

Amended by Order dated June 21, 2013; effective July 1, 2013.

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

ARTICLE VIII. HEARSAY

Rule 2:804 HEARSAY EXCEPTIONS APPLICABLE WHERE THE DECLARANT IS UNAVAILABLE (Rule 2:804(b)(5) derived from Code § [8.01-397](#))

(a) *Applicability.* The hearsay exceptions set forth in subpart (b) hereof are applicable where the declarant is dead or otherwise unavailable as a witness.

(b) *Hearsay exceptions.* The following are not excluded by the hearsay rule:

(1) Former testimony. Testimony given under oath or otherwise subject to penalties for perjury at a prior hearing, or in a deposition, if it is offered in reasonably accurate form and, if given in a different proceeding, the party against whom the evidence is now offered, or in a civil case a privy, was a party in that proceeding who examined the witness by direct examination or had the opportunity to cross-examine the witness, and the issue on which the testimony is offered is substantially the same in the two cases.

(2) Statement under belief of impending death. In a prosecution for homicide, a statement made by a declarant who believed when the statement was made that death was imminent and who had given up all hope of survival, concerning the cause or circumstances of declarant's impending death.

(3) Statement against interest. (A) A statement which the declarant knew at the time of its making to be contrary to the declarant's pecuniary or proprietary interest, or to tend to subject the declarant to civil liability. (B) A statement which the declarant knew at the time of its making would tend to subject the declarant to criminal liability, if the statement is shown to be reliable.

(4) Statement of personal or family history. If no better evidence is available, a statement made before the existence of the controversy, concerning family relationships or pedigree of a person, made by a member of the family or relative.

(5) Statement by party incapable of testifying. Code § [8.01-397](#), entitled "Corroboration required and evidence receivable when one party incapable of testifying," presently provides:

In an action by or against a person who, from any cause, is incapable of testifying, or by or against the committee, trustee, executor, administrator, heir, or other representative of the person so incapable of testifying, no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony. In any such action, whether such adverse party testifies or not, all entries,

memoranda, and declarations by the party so incapable of testifying made while he was capable, relevant to the matter in issue, may be received as evidence in all proceedings including without limitation those to which a person under a disability is a party. The phrase "from any cause" as used in this section shall not include situations in which the party who is incapable of testifying has rendered himself unable to testify by an intentional self-inflicted injury.

For the purposes of this section, and in addition to corroboration by any other competent evidence, an entry authored by an adverse or interested party contained in a business record may be competent evidence for corroboration of the testimony of an adverse or interested party. If authentication of the business record is not admitted in a request for admission, such business record shall be authenticated by a person other than the author of the entry who is not an adverse or interested party whose conduct is at issue in the allegations of the complaint.