STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
THE MAINE RULES OF EVIDENCE

2014 Me. Rules 15

Effective: January 1, 2015

All of the Justices concurring therein, the following amendments to the Maine Rules of Evidence are adopted to be effective on the date indicated above. The amendments replace the current Rules of Evidence with the Restyled Maine Rules of Evidence. To aid in understanding of the amendments, an Advisory Committee Note appears as an initial explanation of the changes, and further restyling notes appear after the text of most restyled rules. The Advisory Committee Notes and Restyling Notes state the reasons for and effect of the changes, but the notes are not part of the amendments adopted by the Court.

1. The Maine Rules of Evidence, as last amended effective January 1, 2012, are abrogated and the Restyled Maine Rules of Evidence are adopted to read as follows:

Maine Advisory Committee on Rules of Evidence
Note: Proposed Restyled Rules of Evidence

The Maine Advisory Committee on Rules of Evidence proposed that the Maine Rules of Evidence be restyled as set forth below. The restyling project, which has taken place over the last two years, follows a similar project by the Federal Advisory Committee on Rules of Evidence to restyle the Federal counterparts to our evidence rules and similar projects for the Federal Rules of Civil and Criminal Procedure. The purpose of the restyling is to make the rules clearer and easier of application by adoption of simple and consistent language, style, and format conventions and elimination of ambiguous or obsolete terminology. The recommendations for restyling are intended to preserve the substance of the respective rules without change, but present the respective Maine rules in the language and format consistent with their restyled counterparts in the Federal Rules of Evidence. Each rule is accompanied by a "Maine Restyling Note" and many also have the Federal Advisory Committee note on the Federal restyling.

In reviewing the work of the Maine Advisory Committee on Rules of Evidence in preparing to publish the Restyled Rules of Evidence, the Court has made some minor clarifications to improve language, and, as the Advisory Committee invited the court to consider, the Court has elected to continue the existing exemption of proceedings regarding probation, parole, administrative release, and deferred dispositions from the requirements of the Maine Rules of Evidence. Those proceedings remain subject to fundamental due process requirements. *See State v. James*, 2002 ME 86, ¶¶ 13-15, 797 A.2d 732.

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The Biennial Report to the Court from Professor Deirdre Smith, Chair of the Advisory Committee on the Maine Rules of Evidence, dated October 14, 2014, included the following notes regarding the Restyling Project:

Restyling Project

The Committee's primary project during the past two years was the complete redrafting of the Maine Rules of Evidence (MREs) to conform to the restyling format incorporated into the Federal Rules of Evidence in 2011. As I explained in the memorandum I submitted to the Court this past summer with the Committee's complete set of proposed restyled rules, the entire Committee took part in this project. The Committee's Consultant, Prof. Peter Murray, assisted by our excellent Student Liaisons, Margaret Machiaek (2012-2013) and Kevin Decker (2013-2014), took the lead in drafting restyled versions of each rule. We worked through the proposed restyled rules in three "batches," each of which was carefully reviewed by a subcommittee assigned to that "batch." Our Judicial Liaison, Justice Donald Alexander, was closely involved with each step of the project and attended most of the subcommittee meetings. Once the subcommittee completed its review and revision of the proposed rules, that batch was distributed to the full Committee for review and discussion. We submitted the complete set of proposed rules to the Court on June 17, 2014. The Court made some minor revisions to the proposed rules and posted them for public comment. No comments were received other than some very helpful ones by Matthew Pollack. My understanding is that those comments have been incorporated, and the rules are now ready for final approval by the Court. Although this was a lengthy and labor-intensive process, I think that it was one well worth undertaking. The revised rules are written with more contemporary language and are better formatted and therefore easier to learn and to use.

MAINE RULES OF EVIDENCE

TABLE OF RULES

MAINE RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 101. Applicability; Definitions; Title

(a) Rules applicable. Except as otherwise provided in (b), these rules apply to all actions and proceedings before:

(1) The Supreme Judicial Court when not sitting as the Law Court;

(2) The Superior Court;

(3) The District Court; and

(4) The Probate Court.

(b) Rules inapplicable. These rules—except for those governing privilege—do not apply to the following:

(1) The court's determination under Rule 104(a) of a preliminary question of fact governing admissibility;

(2) Grand jury proceedings;

(3) Juvenile proceedings under the Maine Juvenile Code other than

(A) Probable cause determinations in bindover hearings; or

(B) Adjudicatory hearings;

(4) Statutory small claims in the District Court;

(5) Proceedings on applications for warrants;

(6) Sentencing proceedings;

(7) Proceedings regarding revocation, modification, or termination of probation, parole, administrative release or deferred disposition;

(8) Bail proceedings;

(9) Proceedings to determine probable cause;

(10) Contempt proceedings in which the court may act summarily; and

(11) Proceedings exempt from applicability of the Rules of Evidence by statute.

(c) Definitions. In these rules:

(1) "Civil case" means a civil action or proceeding;

(2) "Criminal case" includes a criminal proceeding;

(3) "Public office" includes a public agency;

(4) "Record" includes a memorandum, report, or data compilation;

(5) A "rule prescribed by the Supreme Judicial Court" means a rule adopted by the Maine Supreme Judicial Court under statutory or inherent authority; and

(6) A reference to any kind of written material or any other medium includes electronically stored information.

(d) Title. These rules may be known and cited as the Maine Rules of Evidence.

Maine Restyling Note

The Maine Rules of Evidence Restyling Project follows a similar project by the Federal Advisory Committee on Rules of Evidence to restyle the federal counterparts to our evidence rules as well as similar projects for the Federal Rules of Civil and Criminal Procedure. The purpose of the restyling is to make the rules clearer and easier to apply by adoption of simple and consistent language, style, and format conventions and elimination of ambiguous or obsolete terminology. Where the Maine Rule of Evidence is substantially identical in substance to the corresponding Federal Rule of Evidence, the Advisory Committee recommends that the Court adopt language identical to that in the Federal Rules, and we have included the Federal Advisory Committee's restyling note with the proposed

amended Rule. Where a Maine Rule departs in substance from the corresponding Federal Rule, we have recommended revisions that follow the same restyling format as in the other Rules, as described in "The Style Project" in the Federal Advisory Committee Note to Rule 101.

The language of Maine Rule 101(c) closely tracks existing Federal Rule 101(b) in terms of the definitions (the proposed Maine restyling changes the references to Maine references and adds a reference to "or inherent" to "statutory authority" for rule-making). Otherwise, the proposed Maine Rule 101 differs significantly from the Federal Rule by setting forth, in sections (a) and (b), a complete description of the applicability of the Rules to proceedings in Maine courts. As part of the Restyling Project, the Advisory Committee recommends that the Court consolidate all references to applicability in the Rules, including those presently in Rules 104(a) and 1101, into one comprehensive provision in Rule 101. The Committee recommends adding references to deferred dispositions and administrative release in Rule 101(b)(7) as such dispositions are now common in criminal proceedings and are sufficiently analogous to probation proceedings to warrant consistent treatment. The Committee further recommends that the Court eliminate the final sentence of current Maine Rule 104(a) and repeal Rule 1101 entirely as part of this consolidation. Finally, the Committee has proposed that the reference to the title of the Rules be moved from Rule 1102 to a new section 101(d), eliminating the need for Rule 1102 as well.

The restyled Rule does not make specific reference to hearings on "motions to suppress evidence and the like," which are referred to in current Maine Rule 104(a) as not excepted from applicability of the Rules of Evidence. By failing to include an express "exception to the exception" the Committee does not intend to change Maine law to the effect that the Rules of Evidence do apply to hearings in proceedings addressing the suppression of evidence.

Federal Advisory Committee Note

The language of Rule 101 has been amended, and definitions have been added, as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The reference to electronically stored information is intended to track the language of Fed. R. Civ. P. 34.

The Style Project

The Evidence Rules are the fourth set of national procedural rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure took effect in 2007. The restyled Rules of Evidence apply the same general drafting guidelines and principles used in restyling the Appellate, Criminal, and Civil Rules.

1. General Guidelines.

Guidance in drafting, usage, and style was provided by Bryan Garner, *Guidelines for Drafting and Editing Court Rules,* Administrative Office of the United States Courts (1969) and Bryan Garner, *Dictionary of Modern Legal Usage* (2d ed. 1995). *See also* Joseph Kimble, *Guiding Principles for Restyling the Civil Rules,* in *Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure,* at page x (Feb. 2005) (available at http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Prelim_draft_proposed_pt1.pdf); Joseph Kimble, *Lessons in Drafting from the New Federal Rules of Civil Procedure*, 12 Scribes J. Legal Writing 25 (2008-2009). For specific commentary on the Evidence restyling project, see Joseph Kimble, *Drafting Examples from the Proposed New Federal Rules of Evidence*, 88 Mich. B.J. 52 (Aug. 2009); 88 Mich. B.J. 46 (Sept. 2009); 88 Mich. B.J. 54 (Oct. 2009); 88 Mich. B.J. 50 (Nov. 2009).

2. Formatting Changes.

Many of the changes in the restyled Evidence Rules result from using format to achieve clearer presentations. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. "Hanging indents" are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed. Rules 103, 404(b), 606(b), and 612 illustrate the benefits of formatting changes.

3. Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words.

The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. For example, consistent expression is achieved by not switching between "accused" and "defendant" or between "party opponent" and "opposing party" or between the various formulations of civil and criminal action/case/proceeding.

The restyled rules minimize the use of inherently ambiguous words. For example, the word "shall" can mean "must," "may," or something else, depending on context. The potential for confusion is exacerbated by the fact the word "shall" is no longer generally used in spoken or clearly written English. The restyled rules replace "shall" with "must," "may," or "should," depending on which one the context and established interpretation make correct in each rule.

The restyled rules minimize the use of redundant "intensifiers." These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The absence of intensifiers in the restyled rules does not change their substantive meaning. *See, e.g.*, Rule 104(c) (omitting "in all cases"); Rule 602 (omitting "but need not"); Rule 611(b) (omitting "in the exercise of discretion").

The restyled rules also remove words and concepts that are outdated or redundant.

4. Rule Numbers.

The restyled rules keep the same numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity.

5. No Substantive Change.

The Committee made special efforts to reject any purported style improvement that might result in a substantive change in the application of a rule. The Committee considered a change to be "substantive" if any of the following conditions were met:

a. Under the existing practice in any circuit, the change could lead to a different result on a question of admissibility (e.g., a change that requires a court to provide either a less or more stringent standard in evaluating the admissibility of particular evidence);

b. Under the existing practice in any circuit, it could lead to a change in the procedure by which an admissibility decision is made (e.g., a change in the time in which an objection must be made, or a change in whether a court must hold a hearing on an admissibility question);

c. The change would restructure a rule in a way that would alter the approach that courts and litigants have used to think about, and argue about, questions of admissibility (e.g., merging Rules 104(a) and 104(b) into a single subdivision); or

d. The amendment would change a "sacred phrase"—one that has become so familiar in practice that to alter it would be unduly disruptive to practice and expectations. Examples in the Evidence Rules include "unfair prejudice" and "truth of the matter asserted."

Rule 102. Purpose

These 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.

Maine Restyling Note

Maine Rule 102 and Federal Rule 102 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Federal Advisory Committee Note

The language of Rule 102 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 103. Rulings on Evidence

(a) Preserving a claim of error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) If the ruling admits evidence, a party, on the record:

(A) Timely objects or moves to strike; and

(B) States the specific ground, unless it was apparent from the context; or

(2) If the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Court's statement about the ruling; directing an offer of proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(c) Preventing the jury from hearing inadmissible evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(d) Taking notice of plain error. A court may take notice of an obvious error affecting a substantial right, even if the claim of error was not properly preserved.

(e) **Effect of pretrial ruling.** A pretrial objection to or proffer of evidence must be timely renewed at trial unless the court states on the record, or the context clearly demonstrates, that a ruling on the objection or proffer is final.

Maine Restyling Note

Maine Rule 103 is substantially similar to Federal Rule 103, with one small difference. Presently, Maine Rule 103(e) puts the burden on counsel to renew an objection or offer made in limine or otherwise before the evidence would be offered at trial, unless the trial judge or the circumstances make it clear that the previous ruling was indeed final. The Federal Rule (at the end of old subsection (a) and in new subsection (b)) makes the pretrial ruling final so that the objection or proffer need not be renewed at trial.

The Maine departure represents a policy choice for Maine. The proposed restyled Rule 103 embodies this policy choice by carrying over former Maine Rule 103(e) without a change in language.

Federal Advisory Committee Note

The language of Rule 103 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 104. Preliminary Questions

(a) **In general.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible.

(b) **Relevance that depends on a fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) **Conducting a hearing so that the jury cannot hear it.** The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) The hearing involves the admissibility of a confession;

(2) A defendant in a criminal case is a witness and so requests; or

(3) Justice so requires.

(d) Cross-examining a defendant in a criminal case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) Evidence relevant to weight and credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

Maine Restyling Note

Current Maine Rule 104 is slightly different from its former Federal counterpart. Federal Rule 104(b) has been restyled to make it very similar to Maine Rule 104(b). The language regarding applicability of the rules of evidence in preliminary determinations has been eliminated from Rule 104(a) as part of the restyling process to reflect that the proposed new Rule 101 sets forth all provisions regarding the applicability of the Rules. Maine Rule 104(a) previously included a reference to the inapplicability of the Rules on preliminary questions other than those arising in connection with Motions to Suppress "and the like." There is no express reference to Motions to Suppress in the proposed revised Rule 101 as it was the determination of the Advisory Committee that Motions to Supress, which generally consider whether evidence was obtained illegally such as in violation of a person's constitutional rights, are not preliminary determinations of admissibility under Rule 104. Under the revised language and consistent with well-settled Maine law and practice, the Maine Rules of Evidence will continue to apply during evidentiary hearings on such motions.

Federal Advisory Committee Note

The language of Rule 104 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 105. Limiting Evidence That Is Not Admissible against Other Parties or for Other Purposes

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 accordingly.

In a criminal case tried to a jury, evidence inadmissible as to one defendant must not be admitted as to other defendants unless all references to the defendant as to whom it is inadmissible have been effectively deleted.

Maine Restyling Note

The language of the first sentence of Maine Rule 105 is identical to Federal Rule 105. Maine's second sentence is to implement Maine's version of the holding in *U.S. v. Bruton,* 391 U.S. 123, 126 (1968), which has been carried over into the restyled Rules.

Federal Advisory Committee Note

The language of Rule 105 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 106. Remainder of or Related Writings or Recorded Statements

If a party utilizes in court all or part of a writing or recorded 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 time.

Maine Restyling Note

Maine Rule 106 is a little broader than its federal counterpart, in that it authorizes the introduction in evidence of a writing or other parts of a writing that is "utilized" in court, not just admitted. This is to allow a party to attempt to counteract potentially incomplete or misleading handling or reference to writings in court even if they are not formally offered in evidence. *See* Maine Advisers' Note to Rule 106. This policy choice has been carried over in the restyled Rule.

Federal Advisory Committee Note

The language of Rule 106 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of facts that may be judicially noticed. 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.

(c) Taking notice. The court:

(1) May take judicial notice on its own; or

(2) Must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(e) Opportunity to be heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing the jury. The court must instruct the jury to accept the noticed fact as conclusive.

Maine Restyling Note

Maine Rule 201 is similar, but not identical to Federal Rule 201. In Maine there is no distinction between civil and criminal cases in the effect of judicial notice. In both cases the court instructs the jury that the fact noticed should be accepted as conclusive. This policy choice has been carried over into the restyled Rule. *See also* 16 M.R.S. §§ 401-406 (addressing judicial notice of laws of other jurisdictions).

Federal Advisory Committee Note

The language of Rule 201 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ARTICLE III. PRESUMPTIONS

Rule 301. Presumptions in Civil Cases Generally

(a) **Effect.** In a civil case, unless a statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

(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) **Conflicting presumptions.** If two presumptions conflict with each other, the court must apply the presumption that is more strongly supported by policy and logic. If neither presumption is more strongly supported by policy and logic, both presumptions must be disregarded.

Maine Restyling Note

Maine Rule 301 is quite different from Federal Rule 301, in that the effect of a presumption is different and there are additional provisions dealing with the phrase "prima facie evidence" and conflicting presumptions. The proposed restyled Rule attempts to retain these distinctions in restyled format and language.

Federal Advisory Committee Note

The language of Rule 301 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 302. Presumption of Legitimacy

A child conceived by or born to a woman while she is lawfully married is presumed to be the child of the woman and her spouse unless the contrary is established by proof beyond a reasonable doubt.

Maine Restyling Note

Maine's version of Rule 302 is entirely different from Federal Rule 302, which is not necessary in Maine. The restyled Rule attempts to restate the Maine Rule in more succinct terms that resonate with the criminal burden of proof on which it is based. There is some question about whether this Rule continues to be necessary or appropriate in view of current developments that permit quick and easy determination of biological parentage.

Rule 303. Presumptions in Criminal Cases

(a) **Scope.** This rule governs the application of statutory and common law presumptions, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt in criminal cases.

(b) **Submission to jury.** The court may not direct a verdict against an accused based on a presumption or statutory provisions that certain facts are prima facie evidence of other facts or of guilt. The court may permit a jury to infer guilt or a fact relevant to guilt based on a statutory or common law presumption or prima facie evidence, if the evidence as a whole supports guilt beyond a reasonable doubt.

(c) **Instructing the jury.** Whenever the existence of a presumed fact against the accused is submitted to the jury, the court in instructing the jury should avoid charging in terms of a presumption. The charge must include an

instruction that the jurors may draw reasonable inferences from facts proved beyond a reasonable doubt and may convict the accused in reliance upon an inference of fact if they conclude that such inference is valid and if the inference convinces them of guilt beyond a reasonable doubt and not otherwise.

Maine Restyling Note

The Federal Rules of Evidence do not deal with presumptions in the context of criminal cases. The Maine Rule has been restyled in accordance with the federal restyling format.

ARTICLE IV. RELEVANCE AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is 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.

Maine Restyling Note

Maine Rule 401 and Federal Rule 401 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule. The restyled Rule breaks out the concepts of classical relevance and materiality in two subsections.

Federal Advisory Committee Note

The language of Rule 401 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless any of the following provides otherwise:

- A federal or state statute;
- These rules; or
- Other rules applicable in the courts of this state.

Irrelevant evidence is not admissible.

Maine Restyling Note

There are slight differences in language between the Maine and the Federal Rules. The Federal Rule lists the various other sources of authority. The existing and the restyled Maine versions merely make reference to statutes and "other rules applicable in the courts of this state," which is intended to cover constitutional rules.

Federal Advisory Committee Note

The language of Rule 402 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Maine Restyling Note

Maine Rule 403 and Federal Rule 403 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Federal Advisory Committee Note

The language of Rule 403 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 404. Character Evidence; Crimes or Other Acts

(a) Character evidence.

(1) *Prohibited uses.* Evidence of 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.

(2) *Exception for a defendant in a criminal case.* A defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

(3) *Exceptions for a witness.* Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) Crimes, wrongs, or other acts. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

Maine Restyling Note

Maine Rule 404 differs in some respects from its federal counterpart. The Maine Rule does not include any exception for evidence of the character of a victim in a criminal case, or permitting the prosecution to use evidence of the defendant's character to rebut it. The Maine Rule also does not spell out the grounds for limited admissibility of evidence of other wrongs under Rule 404(b). This does not mean that such evidence is not admissible for limited "non-character" purposes. However, the Maine Rule does not list some permissible non-character uses lest it be inferred that these are the only non-character purposes for which the evidence may be admitted. These differences have been maintained in the restyled Rule.

Federal Advisory Committee Note

The language of Rule 404 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 405. Methods of Proving Character

(a) **By reputation.** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) **By 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.

Maine Restyling Note

Existing Maine Rule 405 permits proof of character evidence only by reputation. This substantive difference between the Maine and Federal Rules is maintained in the restyled Rule.

Federal Advisory Committee Note

The language of Rule 405 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 406. Habit; Routine Practice

(a) **Admissibility.** 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. The

court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

(b) Method of proof. Habit or routine practice may be proved by proof of a sufficient number of instances of conduct to support a finding that the habit existed or that the practice was routine.

Maine Restyling Note

Maine Rule 406(a) is identical with Federal Rule 406. Maine Rule 406(b) specifically authorizes the use of evidence of specific instances of conduct to prove habit or routine practice. The language of Maine Rule 406(b) has been carried over into the restyled Rule.

Federal Advisory Committee Note

The language of Rule 406 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 407. Subsequent Remedial Measures; Notification of Defect

(a) Subsequent remedial measures. When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

(1) Negligence;

(2) Culpable conduct;

(3) A defect in a product or its design; or

(4) A need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures.

(b) Notification of defect. Notwithstanding subdivision (a) of this rule, a manufacturer's written notification to purchasers of a defect in its product is admissible to prove the existence of the defect.

Maine Restyling Note

The bulk of Maine Rule 407(a) has been restyled in accordance with Federal Rule 407. Maine Rule 407(b), which has no federal counterpart, has been restyled.

Federal Advisory Committee Note

The language of Rule 407 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 407 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

Rule 408. Compromise Offers and Negotiations

(a) Settlement discussions. Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) Furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) Conduct or a statement made during compromise negotiations or in mediation about the claim.

(b) Mediation. Evidence of conduct or statements by any party or mediator at a mediation session:

(1) Undertaken to comply with any statute, court rule, or administrative agency rule;

(2) To which the parties have been referred by a court, administrative agency, or arbitrator; or

(3) In which the parties and mediator have agreed in writing or electronically to mediate with an expectation of confidentiality;

Is not admissible in the proceeding with respect to which the mediation was held or in any other proceeding between the parties to the mediation that involves the subject matter of the mediation for any purpose other than to prove:

- Fraud;
- Duress;
- Other cause to invalidate the mediation result; or
- Existence of an agreement.

Maine Restyling Note

Maine Rule 408 has evolved to become quite different from Federal Rule 408 in form, if not in substance. The restyled Maine Rule brings the language and structure of the Maine Rule back to be more in conformity with the restyled Federal Rule. The proposed restyled Maine Rule follows the Federal Rule in referring to the validity or amount of a disputed claim rather than the prior Maine formulation of "any substantive issue in dispute between the parties." The prior Maine language was inserted to deal with divorce cases and other matters that did not seem to involve monetary "claims." The phrase has been clumsy and opaque in practice, and the federal formulation seems clearer, particularly if "claim" is broadly read as any substantive legal position of a party. Rule 408(b) is unique to Maine and is the result of extended negotiations with the mediation community. Since there is no federal counterpart, and hence no need for Maine-Federal consistency, the proposed restyled version is the same as the existing version.

Federal Advisory Committee Note

The language of Rule 408 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 408 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

The Committee deleted the reference to "liability" on the ground that the deletion makes the Rule flow better and easier to read, and because "liability" is covered by the broader term "validity." Courts have not made substantive decisions on the basis of any distinction between validity and liability. No change in current practice or in the coverage of the Rule is intended.

Rule 409. Offers to Pay Medical and 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.

Maine Restyling Note

Maine Rule 409 and Federal Rule 409 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Federal Advisory Committee Note

The language of Rule 409 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be

stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 410. Pleas, Plea Discussions, and Related Statements

In a civil or criminal case, evidence of the following is not admissible against the person who made the plea or participated in the plea discussions:

(a) A guilty plea that was later withdrawn;

(b) A nolo contendere plea;

(c) A statement made in connection with a guilty or nolo contendere plea or during a proceeding on either of those pleas under Maine Rule of Criminal Procedure 11 or a comparable Federal or state procedure; or

(d) An offer to plead guilty or nolo contendere.

Maine Restyling Note

Maine's Rule 410 is structurally much simpler and less comprehensive than the current version of the federal counterpart. The proposed restyled Maine Rule attempts to adopt the federal structure but retain the smaller and simpler scope of the Maine Rule. The various exceptions in the Federal Rule and the references to plea negotiations appear to go substantively beyond the Maine Rule. Even though they may have merit, consideration of such changes is beyond the scope of the restyling project.

Federal Advisory Committee Note

The language of Rule 410 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 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.

Maine Restyling Note

Maine Rule 411 is substantially identical with the first sentence of Federal Rule 411. The second sentence of the original Federal Rule 411 was omitted in the Maine rule as redundant and unnecessary. *See, e.g.*, Rule 404(b). *But see* Rule 407. The proposed restyled Maine Rule follows the first sentence of the restyled Federal Rule.

Federal Advisory Committee Note

The language of Rule 411 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 411 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition

(a) Prohibited uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

(1) Evidence offered to prove that an alleged victim engaged in other sexual behavior; or

(2) Evidence offered to prove an alleged victim's sexual predisposition.

(b) Exceptions.

(1) *Criminal cases.* The court may admit the following evidence in a criminal case:

(A) Evidence of specific instances of an alleged victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B) Evidence of specific instances of an alleged victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C) Evidence whose exclusion would violate the defendant's constitutional rights.

(2) *Civil cases.* In a civil case, the court may admit evidence of specific instances of sexual behavior by an alleged victim offered to prove an alleged victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party.

Maine Restyling Note

Maine's Rule 412 has generally followed its federal counterpart, but has differed in some respects in both structure and substance. The main differences are the ban on reputation and opinion evidence in the Maine Rule and the omission in the Maine Rule of any special procedure to determine admissibility. The proposed restyled version follows the federal version more closely, and deals with the prohibition of reputation and opinion evidence by making it clear that the only kind of evidence of sexual behavior that can be admitted under the Rule is evidence of specific acts that meets the requirements of subsection (b). The restyled Maine Rule follows the existing Rule in omitting any special procedure for determining admissibility.

Federal Advisory Committee Note

The language of Rule 412 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 413. Protection of Privacy in Court Proceedings

(a) Evidence of the identity, address, employment or location of any person must be excluded if such person requests the exclusion of such evidence and:

(1) The court is notified that there is a court order in effect that prohibits contact between such person and another person; or

(2) It is alleged under oath, orally or in writing, that such person's health, safety or liberty would be jeopardized by the disclosure of such information, and the court determines that disclosure of such information would jeopardize such person as alleged unless the court finds that such evidence is of a material fact essential to the determination of the proceeding.

(b) The court must conduct all proceedings to determine the admissibility of evidence under this rule in a manner so as not to disclose the information sought to be excluded, unless the court finds that a party's right to due process and a fair hearing would be violated if the information is not disclosed.

(c) If the court determines that information otherwise inadmissible under this Rule must be admitted as evidence of a material fact essential to the determination of the proceedings, the court must receive such evidence *in camera*. In child protective proceedings pursuant to Title 22, Chapter 1071 of the Maine Revised Statutes, such evidence must also be received outside of the presence of any person, and the attorney of any person, who:

(1) Is subject to a court order prohibiting contact with the person requesting exclusion of the evidence; or

(2) Constitutes a risk to the health, safety, or liberty of the person requesting exclusion of the evidence.

(d) Persons who may object to the admission of evidence under this rule include:

(1) Parties to the proceeding;

(2) Parties' attorneys;

(3) A guardian ad litem;

(4) Any person called as a witness;

(5) A juror; and

(6) Any person, who, although not a witness or party, is a subject of the proceeding, such as a child or a protected person.

Maine Restyling Note

Federal Rules 413–415 have not been adopted in Maine. In place of Federal Rule 413, Maine has adopted Maine Rule 413 pursuant to legislative directive. Because there is no Federal Rule with which to maintain consistency, restyling has been limited to applying the federal restyling conventions to the Maine Rule as adopted.

ARTICLE V. PRIVILEGES

Rule 501. Privileges Recognized Only as Provided by Law

Unless an applicable state or federal constitution, statute, or rule provides otherwise, no person has a privilege to:

(a) Refuse to be a witness;

(b) Refuse to disclose any matter;

(c) Refuse to produce an object or writing; or

(d) Prevent another from testifying as a witness, from disclosing any matter, or from producing an object or writing.

Maine Restyling Note

The Federal Rules of Evidence do not set forth privileges, except for the Attorney-Client Privilege in Federal Rule 502, and therefore the Maine Rules of Evidence 501–514 are entirely different from Article V of the Federal Rules. The

Maine Rules in this Article have each been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor nonsubstantive changes to clarify the Rules.

Maine Rule 501 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 502. Lawyer-Client Privilege

(a) Definitions. As used in this rule:

(1) A "client" is:

(A) A person;

(B) A public officer;

(C) A corporation;

(D) An association; or

(E) Any other organization or entity, public or private;

To whom a lawyer renders professional legal services, or who consults with a lawyer with a view toward obtaining professional legal services from the lawyer.

(2) A "representative of the client" is a person who has authority on behalf of the client to:

(A) Obtain professional legal services; or

(B) Act on advice rendered as part of professional legal services.

(3) A "lawyer" is:

(A) A person authorized to practice law in any state or nation; or

(B) A person whom the client reasonably believes to be authorized to practice law in any state or nation.

(4) A "representative of the lawyer" is a person who is employed by the lawyer to assist the lawyer in the rendition of professional legal services.

(5) A communication is "confidential" if it is made to facilitate the provision of legal services to the client and is not intended to be disclosed to any third party other than those to whom the client revealed the information in the process of obtaining professional legal services.

(b) General rule. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of any confidential communication:

(1) Between the client or client's representative and the client's lawyer or lawyer's representative;

(2) Between the lawyer and the lawyer's representative;

(3) By the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in that pending action concerning a matter of common interest in a pending action;

(4) Between the client's representatives, or between the client and his or her representative; or

(5) Among the client's lawyers and those lawyers' representatives.

(c) Who may claim the privilege.

(1) The privilege may be claimed by:

(A) The client;

(B) The client's guardian or conservator;

(C) The client's personal representative, if the client is deceased; or

(D) An officer, manager, trustee, or other agent authorized to act on behalf of a legal entity—such as a corporation, limited liability company, partnership, or trust—in legal matters or in obtaining the services of, or communicating with, an attorney for the entity, whether or not the entity still exists.

(2) There is a presumption that the person who was the lawyer or lawyer's representative at the time of the communication in question has authority to claim the privilege on the client's behalf.

(d) Exceptions. The lawyer-client privilege is subject to the following exceptions:

(1) *Furtherance of Crime or Fraud.* The lawyer-client privilege does not apply if the client sought or obtained the lawyer's services to help a person plan or commit what the client knew or reasonably should have known was a crime or fraud.

(2) *Claimants Through Same Deceased Client.* The lawyer-client privilege does not apply to any communication relevant to an issue between parties who claim through the same deceased client.

(3) *Breach of Duty by Lawyer or Client.* The lawyer-client privilege does not cover any communication relevant to an issue of the lawyer's breach of a duty to the client, or of the client's breach of a duty to the lawyer.

(4) *Document Attested by Lawyer.* The lawyer-client privilege does not apply to a communication relevant to an issue about a document to which the lawyer is an attesting witness.

(5) *Joint Clients.* When a communication is offered in an action between clients who were represented jointly by the lawyer, the lawyer-client privilege does not protect that communication if it is relevant to a matter of common interest between clients, and if the communication was made by any one of the clients to the lawyer retained or consulted as part of a joint representation.

(6) *Public Officer or Agency.* The lawyer-client privilege does not apply to communications between a public officer or agency and its lawyers. However, if the court determines that disclosure will seriously impair the public officer's or agency's ability to process a claim or carry out a pending investigation, litigation, or proceeding in the public interest, the lawyer-client privilege will apply to communications concerning the pending investigation, claim, or action.

Maine Restyling Note

Maine Rule 502 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 503. Health Care Professional–, Mental Health Professional–, and Licensed Counseling Professional–Patient Privilege

(a) Definitions. As used in this rule:

(1) A "patient" is a person who consults, is examined by, or is interviewed by:

(A) A health care professional;

(B) A mental health professional; or

(C) A licensed counseling professional.

(2) A "health care professional" is:

(A) A person authorized to practice as a physician;

(B) A licensed physician's assistant; or

(C) A licensed nurse practitioner;

Under Maine law, or under substantially similar law of any other state or nation, while that person is practicing the health care profession for which he or she is licensed.

(3) A "mental health professional" is:

(A) A health care professional engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction;

(B) A person licensed or certified as a psychologist or psychological examiner under Maine state law or under substantially similar law of any state or nation while practicing as such;

(C) A person licensed as a clinical social worker under Maine state law or under substantially similar law of any state or nation while practicing as such.

(4) A "licensed counseling professional" is:

(A) A "licensed professional counselor";

(B) A "licensed clinical professional counselor";

(C) A "licensed marriage and family therapist" or;

(D) A "licensed pastoral counselor";

Who is licensed to diagnose and treat mental health disorders, intra- and inter-personal problems, or other dysfunctional behavior of a social and spiritual nature under 32 M.R.S. §13858, or under a substantially similar law of any other state or nation, while that person is practicing the counseling profession for which he or she is licensed.

(5) A communication is "confidential" if it was not intended to be disclosed to any third persons, other than:

(A) Those who were present to further the interests of the patient in the consultation, examination, or interview;

(B) Those who were reasonably necessary to make the communication; or

(C) Those who are participating in the diagnosis and/or treatment under the direction of the health care, mental health, or licensed counseling professional. This includes members of the patient's family.

(b) General rule. A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made for the purpose of diagnosing or treating the patient's physical, mental, or emotional condition, including alcohol or drug addiction, between or among the patient and:

(1) The patient's health care professional, mental health professional, or licensed counseling professional; and

(2) Those who were participating in the diagnosis or treatment at the direction of the health care, mental health, or licensed counseling professional. This includes members of the patient's family.

(c) Criminal defendant's privilege. When the court orders that the defendant's mental condition be examined in order to determine criminal responsibility, the defendant has a privilege to refuse to disclose, and to prevent others from disclosing, any communication made during that examination that concerns the offense charged.

(d) Who may claim the privilege.

(1) The privilege may be claimed by:

(A) The patient;

(B) The patient's guardian or conservator; or

(C) The patient's personal representative, if the client is deceased.

(2) There is a presumption that the person who was the health care, mental health, or licensed counseling professional at the time of the communication in question has authority to claim the privilege on behalf of the patient.

(e) Exceptions. The privilege for communications between a patient and a health care professional, a mental health care professional, or a licensed counseling professional is subject to the following exceptions:

(1) *Proceedings for hospitalization.* The privilege under this rule does not apply to communications relevant to an issue in proceedings to hospitalize the patient for mental illness if the professional has determined in the course of diagnosis or treatment that the patient needs to be hospitalized.

(2) *Examination by order of court.* If the court orders an evaluation of a patient's physical, mental, or emotional condition, whether the patient is a party or a witness, the privilege does not apply to communications made during the course of that evaluation, unless the court orders otherwise. However, a criminal defendant's communications during the course of a court-ordered evaluation or examination are still privileged to the extent provided by section (c) of this rule.

(3) *Condition an element of claim or defense.* The privilege under this rule does not apply to communications relevant to an issue of a physical, mental, or emotional condition of the patient if:

(A) The condition is an element of the patient's claim or defense; or

(B) The condition is an element of the claim or defense of:

(i) Any party claiming through or under the patient;

(ii) Any party claiming because of the patient's condition;

(iii) Any party claiming as a beneficiary of the patient; or

(iv) Any party claiming through a contract to which the patient is or was a party.

(4) *After the patient's death.* The privilege does not apply after the patient's death in any proceeding in which any party puts the patient's physical, mental, or emotional condition in issue.

Maine Restyling Note

Maine Rule 503 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 504. Spousal Privilege

(a) Definition. A communication by a married person is confidential if:

(1) The person makes it privately to the person's spouse, and

(2) The person making it does not intend for it to be disclosed to any other person.

(b) General rule. A married person has a privilege to prevent the person's spouse from disclosing the contents of any confidential communication between the person and the spouse.

(c) Who may claim the privilege. The person who made the communication can claim the privilege. The spouse also has presumptive authority to claim the privilege on the person's behalf.

(d) Exceptions. The spousal privilege is subject to the following exceptions:

(1) The spousal privilege does not apply in a proceeding in which one spouse is charged with a crime against the person or property of:

(A) The other spouse;

(B) A child of either spouse;

(C) Any person residing in either spouse's household; or

(D) Any third person, if the crime against that person or property occurred in the course of committing a crime against the other spouse, a child of either spouse, or any person residing in either spouse's household.

(2) The spousal privilege does not apply in a civil proceeding when the spouses are adverse parties.

Maine Restyling Note

Maine Rule 504 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 505. Religious Privilege

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

(1) A "member of the clergy" is an individual who has been ordained or accredited as a spiritual advisor, counselor, or leader by any religious organization established on the basis of a community of faith and belief, doctrines, and practices of a religious character, or an individual reasonably believed so to be by the person consulting that individual.

(2) A communication is "confidential" if:

(A) It is made privately; and

(B) It is not intended for disclosure other than to other persons present in furtherance of the purpose of the communication.

(b) **General rule.** A person has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made to a member of the clergy who was acting as a spiritual adviser at the time of the communication.

(c) **Who may claim the privilege.** The privilege can be claimed by:

(1) The person who made the communication;

(2) The person's guardian or conservator; or

(3) The person's personal representative, if the person is deceased.

The person who was a clergy member at the time of the communication also has presumptive authority to claim the privilege on behalf of the person who made the communication.

Maine Restyling Note

Maine Rule 505 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule. Among the changes recommended for the Maine privileges was to Rule 505. The definition of "member of the clergy" has been revised to be inclusive of all religions, but the language remains restrictive in ensuring that the privilege may not be applied to communications with members of the clergy who are not specifically certified or ordained by a religious community. Thus, communications involving lay practitioners who participate in teaching or advisory roles, for example, would not fall under the privilege.

Rule 506. Political Vote

(a) General rule. Every person has a privilege to refuse to disclose his or her own vote at a political election conducted by secret ballot.

(b) Exceptions. The privilege does not apply if the court:

(1) Finds that the vote was cast illegally; or

(2) Determines that the disclosure should be compelled pursuant to state election laws.

Maine Restyling Note

Maine Rule 506 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 507. Trade Secrets

(a) General rule. A person has a privilege to refuse to disclose, and to prevent any other person from disclosing, a trade secret that the person owns.

(b) Who may claim the privilege. The privilege may be claimed by:

(1) The person who owns the trade secret;

(2) The person's agent; or

(3) The person's employee.

(c) Exceptions. The trade secrets privilege does not apply if it will conceal fraud or otherwise work injustice. If the court directs that the trade secret be disclosed, it must take measures to protect the interests of the trade secret's owner, the other parties, and justice.

Maine Restyling Note

Maine Rule 507 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 508. Secrets of State and Other Official Information; Governmental Privileges

(a) Privilege. If the federal or Maine constitution, or a federal or Maine statute, creates a governmental privilege, a person may claim the privilege pursuant to the applicable provision of law. There is no other governmental privilege.

(b) Effect of sustaining a claim of governmental privilege. If the court sustains a claim of governmental privilege and thereby appears to deprive another party of material evidence, the court must make any orders required by the interests of justice. These orders may include:

(1) Striking the testimony of a witness;

(2) Declaring a mistrial;

(3) Making a finding on an issue as to which the evidence was relevant; or

(4) Dismissing the action.

Maine Restyling Note

Maine Rule 508 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 509. Identity of Informant

(a) Rule of privilege and definitions.

(1) *Rule of privilege.* The United States, a state or subdivision thereof, or any foreign country has a privilege to refuse to disclose the identity of an informant.

(2) *Definitions.* As used in this rule, an "informant" is a person who has furnished information relating to or assisting in an investigation of a possible violation of law to:

(A) A law enforcement officer conducting an investigation; or

(B) A member of a legislative committee or its staff conducting an investigation.

(b) Who may claim the privilege. An authorized representative of the public entity that received the information may claim the privilege.

(c) Exceptions. The privilege of the identity of an informant does not apply if:

(1) The informant's identity or his or her interest in the investigation has already been revealed to those who might resent the communication; or

(2) The informant appears as a witness for the state.

(d) Testimony on relevant issue. If it appears that an informant may be able to give relevant testimony in a civil or criminal case to which a public entity is a party, the public entity may invoke the privilege. If the public entity invokes the privilege:

(1) The court may give the public entity an opportunity to show, in camera and on the record, whether the informant can, in fact, supply

the relevant testimony. The showing may be in the form of affidavits or, if the court finds that the matter cannot be satisfactorily resolved with affidavits, through testimony.

(2) If the court finds that there is a reasonable probability that the informer can give relevant testimony, the court may, either on its own or on motion of a party, enter an order requiring the public entity to disclose the identity of the informant within a specific time and providing relief to other parties in the event the public entity elects not to disclose the identity of the informant within the time specified.

(A) In a criminal case, the relief may include one or more of the following:

(i) Granting the defendant additional time or a continuance;

(ii) Relieving the defendant from making disclosures otherwise required;

(iii) Prohibiting the prosecution from introducing certain evidence; and

(iv) Dismissing the charges.

(B) In a civil case, the court may provide any relief required in the interests of justice.

(C) When ordering relief, the court shall ensure that:

(i) Evidence submitted to the court must be sealed and preserved for appeal;

(ii) A docket entry specifying the form, but not the content, of the evidence must be made; and

(iii) All counsel and parties may be present at every stage of the proceedings under this rule, except that, at a showing in camera, only counsel for the public entity may be present.

Maine Restyling Note

Maine Rule 509 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 510. Waiver of Privilege by Voluntary Disclosure

(a) General rule. A person who has a privilege under these rules waives the privilege if the person or the person's predecessor while holding the privilege voluntarily discloses or consents to the disclosure of any significant part of the privileged matter.

(b) Exception. This rule does not apply if the disclosure is itself privileged.

Maine Restyling Note

Maine Rule 510 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 511. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim the Privilege

A privilege is not waived by a disclosure that was:

(a) Compelled erroneously; or

(b) Made without opportunity to claim the privilege.

Maine Restyling Note

Maine Rule 511 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 512. Comment upon or Inference from Claim of Privilege in Criminal Cases; Instruction

(a) Comment or inference not permitted. The claim of a privilege is not a proper subject of comment by either a judge or counsel in a criminal case, regardless of whether the privilege was claimed in the present proceeding or on a prior occasion. The fact finder may not draw any inference from the claim of privilege.

(b) Claiming privilege outside the hearing of the jury. In criminal jury trials, proceedings shall be conducted, to the extent practicable, so as to allow privilege claims to be made outside of the hearing of the jury.

(c) Jury instruction. Unless waived, any criminal defendant who has claimed a privilege is entitled to an instruction that no inference may be drawn from the claim of privilege.

Maine Restyling Note

Maine Rule 512 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule and make it consistent with Maine precedent. *See State v. Libby*, 410 A.2d 562, 564 (Me. 1980); Alexander, *Maine Jury Instruction Manual* § 6-8 at 116 (2014 ed.).

Rule 513. Claim of Privilege in Civil Cases

(a) Comment permitted. In a civil action, a party's claim of the privilege against self-incrimination is a proper subject of comment by a judge or by counsel, regardless of whether the party claimed the privilege in the present proceeding or on a prior occasion.

(b) Inference permitted. In a civil action, the fact finder may draw an appropriate inference from a party's claim of the privilege against self incrimination.

(c) Claim of privilege by a nonparty witness. Rule 512 governs a nonparty witness's claim of privilege in a civil action or proceeding.

(d) Claim of privilege other than the privilege against self-incrimination. Rule 512 governs any party's or witness's claim of any privilege other than the privilege against self-incrimination in a civil action or proceeding.

Maine Restyling Note

Maine Rule 513 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

Rule 514. Mediator's Privilege

(a) Definitions. As used in this rule:

(1) A "mediating party" is a person who is participating in mediation as a party or as a party's representative, regardless of whether the subject matter of the mediation is in litigation.

(2) A "mediation" is any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute, regardless of whether the dispute is the subject of litigation.

(3) A "mediator" is a neutral person conducting the mediation proceeding.

This rule is subject to any state and federal statutes and regulations of mediations taking place pursuant to such statutory authority.

(b) General rule.

(1) A mediator has a privilege to refuse to testify in any proceeding concerning a mediation or any communication between the mediator and a participant in the mediation that was made during the course of, or that related to the subject matter of, any mediation.

(2) All memoranda and other work product—including files, reports, interviews, case summaries, and notes—prepared by a mediator are confidential and are not subject to disclosure in any judicial or

administrative proceeding involving any of the parties to the mediation in which the materials were generated.

(c) Exceptions. The mediator's privilege does not apply:

(1) *Mediated agreement.* To a communication in an agreement evidenced by a record signed by the parties to the agreement.

(2) *Furtherance of crime or fraud.* If the mediating party who made the communication sought or obtained the mediator's services to enable or aid anyone to plan, commit or conceal what the mediating party knew or reasonably should have known to be a crime or fraud.

(3) *Plan to inflict harm.* To threats or statements of intention to inflict bodily injury or commit a crime.

(4) *Mediator misconduct.* To communications sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice by the mediator.

(5) *Party or counsel misconduct.* To communications sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice by a mediation party, nonparty participant, or a party's representative based on conduct that occurred during a mediation.

(6) *Welfare of child or adult.* In a criminal proceeding or a child or adult protective action, to communications sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation.

(7) *Manifest injustice.* If, after a hearing in camera, a court, administrative agency, or arbitrator finds that the disclosure of a communication is necessary in a particular case to prevent a manifest injustice, and that the need for disclosure outweighs the importance of protecting the general requirement of mediation confidentiality.

Maine Restyling Note

Maine Rule 514 has been restyled in accordance with the federal restyling conventions, and, as part of this process, the Committee has proposed some minor, nonsubstantive changes to clarify the Rule.

ARTICLE VI. WITNESSES

Rule 601. Competency to Testify in General

(a) Every person is competent to be a witness unless these rules provide otherwise.

(b) A person may not be a witness if the court finds that:

(1) The person cannot communicate about the matter so that the judge and jury can understand, either directly or through an interpreter;

(2) The person cannot understand the duty, as a witness, to tell the truth;

(3) The person had no reasonable ability to perceive the matter; or

(4) The person has no reasonable ability to remember the matter.

(c) Interpreters are subject to the same rules that apply to witnesses.

Maine Restyling Note

Maine's Rule 601 departs fairly significantly from its federal counterpart in establishing specific criteria for competency as a witness in the rule itself. These specific requirements have been carried over into the restyled version.

Federal Restyling Committee Note

The language of Rule 601 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to by stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 602. Need for Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own

testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Maine Restyling Note

Maine Rule 602 and Federal Rule 602 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Federal Restyling Committee Note

The language of Rule 601 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to by stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 603. Oath or Affirmation to Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. The oath or affirmation must be in a form designed to impress that duty on the witness's conscience.

Maine Restyling Note

Maine Rule 603 and Federal Rule 603 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Federal Restyling Committee Note

The language of Rule 603 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 604. Interpreters

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

Maine Restyling Note

Maine Rule 604 and Federal Rule 604 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Federal Restyling Committee Note

The language of Rule 604 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 605. Judge's Competency as a Witness

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

Maine Restyling Note

Maine Rule 605 and Federal Rule 605 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Federal Restyling Committee Note

The language of Rule 605 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 606. Juror's Competency as a Witness

(a) At the trial. A juror may not testify as a witness before any jury drawn from the panel of which the juror was a member. If a juror is called to testify, the court must give any party an opportunity to object outside the jury's presence.

(b) During an inquiry into the validity of a verdict or indictment.

(1) *Prohibited testimony or other evidence.* During an inquiry into the validity of a verdict or indictment, a juror may not testify about:

(A) Any statement made or incident that occurred during the jury's deliberations;

(B) The effect of anything on that juror's or another juror's vote; or

(C) Any juror's mental processes concerning the verdict or indictment.

The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) *Exceptions.* A juror may testify about whether:

(A) Extraneous prejudicial information was improperly brought to the jury's attention; or

(B) An outside influence was improperly brought to bear on any juror.

Maine Restyling Note

Maine Rule 606 is substantially similar to Federal Rule 606, except that the Maine Rule includes language broadening the contexts in which a juror may not be called as a witness. Also, Maine has not adopted an exception to 606(b)(2) for testimony about a mistake in entering the verdict on a verdict form. These distinctions have been carried over as part of the restyling process.

Federal Restyling Committee Note

The language of Rule 606 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 607. Who May Impeach a Witness

Any party, including the party that called the witness, may attack the witness's credibility.

Maine Restyling Note

Maine Rule 607 and Federal Rule 607 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Federal Restyling Committee Note

The language of Rule 607 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 608. A Witness's Character for Truthfulness or Untruthfulness

(a) **Reputation evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness. Evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) **Specific instances of conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. The court may, on cross-examination, allow a party to inquire into specific instances of a witness's conduct if they are probative of the character for truthfulness or untruthfulness of:

(1) The witness; or

(2) Another witness about whose character the witness being cross-examined has testified.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Maine Restyling Note

Maine Rule 608 is very similar to its federal counterpart, but does not allow opinion evidence of character for truthfulness, only reputation. The Maine restyled version changes references to "credibility" to "character for truthfulness" to follow the federal version.

Federal Restyling Committee Note

The language of Rule 608 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Committee is aware that the Rule's limitation of bad-act impeachment to "cross-examination" is trumped by Rule 607, which allows a party to impeach a witness on direct examination. Courts have not relied on the term "on cross-examination" to limit impeachment that would otherwise be permissible under Rules 607 and 608. The Committee therefore concluded that no change to the language of the Rule was necessary in the context of a restyling project.

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) In general. Evidence of a criminal conviction offered to impeach a witness's character for truthfulness must be admitted if its probative value outweighs its prejudicial effect on a criminal defendant or on any party in a civil action if the criminal conviction is:

(1) For a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year; or

(2) For any crime if the court can reasonably determine that establishing the elements of the crime required proving—or the witness admitting—a dishonest act or false statement.

(b) Time limit. Evidence of a conviction is admissible under this rule only if:

(1) Less than 15 years has passed since the conviction; or

(2) Less than 10 years has passed since the witness was released from confinement for the conviction.

(c) Effect of a pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure.

(d) Juvenile adjudications. Evidence of a juvenile adjudication in a public proceeding is admissible under this rule. Evidence of a juvenile adjudication in a proceeding that was closed to the public is admissible only in juvenile proceedings that are also closed to the public.

Maine Restyling Note

Maine Rule 609 is differs in a number of respects from its federal counterpart. Maine Rule 609 requires all convictions to pass a "reverse Rule 403" test, i.e. they can be admitted only if their probative value as to credibility outweighs any danger of unfair prejudice to a criminal defendant or any civil party. There are minor differences in time limits and the Maine time bar is absolute. The proposed restyled Rule maintains the substantive differences as they are now.

Federal Restyling Committee Note

The language of Rule 609 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Maine Restyling Note

Maine Rule 610 and Federal Rule 610 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Federal Restyling Committee Note

The language of Rule 610 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(a) Control by the court; purposes. The court must exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) Make those procedures effective for determining the truth;

(2) Avoid wasting time; and

(3) Protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. Cross-examination may address matters relevant to any issue in the case, including the credibility of any witness. The court may limit cross-examination about matters that were not addressed on direct examination.

(c) Leading questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

(1) On cross-examination; and

(2) When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party. A hostile witness or a witness identified with an adverse party may be cross-examined by the adverse party, but only as to matters that the witness testified to during his or her examination in chief.

(d) **Cross-examination relating to signatures.** If a witness's examination in chief addresses only the signature to or execution of a paper, cross-examination must be limited to that signature or execution.

Maine Restyling Note

Maine Rule 611 is similar to its federal counterpart, but does not limit cross-examination to the subject matter of direct unless the witness was the adverse party, was identified with the adverse party, or testified only to the signature to or execution of a paper. This distinction has been carried over in the restyling process.

Federal Restyling Committee Note

The language of Rule 611 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 612. Writing Used to Refresh a Witness's Memory

(a) **While testifying.** If a witness uses a writing or object to refresh his or her memory while testifying, the adverse party is entitled to production of the writing or object at the time.

(b) **Before testifying.** If a witness uses a writing or object to refresh his or her memory before testifying, the court may require production of the writing or object in the interests of justice.

(c) **Terms and conditions.**

(1) If a party is entitled to production of a writing or object under this rule, that party may inspect it, cross-examine the witness about it, and introduce relevant parts of it in evidence.

(2) If a party claims that the writing contains material that is irrelevant to the witness's testimony, the court must examine the writing in camera, remove any irrelevant portions, and order production of the rest of the writing.

The court must preserve any portion of the writing that is withheld under this subsection, and must provide it to the appellate court if there is an appeal.

(d) **Failure to produce or deliver the writing.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the state does not comply in a criminal case, the court must strike the witness's testimony or may—if justice so requires—declare a mistrial.

Maine Restyling Note

Maine Rule 612 is somewhat different from its federal counterpart. The proposed restyled Rule maintains those differences.

Federal Restyling Committee Note

The language of Rule 612 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to by stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 613. Witness's Prior Statement

When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

Maine Restyling Note

Maine Rule 613 is somewhat similar to its federal counterpart. However, the requirement in the Federal Rule that the witness be given an opportunity to explain

a prior inconsistent statement is not maintained in the Maine Rule. The restyled version continues this distinction.

Federal Restyling Committee Note

The language of Rule 613 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 614. Court's Calling or Examining a Witness

(a) Calling. The court may call a witness on its own, or at a party's request. Each party is entitled to cross-examine the witness.

(b) Examining. The court may examine a witness regardless of who calls the witness.

(c) Objections. A party may object to the court's calling or examining a witness either at that time or at the next opportunity out of the hearing of the jury.

Maine Restyling Note

Maine Rule 614 is similar with its federal counterpart. The restyled version maintains the minor differences.

Federal Restyling Committee Note

The language of Rule 614 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to by stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 615. Excluding Witnesses

At a party's request or on the court's own initiative, the court may order witnesses excluded so that they cannot hear other witnesses' testimony. But this rule does not authorize excluding:

(a) A party who is a natural person;

(b) An officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney; or

(c) A person whose presence a party shows to be essential to presenting the party's claim or defense.

Maine Restyling Note

Maine Rule 603 is similar to its federal counterpart. The minor differences in the proposed restyled Rule preserve the substantive differences.

Federal Restyling Committee Note

The language of Rule 615 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 616. Illustrative Aids

(a) Otherwise inadmissible objects or depictions may be used to illustrate witness testimony or counsel's arguments.

(b) The court may limit or prohibit the use of illustrative aids as necessary to avoid unfair prejudice, surprise, confusion, or waste of time.

(c) Opposing counsel must be given reasonable opportunity to object to the use of any illustrative aid prepared before trial.

(d) The jury may use illustrative aids during deliberations only if all parties consent, or if the court so orders after a party has shown good cause.

Illustrative aids remain the property of the party that prepared them. They may be used by any party during the trial. They must be preserved for the record for appeal or further proceedings upon the request of any party.

Maine Restyling Note

Maine Rule does not have a federal counterpart. It has been revised in accordance with the conventions of the federal restyling.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, opinion testimony is limited to opinions that are:

(a) Rationally based on the witness's perception; and

(b) Helpful to clearly understanding the witness's testimony or to determining a fact in issue.

Maine Restyling Note

Maine Rule of Evidence 701 is similar to its federal counterpart. Maine has not adopted the final subparagraph (c) of Federal Rule 701 and that omission is carried through in the restyled Rule.

Federal Restyling Committee Note

The language of Rule 701 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Committee deleted all reference to an "inference" on the grounds that the deletion made the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made

substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 702. Testimony by Expert Witnesses

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 such testimony will help the trier of fact to understand the evidence or to determine a fact in issue.

Maine Restyling Note

Maine Rule of Evidence 702 is similar to its federal counterpart. Maine did not adopt the final subparagraphs of Federal Rule of Evidence 702 and that omission is carried through in the restyled Rule.

Federal Restyling Committee Note

The language of Rule 702 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 703. Basis of an Expert'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 has 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, the facts or data need not be admissible for the opinion to be admitted.

Maine Restyling Note

Maine Rule of Evidence 703 is similar to its federal counterpart. Maine did not adopt the final subparagraph of Federal Rule 703, an omission that is carried through in the restyled Rule.

Federal Restyling Committee Note

The language of Rule 703 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and

terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on admissibility.

The Committee deleted all reference to an "inference" on the grounds that the deletion made the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 704. Opinion on an Ultimate Issue

An opinion is not objectionable merely because it is an opinion on an ultimate issue.

Maine Restyling Note

Maine Rule of Evidence 704 is similar to its federal counterpart. The Maine Rule does not contain reference to a special treatment of opinions in criminal cases. This difference was carried over in the restyled Rule.

Federal Restyling Committee Note

The language of Rule 704 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Committee deleted all reference to an "inference" on the grounds that the deletion made the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion

(a) Disclosure of underlying facts. 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.

(b) Objection. A party may object to an expert witness's testimony on the ground that the expert lacks a sufficient basis for expressing an opinion. Before the expert gives an opinion, counsel may be allowed to examine the expert about the facts or data underlying the opinion outside of the jury's presence. If there is evidence sufficient to support a finding that the expert lacks a sufficient basis for the opinion, the opinion is inadmissible, unless the party who called the expert witness first establishes the underlying facts or data.

Maine Restyling Note

Maine Rule of Evidence 705 is similar to its federal counterpart. The Maine version sets forth a procedure to test the factual basis for expert testimony before it is admitted, which has been included in the restyled version.

Federal Restyling Committee Note

The language of Rule 705 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Committee deleted all reference to an "inference" on the grounds that the deletion made the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 706. Court-Appointed Expert Witnesses

(a) Appointment process. 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.

(b) **Expert's role.** The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

(1) Must advise the parties of any findings the expert makes;

(2) May be deposed by any party;

(3) May be called to testify by the court or any party; and

(4) May be cross-examined by any party, including the party that called the expert.

(c) **Compensation.** The expert is entitled to reasonable compensation, as set by the court. Unless provided otherwise by law, the parties must pay the expert's compensation in whatever proportion the court directs, at a time chosen by the court. Thereafter, the expert's compensation may be charged in the same manner as other costs.

(d) **Disclosing the appointment to the jury.** The court may authorize disclosure to the jury that the court appointed the expert.

(e) **Parties' choice of their own experts.** This rule does not limit a party in calling its own experts.

Maine Restyling Note

Maine Rule of Evidence 706 is similar to its federal counterpart. The Maine Rule sets forth a different procedure for assigning the costs for compensation of the expert witness. This difference was carried over in the restyled Rule.

Federal Restyling Committee Note

The language of Rule 706 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

ARTICLE VIII. HEARSAY

Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay

(a) Statement. ''Statement'' means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. ''Declarant'' means the person who made the statement.

(c) Hearsay. ''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.

(d) Statements that are not hearsay. A statement that meets one of the following conditions is not hearsay:

(1) *A declarant-witness's prior statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) Is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition; or

(B) Identifies a person as someone the declarant perceived earlier.

A prior consistent statement by the declarant, whether or not under oath, is admissible only to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.

(2) *An opposing party's statement.* The statement is offered against an opposing party and:

(A) Was made by the party in an individual or representative capacity;

(B) Is one the party manifested that it adopted or believed to be true;

(C) Was made by a person whom the party authorized to make a statement on the subject, but was not made to the principal or employer;

(D) Was made by the party's agent or employee on a matter within the scope of that relationship and while it existed, but was not made to the principal or employer; or

(E) Was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C), the existence or scope of the relationship under (D), or the existence of the conspiracy or participation in it under (E).

Maine Restyling Note

Maine Rule 801 is substantially similar Federal Rule 801, except that the Maine Rule is structured somewhat differently with respect to the admissibility of prior consistent statements. Also, Maine excludes from Rule 801(b)(2) "in-house" statements made by an agent, employee, or authorized person. These distinctions have been carried over as part of the restyling process.

Federal Committee Restyling Note

The language of Rule 801 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Statements falling under the hearsay exclusion provided by Rule 801(d)(2) are no longer referred to as "admissions" in the title to the subdivision. The term "admissions" is confusing because not all statements covered by the exclusion are admissions in the colloquial sense—a statement can be within the exclusion even if it "admitted" nothing and was not against the party's interest when made. The

term "admissions" also raises confusion in comparison with the Rule 804(b)(3) exception for declarations against interest. No change in application of the exclusion is intended.

Rule 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

- A statute;
- These rules; or
- Other rules prescribed by the Maine Supreme Judicial Court.

Maine Restyling Note

The restyled rule leaves out the definition of "as provided by law" inserted in Maine Rule 802 in favor of the federal approach of listing the alternative sources of hearsay exceptions.

Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) Excited utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) Then-existing mental, emotional, or physical condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) Statement made for medical diagnosis or treatment. A statement that:

(A) Is made for—and is reasonably pertinent to—medical diagnosis or treatment; and

(B) Describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) Recorded recollection. A record that:

(A) Is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) Was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) Accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) Records of a regularly conducted activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) The record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) The record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) Making 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 902(11), Rule 902(12) 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.

(7) Absence of a record of a regularly conducted activity. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) The evidence is admitted to prove that the matter did not occur or exist;

(B) A record was regularly kept for a matter of that kind; and

(C) Neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) Public records. A record or statement of a public office if:

(A) It sets out:

(i) The office's regularly conducted and regularly recorded activities;

(ii) A matter observed while under a legal duty to report; or

(iii) Factual findings from a legally authorized investigation.

(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 state in a criminal case;

(iv) Factual findings resulting from special investigation of a particular complaint, case, or incident; and

(v) Any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.

(9) Public records of vital statistics. A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) **Absence of a public record.** Testimony—or a certification under Rule 902—that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) The record or statement does not exist; or

(B) A matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(11) **Records of religious organizations concerning personal or family history.** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) **Certificates of marriage, baptism, and similar ceremonies.** A statement of fact contained in a certificate:

(A) Made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) Attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) Purporting to have been issued at the time of the act or within a reasonable time after it.

(13) **Family records.** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) **Records of documents that affect an interest in property.** The record of a document that purports to establish or affect an interest in property if:

(A) The record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) The record is kept in a public office; and

(C) A statute authorizes recording documents of that kind in that office.

(15) RESERVED.

(16) Statements in ancient documents. A statement in a document that is at least 20 years old and whose authenticity is established.

(17) Market reports and similar commercial publications. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) Statements in learned treatises, periodicals, or pamphlets. A statement contained in a treatise, periodical, or pamphlet if:

(A) The statement is called to the attention of an expert witness on cross-examination; and

(B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) Reputation concerning personal or family history. A reputation among a person's family by blood, adoption, or marriage—or among the person's associates or in the community—concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of the person's personal or family history.

(20) Reputation concerning boundaries or general history. A reputation in a community—arising before the controversy—concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) Reputation concerning character. A reputation among a person's associates or in the community concerning the person's character.

(22) Judgment of a previous conviction. Evidence of a final judgment of conviction if:

(A) The judgment was entered after a trial or guilty plea;

(B) The conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) The evidence is admitted to prove any fact essential to the judgment; and

(D) When offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

(23) Judgments involving personal, family, or general history, or a boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) Was essential to the judgment; and

(B) Could be proved by evidence of reputation.

Maine Restyling Note

Restyled Rule 803 preserves the substantive differences between the Maine and the Federal Rules. Maine does not have any residual hearsay exception.

Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness

(a) Criteria for being unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) Is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) Refuses to testify about the subject matter despite a court order to do so;

(3) Testifies to not remembering the subject matter;

(4) Cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) Is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance.

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

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

(1) *Former Testimony.* Testimony that:

(A) Was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) Is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) *Statement under the belief of imminent death.* A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) *Statement against interest.* A statement—except, in a criminal case, for a statement or confession made by a defendant or other person implicating both the declarant and the accused that is offered against the accused—that:

(A) A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability or to render invalid a claim by the declarant against another, or to make the declarant an object of hatred, ridicule, or disgrace; and

(B) Is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) *Statement of personal or family history.* A statement about:

(A) The declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) Another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

Maine Restyling Note

Restyled Maine Rule 804 preserves the substantive differences between the Maine and Federal Rules.

Rule 805. Hearsay Within Hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

Maine Restyling Note

Maine Rule 805 and Federal Rule 805 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

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. The court may admit evidence of the

declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Maine Restyling Note

Maine Rule 806 and Federal Rule 806 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 901. Authenticating or Identifying Evidence

(a) In general. 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.

(b) Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) *Testimony of a witness with knowledge.* Testimony that an item is what it is claimed to be.

(2) *Nonexpert opinion about handwriting.* A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an expert witness or the trier of fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive characteristics.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion about a voice.* An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic

transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence about a telephone conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) A particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) A particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence about public records.* Evidence that:

(A) A document was recorded or filed in a public office as authorized by law; or

(B) A purported public record or statement is from the office where items of this kind are kept.

(8) *Evidence about ancient documents or data compilations.* For a document or data compilation, evidence that it:

(A) Is in a condition that creates no suspicion about its authenticity;

(B) Was in a place where, if authentic, it would likely be; and

(C) Is at least 20 years old when offered.

(9) *Evidence about a process or system.* Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods provided by a statute or rule.* Any method of authentication or identification allowed by a rule of the Maine Supreme Judicial Court or by a statute or as provided in the Maine Constitution.

Maine Restyling Note

The restyled Rule preserves the substantive differences between the Maine and Federal Rules. The proposed restyled Rule adopts the language of the Federal Rule 901(b)(3) in providing that one method of authentication is a comparison by the "trier of fact" of the item of evidence with an authenticated original. The use of the term "court" in lieu of "trier of fact" in the current Maine Rule may cause some confusion in a jury trial as it is clear that the Rule is intended to permit comparison by the trier of fact.

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) Domestic public documents that are sealed and signed. A document that bears:

(A) A seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) A signature purporting to be an execution or attestation.

(2) Domestic public documents that are not sealed but are signed and certified. A document that bears no seal if:

(A) It bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) Another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—

or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) Order that it be treated as presumptively authentic without final certification; or

(B) Allow it 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 a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) The custodian or another person authorized to make the certification; or

(B) A certificate that complies with Rule 902(1), (2), or (3) or a federal or state statute.

(5) **Official publications.** A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) **Newspapers and periodicals.** Printed material purporting to be a newspaper or periodical.

(7) **Trade inscriptions and the like.** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) **Acknowledged documents.** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) **Commercial paper and related documents.** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) **Presumptions created by law.** A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.

(11) **Certified domestic records of a regularly conducted activity.** The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)–(C), as shown by a certification of the custodian or another qualified person that complies with a statute or a rule prescribed by the Maine Supreme Judicial Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to object to the authenticity of the record or on the basis of hearsay. In the event of an adverse party's objection to a record offered under this paragraph, the court may in the interests of justice refuse to accept the certification under this paragraph and require the party offering the record to provide appropriate foundation by other evidence.

(12) **Certified foreign records of a regularly conducted activity.** In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a statute or Maine Supreme Judicial Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

Maine Restyling Note

The restyled Rule preserves the substantive differences between the Maine and Federal Rules.

Rule 903. Subscribing Witness's Testimony

A subscribing witness's testimony is necessary to authenticate a writing only if required by statute.

Maine Restyling Note

The restyled Rule preserves the substantive differences between the Maine and Federal Rules.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions That Apply to This Article

In this article:

(a) A ''writing'' consists of letters, words, numbers, or their equivalent set down in any form.

(b) A ''recording'' consists of letters, words, sounds, numbers, or their equivalent recorded in any manner.

(c) A ''photograph'' means a photographic image or its equivalent stored in any form.

(d) An ''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. For electronically stored information, ''original'' means any printout—or other output readable by sight—if it accurately reflects the information. An ''original'' of a photograph includes the negative or a print from it.

Maine Restyling Note

The restyled Rule preserves the substantive differences between the Maine and Federal Rules, including the exclusion of a definition of "duplicate" to reflect Maine's decision not to adopt Federal Rule 1003 regarding the admissibility of duplicates.

Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules or a statute provides otherwise.

Maine Restyling Note

The restyled Rule preserves the substantive differences between the Maine and Federal Rules.

Rule 1003. RESERVED.

Rule 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 if:

(a) All the originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) An original cannot be obtained by any available judicial process;

(c) The party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) The writing, recording, or photograph is not closely related to a controlling issue.

Maine Restyling Note

Maine Rule 1004 and former Federal Rule 1004 are substantially identical, and there is no reason to depart from the language of the restyled Federal Rule.

Rule 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 these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

Maine Restyling Note

Maine Rule 1005 and former Federal Rule 1005 are substantially identical, and there is no reason to depart from the language of the restyled Federal Rule.

Rule 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 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.

Maine Restyling Note

Maine Rule 1006 and former Federal Rule 1006 are substantially identical, other than the Federal Rule's reference to "duplicates," and there is no reason to depart from the language of the restyled Federal Rule.

Rule 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.

Maine Restyling Note

Maine Rule 1007 and Federal Rule 1007 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

Rule 1008. Functions of the Court and Jury

The 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.

Maine Restyling Note

Maine Rule 1008 and Federal Rule 1008 are substantively identical, and therefore the Advisory Committee recommends adoption of the language of the restyled Federal Rule.

ARTICLE XI. MISCELLANEOUS RULES

Abrogated January 1, 2015.

Maine Restyling Note

In light of the significant revision to Rule 101 to incorporate the substance of Rules 1101 and 1102, the Advisory Committee Recommends deletion of both of these Rules entirely.

2. These amendments shall take effect on January 1, 2015.

Dated: November 17, 2014

FOR THE COURT[1]

LEIGH I. SAUFLEY
Chief Justice
DONALD G. ALEXANDER
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
Associate Justices

[1] This Rules Amendment Order was approved after conference of the Court, all Justices participating therein.