

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO
MAINE RULES OF EVIDENCE

2025 Me. Rules 08

Effective: October 14, 2025

All of the Justices concurring therein, the following amendment to the Maine Rules of Evidence is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in the understanding of the amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 804 of the Maine Rules of Evidence is amended to read as follows:

**RULE 804. EXCEPTIONS TO THE RULE AGAINST HEARSAY—WHEN THE DECLARANT
IS UNAVAILABLE AS A WITNESS**

....

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

....

(5) [Reserved]

(6) Statement Offered Against a Party that Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that engaged in or encouraged wrongdoing that caused the declarant's unavailability as a witness and did so intending that result.

Advisory Note – October 2025

Subdivision (b)(5) is reserved so that the subdivision number for the exception added as subdivision (b)(6) will correspond with the subdivision in which the exception appears in the Federal Rules. See Fed. R. Evid. 804(b)(6). This numbering will minimize the potential for confusion.

Subdivision (b)(6) is added to provide that a party forfeits the right to object on hearsay grounds to the admission of a declarant's prior statement when the party's deliberate wrongdoing procured the unavailability of the declarant as a witness. It incorporates the common law doctrine of forfeiture by wrongdoing, which is contained in 35 state evidence codes as well as the Federal Rules of Evidence.

As stated in the Advisory Committee Note to its federal counterpart, Fed. R. Evid. 804(b)(6), the Rule “recognizes the need for a prophylactic rule to deal with abhorrent behavior which strikes at the heart of the system of justice itself.” Fed. R. Evid. 804 cmt. to 1997 amendments (quotation marks omitted). The policy considerations supporting the federal rule apply with equal force within the State of Maine.

For this provision to apply, the wrongdoing need not consist of a criminal act and may include a broad array of conduct that is designed to, and does, cause a witness to withhold testimony in a court proceeding. The Rule applies to all parties including the State. The Rule 104(a) preponderance of the evidence standard that applies to the admission of evidence under the other hearsay exceptions, and that has been adopted in a substantial majority of jurisdictions that have a forfeiture by wrongdoing provision, would apply to this exception as well.

The language of the Maine Rule tracks that of the Federal Rule with one important variation. Unlike the Federal Rule, and many state rules, it is not sufficient under the Maine Rule that a party “acquiesced in” wrongdoing. Instead, the Maine Rule requires that the party be personally involved in the conduct that results in the witness’s unavailability by either engaging in the conduct or encouraging it.

Dated: September 30, 2025

FOR THE COURT,*

_____/s/_____
VALERIE STANFILL
Chief Justice

ANDREW M. MEAD
CATHERINE R. CONNORS
RICK E. LAWRENCE
WAYNE R. DOUGLAS
JULIA M. LIPEZ
Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.