

## VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on* Wednesday *the* 12th *day of* November, 2014.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective July 1, 2015.

Amend Rule 2:801 to read as follows:

**Rule 2:801. 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 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) *Prior statements*. When a party or non-party witness testifies either live or by deposition, a prior statement (whether under oath or not) is hearsay if offered in evidence to prove the truth of the matters it asserts, but may be received in evidence for all purposes if the statement is admissible under any hearsay exception provided in Rules 2:803 or 2:804. In addition, if not excluded under another Rule of Evidence or a statute, a prior hearsay statement may also be admitted as follows:

(1) *Prior inconsistent statements*. A prior statement that is inconsistent with the hearing testimony of the witness is admissible for impeachment of the witness' credibility when

offered in compliance with Rule 2:613.

(2) *Prior consistent statements.* A prior statement that is consistent with the hearing testimony of the witness is admissible for purposes of rehabilitating the witness' credibility, but only if

(A) the witness has been impeached using a prior inconsistent statement as provided in Rule 2:607, Rule 2:613 and/or subpart (d)(1) of this Rule 801, or

(B) (i) the witness has been impeached based on alleged improper influence, or a motive to falsify testimony, such as bias, interest, corruption or relationship to a party or a cause, or by an express or implied charge that the in-court testimony is a recent fabrication; and

(ii) the proponent of the prior statement shows that it was made before any litigation motive arose for the witness to make a false statement.

Amend Rule 2:803 to read as follows:

**Rule 2:803. Hearsay Exceptions Applicable Regardless Of Availability Of The Declarant (Rule 2:803(10) (a) derived from Code § 8.01-390(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) derived from Code § 19.2-268.2).**

\* \* \*

(6) *Records of a Regularly Conducted Activity.* A record of acts, events, calculations, or conditions if:

(A) the record was made at or near the time of the acts, events, calculations, or conditions by--or from information transmitted by--someone with knowledge;

(B) the record was made and kept in the course of a

regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making and keeping the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 2:902(6) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

\* \* \*

A Copy,

Teste: *Pat L. Harringer*

Clerk