage in any offense described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 or § 18.2-370, 18.2-370.01, or 18.2-370.1 or any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

(e) Evidence offered in a criminal case pursuant to the provisions of this Rule shall be subject to exclusion in accordance with the Virginia Rules of Evidence, including but not limited to Rule 2:403.

**Adopted and promulgated by Order dated July 1, 2014; effective July 1, 2014.**