

FEDERAL RULES OF EVIDENCE (2025)/MD RULES OF EVIDENCE/VA RULES OF EVIDENCE*

102 – Purpose - rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

103 – Rulings on Evidence - A party may claim error in a ruling to admit or exclude evidence. If admitted: must timely object or move to strike; and (B) states the specific ground (2) if the ruling excludes evidence, a party informs the court of its substance by proffer.

104 – Preliminary Questions - The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.€

105 – Limiting Evidence - If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury

106 – Remainder of or Related Writings or Recorded Statements - If a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection.

VA 107 – Ultrahazardous Items as Exhibits – cannot bring items or devices that could pose a significant threat to human health without Court’s permission

201 – Judicial Notice of Adjudicative Facts - This rule governs judicial notice of an adjudicative fact only, not a legislative fact. The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

VA 202 – Judicial Notice of Law – where it is necessary to ascertain the law, statutory, administrative, or otherwise, of this Commonwealth, another state, of the US/another country, the court shall take judicial notice thereof whether specially pleaded or not.

VA 203 – Judicial Notice of Official Publications – Ct shall take judicial notice of the contents of all official publications of the Commonwealth and its political subdivisions and agencies required to be published pursuant to law.

301 – Presumptions in Civil Cases Generally - In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. This rule does not shift the burden of persuasion, which remains on the party who had it originally.

302 – Applying State Law to Presumptions in Civil Cases - In a civil case, state law governs the effect of a presumption regarding a claim or defense for which state law supplies the rule of decision.¥

401 – Test for Relevance - relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.

402 – General Admissibility of Relevant Evidence - Relevant evidence is admissible unless any of the following provides otherwise: the Constitution; a federal statute; these rules; or other rules prescribed by the Supreme Court. Irrelevant evidence is not admissible.

403 – Excluding Relevant Evidence - evidence may be excluded if its probative value is substantially outweighed by a danger of: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

404 – Character Evidence - 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.

405 – Methods of Proving Character - By Reputation/Opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person’s conduct – Specific Instances of Conduct. When a person’s character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person’s conduct.

406 – Habit - Evidence of a person’s habit or an organization’s routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. Do not need an eyewitness**.

407 – Subsequent Remedial Measures - Evidence of the subsequent measures is not admissible to prove: negligence; culpable conduct; a defect in a product or its design; or a need for a warning or instruction. Can be offered for impeachment on ownership, control, or feasibility of precautionary measures.

408 – Compromise Offers and Negotiations – Evidence of compromise offers and negotiations are not admissible to either prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement.£

409 – Offers to Pay Medical/Similar Expenses - evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

VA 409 – Evidence Of Abuse – admissible in certain criminal trials (subject to general rules of evidence)

410 – Pleas, Plea Discussions, and Related Statements – Cannot be used in a criminal or civil case against defendant who made the plea or participated in the plea discussions; a guilty plea that was later withdrawn; a nolo contendere plea; etc.

411 – Liability Insurance - Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. May be admitted for other purpose, such as proving a witness’s bias or prejudice or proving agency, ownership, or control. [Rules 412-415 omitted]

502 – Attorney-Client Privilege and Work Product – disclosure made in federal proceeding or to a federal office or agency; inadvertent disclosure; disclosure made in a state proceeding; controlling effect of a party agreement (see subsection “g” for definitions)

VA 503 – Clergy & Communicant Privilege

VA 504 – Spousal Testimony & Martial Communications Privileges

VA 505 – Healing Arts and Practitioner/Patient Privilege

VA 506 – Mental Health Professional and Client Privilege

VA 507 – Privileged Communication Involving Interpreters

VA 508 – Protected Information; Newsperson Engaged in Journalism

601 – Competency to Testify in General - Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness's competency regarding a claim or defense for which state law supplies the rule of decision.

602 – Need for Personal Knowledge - A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.

603 – Oath/Affirmation to Testify – Before testifying, a witness must give an oath/affirmation to testify truthfully.

604 – Interpreter – must be qualified and must give an oath or affirmation to make a true translation

605 – Judge's Competency as a Witness - presiding judge may not testify as witness at trial. No objection needed to preserve issue[∞]

606 - Juror's Competency as a Witness - A juror may not testify as a witness at trial; statements during jury deliberations; or mental processes etc. *EXCEPTIONS*: extraneous prejudicial information improperly brought to jury's attention; outside influence; mistake made in entering the verdict.

607 - Who May Impeach a Witness - Any party, including the party that called the witness, may attack the witness's credibility.

608 - A Witness's Character for Truthfulness or Untruthfulness – may be attacked by a) reputation or opinion evidence; specific instances of conduct (but not via extrinsic evidence unless it falls under **Rule 609**).

609 - Impeachment by Evidence of a Criminal Conviction – generally limited to past 10 years; with evidence that a crime in convicting jdx was punishable by death; imprisonment for >1y; must be admitted subject to **403** in civil case[≠]

610 – Religious Beliefs or Opinions – evidence of a witness' religious beliefs or opinions is not admissible to attack or support credibility^{***}]

611 – Mode/Order of Examining Witnesses – scope of cross should not go beyond direct and matters affecting credibility. Leading questions to develop direct testimony are limited; OK with a hostile/adverse party, or witness identified with an adverse party.

612 – Writing To Refresh a Witness – adverse party is entitled to have writing produced; cross-examine on it; and introduce into evidence.

613 – Witness' Prior Statement – need not show it or disclose its contents to the witness; but upon request to OC. Extrinsic evidence of a witness' prior inconsistent statement is admissible only if witness is given opportunity to explain or deny the statement. ✓

614 - Court's Calling or Examining a Witness - the court may call a witness on its own or at a party's request; can cross-examine; party may object to the Court's calling at that time OR the next opportunity when the jury is not present.

615 - Excluding Witnesses -The court must order witnesses excluded so that they cannot hear other witnesses' testimony; may also be done sua sponte. Cannot exclude a party, an officer/employee of a party designated as a representative; person essential to presenting a claim/defense; person authorized by statute to be present. Court may prohibit witnesses from access to trial testimony.

MD 616 – Impeachment and Rehab – credibility of witness may be attacked through questions proving bias, interest, lack of personal knowledge, weakness in capacity to perceive/remember/communicate, character for untruthfulness AND extrinsic evidence.

MD 617 – Pretrial eyewitness Identification Evidence – in determining whether eyewitness identification is admissible, the Court shall consider whether there was compliance with the requirements of the Code §3-506 and 3-506.1.

701 – Opinion Testimony by Lay Witnesses - If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

702 – Testimony by EWs - A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert's opinion reflects a reliable application to the principles and methods to the facts of the case. Δ

703 – Bases of EW's Opinion Testimony - An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect. †

704 – Opinion on Ultimate Issue - An opinion is not automatically objectionable just because it embraces an ultimate issue. †

705 – Disclosing Facts/Data Underlying Expert's Opinion - Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

706 – Court-Appointed Experts- On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

VA 706 – Use of earned Treatises with Experts – shall not be excluded as hearsay

801- Hearsay Definition and Exclusions - (a) "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion; (b) "Declarant" means the person who made the statement; (c) Hearsay" means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.**801(d) - Not Hearsay** -(1) A declarant-witness' prior statement;(2) opposing party's statement

802 – Rule Against Hearsay - Hearsay is not admissible unless the following provides otherwise: federal statute; FRE; other rules by the US Supreme Court † (**X-REF with:** §11-304, statements by child victim/witness)

803 – Exceptions - Declarant Availability Not An Issue – present sense impression; excited utterance; then-existing mental, emotional or physical condition; statement made for medical diagnosis or treatment; recorded recollection; records (or absence) of regularly conducted activity; public records (or absence of);vital statistics; records of religious orgs.; certificates of marriage, baptism, etc.; family records; documents (records/statements) that affect an interest in property; statements in ancient documents; learned treatises; market reports; reputation concerning character; judgment of a previous conviction.

804 – Exceptions – Unavailable Declarant – former testimony; statement against interest; statement of personal/family history; statement under the belief of imminent death; statement of personal or family history; statement offered against a party that wrongfully caused declarant's unavailability. (**VA ONLY:** statement by party incapable of testifying)

805 – Hearsay Within Hearsay - not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

806 – Attacking and Supporting the Declarant's Credibility - When a hearsay statement or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness.

807 – Residual Exception - Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in 803/804.Σ

901 – Authenticating/Identifying Evidence - To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

902 –Self-Authenticating – domestic public documents that are sealed and signed; domestic public documents that are not sealed but are signed and certified; foreign public documents; certified copies of public records; official publications; newspapers/periodicals; acknowledged documents; trade inscriptions, etc.; commercial paper and related docs.; presumptions under a federal statute; certified domestic (and foreign) records of a regularly conducted activity; certified records generated by an electronic process/system or copied from an electronic device, etc.†

903 – Subscribing Witness' Testimony -A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity. Σ

1001 – Writings, etc. - (a)"writing" consists of letters, words, numbers, or their equivalent set down in any form; (b)"recording" consists of letters, words, numbers, or their equivalent recorded in any manner; (c) "photograph" means a photographic image or its equivalent stored in any form; (d)"original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it.

1002 – Requirement of the Original - An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.

1003 – Admissibility of Duplicates - A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

VA 1003 – Use of Substitute Checks – generally admissible

1004 – Admissibility of Other Evidence of Content - An original is not required and other evidence of the content of a writing, recording, or photograph is admissible

1005 – Copies of Public Records to Prove Content - The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law if certain conditions are met.

1006 – Summaries to Prove Content - The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

1007 – Testimony or Statement of a Party to Prove Content - The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

1008 – Functions of the Court and Jury - Court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines —

in accordance with Rule 104(b) — any issue about whether:(a) an asserted writing, recording, or photograph ever existed; (b) another one produced at the trial or hearing is the original; or (c) other evidence of content accurately reflects the content.

1101 – Applicability of the Rules - These rules apply to proceedings before: USDCs, USDBs, US COAs, US Ct. of Fed Appeals, USDC of Guam, VI, and N. Mariana Islands.

*- The Federal Rules of Evidence are noted above. For Maryland, add “5-” before, unless otherwise noted. For Virginia, add “8-” before, unless otherwise noted.

MARYLAND

** - Maryland does not make this distinction.

*** - Maryland allows this to come in to show interest/bias.

† - Maryland has expanded upon this Rule.

Δ - This Rule is not intended to overrule Reed v. State, 283 Md. 374 (1978) and other cases adopting the principles enunciated in Frye v. United States, 293 F. 1013 (D.C.Cir.1923). The required scientific foundation for the admission of novel scientific techniques or principles is left to development through case law. Compare Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993). (current through Aug. 1, 2020)

VIRGINIA

€ - VA distinction. If the relevancy of evidence depends upon proof of connecting facts, the Ct. may admit the evidence, subject to introduction of proof sufficient to support a finding of the connecting facts.

¥ - VA distinction. *Federal* law governs effect of presumption.

£ - VA distinction. An admission of liability, or an admission concerning an independent fact pertinent to a question in issue is admissible even if made during settlement negotiations.

∞ - VA distinction. Also applies to court personnel.

≠ - VA distinction. No 10 year general limitation *and* “number of such convictions” may be elicited during exam of party/accused.

∫ - VA does not have this distinction. A witness may be impeached on bias or prejudice only.

√ - VA distinction. Does not apply to a statement of a party opponent.

Σ - VA does not have this Rule.