

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2024

Order Promulgating Amendments to Rules 104, 106, 301, 303, 404, 405, 441, 502, 503, 504, 505, 509, 601, 602, 603, 604, 606, 607, 608, 610, 611, 612, 613, 615, 705, 706, 801, 803, 804, 806, 902, 1004, and 1007 of the Vermont Rules of Evidence

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 104 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 104. PRELIMINARY QUESTIONS

(a) **Questions of Admissibility Generally.** Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b); provided that in a criminal case if the court rules that a confession is voluntary, the confession may be admitted but the issue of voluntariness shall be submitted to the jury. In making a determination under this subdivision, the court is not bound by the rules of evidence except those with respect to privileges.

(b) **Relevancy Conditioned on Fact.** When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) **Hearing of Jury.** Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if the accused ~~he~~ so requests.

(d) **Testimony by Accused.** The accused does not, by testifying upon a preliminary matter, become subject ~~himself~~ to cross-examination as to other issues in the case.

(e) **Weight and Credibility.** This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Reporter's Note—2024 Amendment

Rule 104(c) and (d) is amended to remove gendered pronouns.

2. That Rule 106 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require ~~him~~ at that time ~~to introduce~~ the introduction of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Reporter's Note—2024 Amendment

Rule 106 is amended to remove gendered pronouns.

3. That Rule 301 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 301. PRESUMPTIONS IN CIVIL CASES

(a) **Effect.** In civil actions and proceedings, except as otherwise provided by law, a presumption imposes on the party against whom it operates the burden of producing evidence sufficient to support a finding that the presumed fact does not exist, but a presumption does not shift to such party the burden of persuading the trier of fact that the presumed fact does not exist.

(b) **Prima Facie Evidence.** A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) **Submission to the Jury and Instructions.**

(1) If the evidence of the basic fact is such that no reasonable juror could find the nonexistence of that fact and if the party against whom the presumption operates has not met the production burden imposed ~~on him~~ by subdivision (a) of this rule, the court shall direct the jury to find the existence of the presumed fact.

(2) If the evidence of the basic fact is sufficient to support a finding of the existence of that fact and if the party against whom the presumption operates has not met the ~~his~~ production burden, the court shall submit the question of the existence of the basic fact to the jury and shall direct the jury to find the existence of the presumed fact if it finds the existence of the basic fact.

(3) If the evidence of the basic fact is at least sufficient to support a finding of the existence of that fact and if the party against whom the presumption operates has met the ~~his~~ production burden, the court shall submit the question of the existence of the presumed fact to the jury on the evidence as a whole without reference to the presumption; provided that, if the court determines that a reasonable juror on the evidence as a whole could not find the existence of the presumed fact, it shall not submit that question to the jury.

Reporter's Note—2024 Amendment

Rule 301 is amended to remove gendered pronouns.

4. That Rule 303 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 303. PRESUMPTIONS IN CRIMINAL CASES

(a) **Presumptions in Favor of the Accused.** In criminal cases, a presumption operating in favor of the accused is governed by the provisions of Rule 301.

(b) **Presumptions Against the Accused.**

(1) *Effect.* In criminal cases, except as otherwise provided by law, a presumption operating against the accused permits, but does not require, the trier of fact upon sufficient evidence of the basic fact to find the existence of the presumed fact; but a presumption does not shift to the accused the burden of producing evidence or of persuading the trier of fact that the presumed fact does not exist.

(2) *Prima Facie Evidence.* A statute providing that a fact or group of facts is prima facie evidence of another fact or of guilt establishes a presumption within the meaning of this rule.

(c) **Presumptions Against the Accused: Submission to the Jury.** When a presumption operates against the accused, the court may not direct the jury to find the presumed fact against the accused ~~him~~. If a presumed fact establishes guilt or is an element of the offense or negatives a defense, the court may submit the question of guilt or of the existence of the presumed fact to the jury, but only if a reasonable juror on the evidence as a whole, including the evidence of the basic fact, could find guilt or the presumed fact beyond a reasonable doubt. If the presumed fact has a lesser effect, the question of its existence may be submitted to the jury, provided the basic fact is supported by substantial evidence or is otherwise established, unless the court determines that a reasonable juror on the evidence as a whole could not find the existence of the presumed fact.

(d) **Presumptions Against the Accused: Instructions.** Whenever the existence of a presumed fact against the accused is submitted to the jury, the court shall instruct the jury that if it finds the existence of the basic fact it may regard that fact as sufficient evidence of the presumed fact but is not required to do so. In addition if the presumed fact establishes guilt or is an element of the offense or negatives a defense, the court shall instruct the jury that its existence on all the evidence, must be proved beyond a reasonable doubt.

Reporter's Note—2024 Amendment

Rule 301(c) is amended to remove gendered pronouns.

5. That Rule 404 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES, WRONGS OR ACTS

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

(1) *Character of accused.* In a criminal case, evidence of a pertinent trait of the accused's character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the victim of the crime is offered by an accused and admitted under Rule 404(a)(2), evidence of the same trait of character of the accused offered by the prosecution;

(2) *Character of a victim.* In a criminal case and subject to the limitations imposed by 13 V.S.A. § 3255, evidence of a pertinent trait of character of a victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

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

(b) **Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that ~~he~~ the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Reporter's Note—2024 Amendment

Rule 404(b) is amended to remove gendered pronouns.

6. That Rule 405 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 405. METHODS OF PROVING CHARACTER

(a) **Reputation.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) **Specific Instances of Conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of the person's ~~his~~ conduct.

Reporter's Note—2024 Amendment

Rule 405(b) is amended to remove gendered pronouns.

7. That Rule 411 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 411. LIABILITY INSURANCE

Evidence that a person was or was not insured against liability is not admissible upon the issue whether ~~he~~ the person acted negligently or otherwise wrongfully. This rule does not require the

exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Reporter's Note—2024 Amendment

Rule 411 is amended to remove gendered pronouns.

8. That Rule 502 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 502. LAWYER-CLIENT PRIVILEGE

(a) **Definitions.** As used in this rule:

(1) A “client” is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer ~~him~~.

(2) A “representative of the client” is (A) a person having authority to obtain professional legal services or act on advice rendered pursuant thereto, on behalf of the client, or (B) any other person who, while acting in the scope of employment for the client, makes or receives a confidential communication necessary to effectuate legal representation for the client. In the case of a corporation, the officers and directors and those persons who have the authority to control or substantially participate in a decision regarding action to be taken on the advice of a lawyer are also “representatives of the client.”

(3) A “lawyer” is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation.

(4) A “representative of the lawyer” is one employed by the lawyer to assist the lawyer in the rendition of professional legal services.

(5) A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) **General Rule of Privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client ~~himself~~ or the client's ~~his~~ representative and the client's ~~his~~ lawyer or the lawyer's ~~his~~ representative, (2) between the ~~his~~ lawyer and the lawyer's representative, (3) by the client ~~him~~ or the client's ~~his~~ representative or ~~his~~ lawyer, or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the client, ~~the client's~~ his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(d) **Exceptions.** There is no privilege under this rule:

(1) *Furtherance of Crime or Fraud.* If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) *Claimants Through Same Deceased Client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transactions;

(3) *Breach of Duty by a Lawyer or Client.* As to a communication relevant to an issue of breach of duty by the lawyer to ~~the~~ his client or by the client to ~~the~~ his lawyer;

(4) *Document Attested by a Lawyer.* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

(5) *Joint Clients.* As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.

Reporter's Note—2024 Amendment

Rule 502 is amended to remove gendered pronouns.

9. That Rule 503 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 503. PATIENT'S PRIVILEGE

(a) **Definitions.** As used in this rule:

(1) A "patient" is a person who consults or is examined or interviewed by a physician, dentist, nurse, or mental health professional.

(2) A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A "dentist" is a person authorized to practice dentistry in any state or nation, or reasonably believed by the patient so to be.

(4) A "nurse" is a person registered or licensed as a professional or practical nurse in any state or nation, or reasonably believed by the patient so to be.

(5) A “mental health professional” is a qualified person designated by the Commissioner of Mental Health and Mental Retardation or a physician, psychologist, social worker, or nurse with professional training, experience and demonstrated competence in the treatment of mental illness, or a person reasonably believed by the patient to be a mental health professional.

(6) A communication is “confidential” if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination, or interview; persons reasonably necessary for the transmission of the communication; or persons who are participating in diagnosis and treatment under the direction of a physician, dentist, nurse or mental health professional, including members of the patient’s family or other participants in joint or group counseling sessions.

(b) **General Rule of Privilege.** A patient has a privilege to refuse to disclose and to prevent any other person, including a person present to further the interest of the patient in the consultation, examination or interview, from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient’s ~~his~~ physical, mental, dental, or emotional condition, including alcohol or drug addiction, among the patient himself, the patient’s ~~his~~ physician, dentist, nurse, or mental health professional, and persons who are participating in diagnosis or treatment under the direction of a physician, dentist, nurse, or mental health professional, including members of the patient’s family.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the patient, the patient’s ~~his~~ guardian or conservator, or the personal representative of a deceased patient. The person who was the physician, dentist, nurse, or mental health professional at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(d) **Exceptions.**

(1) *Mental Health Proceedings.* There is no privilege under this rule in proceedings under that part of Title 18 of Vermont Statutes Annotated on mental health for any communications to or from a mental health professional while the professional ~~he~~ is attending the patient.

(2) *Examination by Order of Court.* If the court orders an examination of the physical, mental, or emotional condition of a patient whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise or unless the state seeks to admit communications obtained in an examination of the mental or emotional condition of a patient in a criminal case for the purpose of proving the commission of a criminal offense or for the purpose of impeaching the testimony of the patient.

(3) *Condition an Element of Claim or Defense.* There is no privilege under this rule as to a communication relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which the patient ~~he~~ relies upon the condition as an element of a ~~his~~ claim or defense or, after the patient’s death, in any proceeding in which any party relies upon the condition as an element of the patient’s ~~his~~ claim or defense, unless the state seeks to admit information obtained in the examination of the mental or emotional condition of a patient in a

criminal case for the purpose of proving the commission of a criminal offense or for the purpose of impeaching the testimony of the patient.

(4) *Dental Identification*. There is no privilege under this rule for information acquired by a dentist that is necessary for the identification of a patient.

(5) *Victims of Crime Under the Age of 16*. There is no privilege under this rule for information indicating that a patient who is under the age of sixteen years has been the victim of a crime.

(6) *Required Reports*. There is no privilege under this rule for any report of a patient's medical condition required to be made by statute.

(7) *Risk of harm to a child*. In any proceeding under Rules 4.0-4.3 of the Vermont Rules for Family Proceedings to determine parental rights or responsibilities or parent-child contact, and in any proceeding under Chapter 55 of Title 33, Vermont Statutes Annotated, there is no privilege under this rule if the court, after hearing, finds on the basis of evidence other than that sought to be obtained, that: (1) in any such case lack of disclosure of the communication would pose a risk of harm to the child as defined in 33 V.S.A. § 4912, or in a proceeding to terminate parental rights the communication would be relevant under 33 V.S.A. § 5540(3); (2) the probative value of the communication outweighs the potential harm to the patient; and (3) the evidence sought is not reasonably available by any other means.

Reporter's Note—2024 Amendment

Rule 503 is amended to remove gendered pronouns and to update the title of the Commissioner of Mental Health.

10. That Rule 504 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 504. SPOUSAL ~~HUSBAND-WIFE~~ PRIVILEGE

(a) **Definition**. A statement, letter, conversation, or other communication is “confidential” if it is made privately by any person and is not intended for disclosure to any other person.

(b) **General Rule of Privilege**. Any person has a privilege to refuse to disclose and to prevent the person's ~~his~~ spouse or any other person from disclosing any confidential statement, conversation, letter, or other confidential communication between such person and the person's ~~his~~ spouse occurring while they were lawfully married, and to refuse to testify and prevent the ~~his~~ spouse from testifying in any case as to any matter which in the opinion of the court would lead to a violation of marital confidence. This privilege exists whether or not the person and spouse are still lawfully married at the time at which the spouse's testimony is to be given.

(c) **Who May Claim the Privilege**. The privilege may be claimed by the person who made the communication or by the spouse in the person's ~~his~~ behalf. The authority of the spouse to do so is presumed.

(d) **Exceptions.** There is no privilege under this rule in a proceeding in which one spouse is charged with a crime, or alleged to have committed a tort, against the person or property of (1) the other, (2) a child of either, (3) a person residing in the household of either, or (4) a third person in the course of committing a crime against any of them. There is also no privilege under this rule in any other civil proceeding in which the spouses are adverse parties; or, in the discretion of the court, in any other proceeding where the interests of a child of either are involved.

Reporter's Note—2024 Amendment

Rule 504 is amended to remove gendered pronouns.

11. That Rule 505 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 505. RELIGIOUS PRIVILEGE

(a) **Definitions.** As used in this rule:

(1) “Member of the clergy” means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.

(2) A communication is “confidential” if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) **General Rule of Privilege.** A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in that person's ~~his or her~~ professional character as spiritual adviser.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the communicant, by ~~his or her~~ the communicant's guardian or conservator, or by the communicant's ~~his or her~~ personal representative if such person is deceased. The person who was the member of the clergy at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the communicant.

Reporter's Note—2024 Amendment

Rule 505 is amended to remove gendered pronouns.

12. That Rule 509 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 509. IDENTITY OF INFORMANT

(a) **Rule of Privilege.** The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting

in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) **Who May Claim.** The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) **Exceptions.**

(1) *Voluntary Disclosure; Informant a Witness.* No privilege exists under this rule (A) if the identity of the informant or the informant's ~~his~~ interest in the subject matter of the informant's ~~his~~ communication has been disclosed by a holder of the privilege or by the informant's own deliberate action to those who would have cause to resent the communication, or (B) if the informant testifies as a witness for the government.

(2) *Testimony on Relevant Issue.* If it appears in the case that an informant may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the informed public entity invokes the privilege, the court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informant can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it determines that the matter cannot be resolved satisfactorily upon affidavit. If the court determines there is a reasonable probability that the informant can give the testimony, and the public entity elects not to disclose the informant's ~~his~~ identity, in criminal cases the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include one or more of the following: requiring the prosecuting attorney to comply, granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of the defendant ~~him~~, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing charges. In civil cases, the court may make any order the interests of justice require. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every state of proceedings under this paragraph except a showing in camera at which no counsel or party shall be permitted to be present.

Reporter's Note—2024 Amendment

Rule 509 is amended to remove gendered pronouns. In Rule 509(a), the article "a" is deleted so the sentence reads "violation of law." No substantive change is intended.

13. That Rule 601 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 601. COMPETENCY IN GENERAL: DISQUALIFICATION

(a) **General Rule of Competency.** Every person is competent to be a witness except as otherwise provided by statute or in these rules.

(b) **Disqualification of Witness.** A person is disqualified to be a witness if the court determines that (1) the proposed witness is incapable of providing testimony ~~expressing himself~~ concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand the witness ~~him~~, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth.

Reporter's Note—2024 Amendment

Rule 601 is amended to remove gendered pronouns.

14. That Rule 602 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 602. LACK OF PERSONAL KNOWLEDGE

The testimony of a witness may be excluded or stricken unless evidence is introduced sufficient to support a finding that the witness ~~he~~ has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of ~~the testimony from~~ of the witness ~~himself~~. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Reporter's Note—2024 Amendment

Rule 602 is amended to remove gendered pronouns.

15. That Rule 603 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 603. OATH OR AFFIRMATION

Before testifying, every witness shall be required to promise to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken the ~~his~~ conscience of the witness and impress upon the witness's mind ~~his mind~~ the ~~with his~~ duty to do so.

Reporter's Note—2024 Amendment

Rule 603 is amended to remove gendered pronouns. Additional stylistic amendments are made for readability and no substantive change is intended.

16. That Rule 604 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 604. INTERPRETERS

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to that he will make a true translation.

Reporter's Note—2024 Amendment

Rule 604 is amended to remove gendered pronouns.

17. That Rule 606 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 606. COMPETENCY OF JUROR AS WITNESS

(a) **At the Trial.** A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror ~~he~~ is sitting ~~as a juror~~. If the juror ~~he~~ is called ~~so~~ to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) **Inquiry into validity of verdict or indictment.** Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in conjunction therewith. But a juror may testify about (1) whether extraneous prejudicial information was improperly brought to the jury's attention, (2) whether any outside influence was improperly brought to bear upon any juror, (3) whether there was a mistake in entering the verdict onto the verdict form, or (4) whether any juror discussed matters pertaining to the trial with persons other than fellow jurors. A juror's affidavit or evidence of any statement made by the juror may not be received on a matter about which the juror would be precluded from testifying.

Reporter's Note—2024 Amendment

Rule 606 is amended to remove gendered pronouns.

18. That Rule 607 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 607. WHO MAY IMPEACH

The credibility of a witness may be attacked by any party, including the party calling the witness ~~him~~.

Reporter's Note—2024 Amendment

Rule 606 is amended to remove gendered pronouns.

19. That Rule 608 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

(a) **Opinion and Reputation Evidence of Character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and

(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) **Specific Instances of Conduct.** Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's ~~his~~ credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness's ~~his~~ character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's ~~his~~ privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Reporter's Note—2024 Amendment

Rule 608 is amended to remove gendered pronouns.

20. That Rule 610 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 610. RELIGIOUS BELIEFS OR OPINIONS

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's ~~his~~ credibility is impaired or enhanced.

Reporter's Note—2024 Amendment

Rule 610 is amended to remove gendered pronouns.

21. That Rule 611 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION

(a) **Control by Court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation orderly and effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) **Scope of Cross-Examination.** Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness, except that when the witness is a party, the scope of cross-examination includes any matter of consequence to the determination of the action. In the case of a nonparty witness, the court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) **Leading Questions.** Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's ~~his~~ testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Reporter's Note—2024 Amendment

Rule 612 is amended to remove gendered pronouns.

22. That Rule 612 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 612. WRITING OR OBJECT USED TO REFRESH MEMORY

(a) **While Testifying.** If, while testifying, ~~a witness uses~~ a writing or object is used to refresh the witness's ~~his~~ memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

(b) **Before Testifying.** If, before testifying, ~~a witness uses~~ a writing or object is used to refresh the witness's ~~his~~ memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(c) **Terms and Conditions of Production and Use.** A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony the court shall examine the writing or object in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of any appeal. If a writing or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

Reporter's Note—2024 Amendment

Rule 612 is amended to remove gendered pronouns.

23. That Rule 613 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 613. PRIOR STATEMENTS OF WITNESS

(a) **Examining Witness Concerning Prior Statement.** In examining a witness concerning a prior statement made by the witness him, whether written or not, the statement need not be shown nor its contents disclosed to the witness him at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) **Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

Reporter's Note—2024 Amendment

Rule 613 is amended to remove gendered pronouns.

24. That Rule 615 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 615. EXCLUSION OF WITNESSES

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion; after a witness' testimony has been completed, however, the witness may remain within the courtroom, even if the witness subsequently may be called upon by the other party or recalled in rebuttal, unless a party shows good cause for the witness to be excluded. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's ~~his~~ cause.

Reporter's Note—2024 Amendment

Rule 615 is amended to remove gendered pronouns.

25. That Rule 705 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

An ~~The~~ expert may testify in terms of opinion or inference and give the ~~his~~ reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Reporter's Note—2024 Amendment

Rule 705 is amended to remove gendered pronouns.

26. That Rule 706 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 706. COURT APPOINTED EXPERTS

(a) **Appointment.** The court, on motion of any party or its own motion, may enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witness agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness should not be appointed by the court unless the witness ~~he~~ consents to act. A witness so appointed shall be informed of the witness's ~~his~~ duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's ~~his~~ findings, if any; the witness's ~~his~~ deposition may be taken by any party; and the witness ~~he~~ may be called to testify by the court or any party. The witness ~~He~~ shall be subject to cross-examination by each party, including a party calling the witness ~~him as a witness~~.

(b) **Compensation.** Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. In civil cases or proceedings, the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) **Disclosure of Appointment.** In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) **Parties' Experts of Own Selection.** Nothing in this rule limits the parties in calling expert witnesses of their own selection.

Reporter's Note—2024 Amendment

Rule 706(a) is amended to remove gendered pronouns.

27. That Rule 801 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 801. DEFINITIONS

The following definitions apply under this Article:

(a) **Statement.** A “statement” is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person ~~him~~ as an assertion.

(b) **Declarant.** A “declarant” is a person who makes a statement.

(c) **Hearsay.** “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) **Statements Which Are Not Hearsay.** A statement is not hearsay if

(1) *Prior Statement by Witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the witness's ~~his~~ testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the witness's ~~his~~ testimony and is offered to rebut an express or implied charge against the witness ~~him~~ of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person ~~him~~; or

(2) *Admission by Party-Opponent.* The statement is offered against a party and is (A) the party's ~~his~~ own statement, in either the party's ~~his~~ individual or a representative capacity, or (B) a statement of which the party ~~he~~ has manifested ~~his~~ adoption or belief in its truth, or (C) a statement by a person authorized by the party ~~him~~ to make a statement concerning the subject, or (D) a statement by the party's ~~his~~ agent or servant concerning a matter within the scope of the ~~his~~ agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy. A statement by a co-conspirator may only be admitted if the court finds that the declarant is unavailable and that there is sufficient indicia of reliability to show its trustworthiness.

Reporter's Note—2024 Amendment

Rule 801 is amended to remove gendered pronouns.

28. That Rule 803 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

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) *Present Sense Impression.* A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) *Excited Utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(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 declarant's will.

(4) *Statements for Purposes of Medical Diagnosis or Treatment.* Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations.

(5) *Recorded Recollection.* A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness ~~him~~ to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's ~~his~~ memory and to reflect that knowledge correctly. 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) *Records of Regularly Conducted Business Activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12) or a statute or rule permitting certification, 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, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Absence of Entry in Records Kept in Accordance With the Provisions of Paragraph (6).* Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Public Records and Reports.*

(A) To the extent not otherwise provided in (B), records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

(B) The following are not within this exception to the hearsay rule:

- (i) investigative reports by police and other law enforcement personnel;
- (ii) investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party;
- (iii) factual findings offered by the government in criminal cases;
- (iv) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.

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

(10) *Absence of Public Record or Entry.* To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence 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.

(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 member of the clergy ~~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 authorized 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 in a document in existence 20 years or more whose authenticity is established.

(17) *Market Reports, Commercial Publications.* Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) *Learned Treatises.* To the extent called to the attention of an expert witness upon cross-examination, or relied upon by the expert ~~him~~ in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) *Reputation Concerning Personal or Family History*. Reputation among members of one's ~~his~~ family by blood, adoption, or marriage, or among one's ~~his~~ associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of ~~his~~ personal or family history.

(20) *Reputation Concerning Boundaries or General History*. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) *Reputation as to Character*. Reputation of a person's character among the person's ~~his~~ associates or in the community.

(22) *Judgment of Previous Conviction*. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. A judgment is not admissible under this rule during the pendency of an appeal therefrom.

(23) *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.

(24) *Statements of a Putative Victim Who Is a Minor*. [Repealed.]

Reporter's Note—2024Amendment

Rule 803 is amended to use “member of the clergy” instead of “clergyman” and remove gendered pronouns.

29. That Rule 804 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 804. HEARSAY EXCEPTIONS: DECLARANT UNAVAILABLE

(a) **Definition of Unavailability**. “Unavailability as a witness” includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's ~~his~~ statement; or

(2) Persists in refusing to testify concerning the subject matter of the ~~his~~ statement despite an order of the court to do so; or

(3) Testifies to a lack of memory of the subject matter of the ~~his~~ statement; or

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of ~~the~~ his statement has been unable to procure ~~the declarant's~~ his attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), ~~his~~ attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if ~~the declarant's~~ his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of ~~the declarant's~~ his statement for the purpose of preventing the witness from attending or testifying.

(b) **Hearsay Exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement Under Belief of Impending Death.* In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that ~~the declarant's own~~ his death was imminent, concerning the cause or circumstances of what ~~the declarant~~ he believed to be ~~his~~ impending death.

(3) *Statement Against Interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject ~~the declarant~~ him to civil or criminal liability, or to render invalid a claim by ~~the declarant~~ him against another, that a reasonable ~~person~~ man in ~~the same~~ his position would not have made the statement unless ~~believing he believed~~ believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. A statement of confession offered against the accused in a criminal case, made by a co-defendant or other person implicating both ~~the co-defendant or other person~~ himself and the accused, is not within this exception.

(4) *Statement of Personal or Family History or Concerning Boundaries.*

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared; or

(C) a statement as to boundaries of land.

(5) [Reserved]

(6) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Reporter's Note—2024 Amendment

Rule 804 is amended to remove gendered pronouns.

30. That Rule 806 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT

When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the statement admitted in evidence, is not subject to any requirement that the declarant ~~he~~ may have been afforded an opportunity to deny or explain. If the party against whom a statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant ~~him~~ on the statement as if under cross-examination.

Reporter's Note—2024 Amendment

Rule 806 is amended to remove gendered pronouns.

31. That Rule 902 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 902. SELF-AUTHENTICATION

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

(1) *Domestic Public Documents Under Seal*. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic Public Documents Not Under Seal*. (A) A document purporting to bear the signature ~~in his official capacity~~ of an officer or employee of the State of Vermont, or of any political subdivision, department, or agency thereof, acting in an official capacity. (B) A document purporting to bear the signature ~~in his official capacity~~ of an officer or employee of

any other entity included in paragraph (1) hereof acting in an official capacity, if accompanied by a certificate under oath of such person that the person ~~he~~ acts in that capacity or if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) *Foreign Public Documents*. A document made authentic by treaty between the United States and a foreign country or, if no treaty applies, a document purporting to be executed or attested in an ~~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 certificates 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.

(4) *Certified Copies of Public Records*. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any statute of the United States or the State of Vermont or rule prescribed by the Supreme Court.

(5) *Official Publications*. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) *Newspapers and Periodicals*. Printed materials purporting to be newspapers or periodicals.

(7) *Trade Inscriptions and the Like*. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) *Acknowledged Documents*. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) *Commercial Paper and Related Documents*. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) *Presumptions Created by Statute*. Any signature, document, or other matter declared by any statute of the United States or of the State of Vermont to be presumptively or prima facie genuine or authentic.

(11) *Certified Domestic Records of Regularly Conducted Activity*. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, made under oath, certifying that the record:

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties and must make the record and declaration available for inspection sufficiently in advance of offering them ~~their offer~~ into evidence to provide an adverse party with a fair opportunity to challenge ~~them~~ the offer.

(12) *Certified Foreign Records of Regularly Conducted Activity*. The original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record:

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties and must make the record and declaration available for inspection sufficiently in advance of offering them ~~their offer~~ into evidence to provide an adverse party with a fair opportunity to challenge ~~them~~ the offer.

(13) *Blockchain records*. Any digital record electronically registered in a blockchain if it is accompanied by a written declaration of a qualified person, made under oath, stating the qualification of the person to make the certification and:

(A) the date and time the record entered the blockchain;

(B) the date and time the record was received from the blockchain;

(C) that the record was maintained in the blockchain as a regularly conducted activity;
and

(D) that the record was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties and must make the record and declaration available for inspection sufficiently in advance of offering them into evidence to provide an adverse party with a fair opportunity to challenge the offer.

Reporter's Note—2024 Amendment

Rule 902 is amended to remove gendered pronouns. Rule 903(11) and (12) are amended stylistically and no substantive change is intended.

32. That Rule 1004 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 1004. ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if

(1) *Originals Lost or Destroyed*. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) *Original Not Obtainable*. No original can be obtained by any available judicial process or procedure; or

(3) *Original in Possession of Opponent*. At a time when an original was under the control of the party against whom a writing, recording, or photograph is offered, the party ~~he~~ was put on notice, by the pleadings or otherwise, that the contents would be subject to proof at the hearing, and that party ~~he~~ does not produce the original at the hearing; or

(4) *Collateral Matters*. The writing, recording, or photograph is not closely related to a controlling issue.

Reporter's Note—2024 Amendment

Rule 1004 is amended to remove gendered pronouns.

33. That Rule 1007 of the Vermont Rules of Evidence be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 1007. TESTIMONY OR WRITTEN ADMISSION OF PARTY

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's ~~his~~ written admission, without accounting for the nonproduction of the original.

Reporter's Note—2024 Amendment

Rule 1007 is amended to remove gendered pronouns.

34. That these rules are prescribed and promulgated effective _____, 2024. The Reporter's Notes are advisory.

35. That the Chief Justice is authorized to report this rule to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2024.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen Associate Justice

Nancy J. Waples, Associate Justice