TITLE 28 – EVIDENCE
CHAPTER 1 - EVIDENCE ACT

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

EVIDENCE ACT 1989

Arrangement of Sections

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EVIDENCE ACT 1989

AN ACT prescribing the Rules of Evidence.

Commencement:	*September 18, 1989*
Source:	*P. L. 1989-71*
Amended By:	*P. L. 2003-87 P. L. 2005-23 P. L. 2007-87*

§101. Short Title.

This Chapter may be cited as the "Evidence Act of 1989". **[P.L. 1989-71, §1.]**

§102. Repeal.

The Evidence Act 1986 (28 MIRC, Chapter I), is hereby repealed. **[P.L. 1989-71, §2.]**

§103. Rules of Evidence.

The Rules of Evidence are as set forth below. **[P.L. 1989-71, §3.]**

RULES OF EVIDENCE

ARTICLE I - GENERAL PROVISIONS

Rule 101. Scope.

These Rules govern proceedings in all of the courts of the Marshall Islands and in master's hearings as they may be required by the High Court or the District Court, except as otherwise provided in these Rules. In the

Traditional Rights Court these Rules shall be followed, unless the High Court shall prescribe special rules. These Rules may be followed in civil or criminal proceedings in any Community Court when such court deems it best. **[amended P.L. 2003-87][Amended by P.L. No: 2005-23]**

Rule 102. Purpose and construction.

These Rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 103. Rulings on Evidence.

(a) *Effect of erroneous ruling*. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

(1) *Objection*. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof*. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(b) *Record of offer and ruling*. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) *Hearing of jury*. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury

(d) *Plain error*. Nothing in this Rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court. **[(a)(1) &(2) amended P.L. 2003-87]**

Rule 104. Preliminary questions.

(a) *Questions of admissibility generally*. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of Subdivision (b) of this Rule. In making its determination it is not bound by the rules of evidence except those with respect to privileges

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

(c) *Presence of jury*. Hearings on the admissibility of confessions shall in criminal cases be conducted out of the presence of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or when an accused is a witness and so requests. **[Amended by P.L. No: 2005-23]**

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

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

Rule 105. Limited admissibility.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and in the case of a jury trial instruct the jury accordingly.

Rule 106. Remainder of or related writings or recorded statements.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the proponent at that time to introduce

any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

ARTICLE II- JUDICIAL NOTICE

Rule 201. Judicial notice of adjudicative facts.

(a) *Scope of Rule*. This Rule governs only judicial notice of adjudicative facts.

(b) *Kinds of facts*. A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) generally known within the territorial jurisdiction of the trial court; or

(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) *When discretionary*. A court may take judicial notice, whether requested or not.

(d) *When mandatory*. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) *Opportunity to be heard*. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) *Time of taking notice*. Judicial notice may be taken at any stage of the proceeding, including on appeal.

(g) *Instructing jury*. In a criminal case before a jury, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed." **[amended by P.L. 2003-87]**

ARTICLE III - PRESUMPTIONS AND RELATED MATTERS

Rule 301. Presumptions in civil actions and proceedings.

In all civil actions and proceedings not otherwise provided for by Act of Nitijela or by these Rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or

meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non persuasion, which remains throughout the trial upon the party on whom it was originally cast.

Rule 302. Reserved [P.L. 2005-23.]

Rule 303. Presumptions in criminal cases.

(a) *Scope.* In criminal cases, presumptions against an accused, recognized at common law or created by statute, including statutory provision that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.

(b) *Submission to Jury*. The judge is not authorized to direct the jury to find a presumed fact against the accused. When the presumed fact establishes guilt or is an element of the offense or negatives a defense, the judge may submit the question of guilt or of the existence of the presumed fact to the jury, if, but only if, a reasonable juror on the evidence as a whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt. When the presumed fact has a lesser effect, its existence may be submitted to the jury if the basic facts are supported by substantial evidence, or are otherwise established, unless the evidence as a whole negatives the existence of the presumed fact.

(c) *Instructing the jury*. Whenever the existence of a presumed fact against an accused is submitted to the jury, the judge shall give an instruction that the law declares that the jury may regard the basic facts as sufficient evidence of the presumed fact but does not require it to do so. In addition, if the presumed fact establishes guilt or is an element of the offense or negatives a defense, the judge shall instruct the jury that its existence must, on all the evidence, be proved beyond a reasonable doubt. **[Amended by P.L. 2005-23.]**

Rule 304. Land title disputes.

In respect to land title disputes see also Rule 1101(d)(1). **[renumbered as Rule 304 by P.L. 2005-23]**

ARTICLE IV - RELEVANCY AND ITS LIMITS

Rule 401. Definition of "relevant evidence".

"**Relevant evidence**" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution, by Act of Nitijela, by these Rules, or by other rules prescribed by a court pursuant to statutory authority. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

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

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

(2) *Character of victim*. In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait

of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; and

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

(b) *Other crimes, wrongs, or acts*. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therein, except as provided in Rules 413, 414, and 415 with respect to evidence of similar crimes or acts of sexual assault or child molestation. Evidence of other crimes, wrongs or acts may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.**[404(a)(1) and (b) amended by P.L. 2003-87][Amended by P.L.2005-23][404(1)(a) further amended by P.L.2007-87]**

Rule 405. Methods of proving character.

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

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

Rule 406. Habit; routine practice.

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or

organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407. Subsequent remedial measures.

When, after an injury or harm allegedly caused by an event, measures are taken which, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This Rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment. **[amended by P.L. 2003-87.]**

Rule 408. Compromise and offers to compromise.

(a) *Prohibited uses*. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

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

(2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) *Permitted uses.* This Rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice; negating a contention of undue delay, and proving an effort to obstruct a criminal investigation or prosecution. **[Amended in 2003 by P.L. 2003-87.][Amended by P.L. 2007-87.]**

Rule 409. Payment of medical and similar expenses.

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410. Inadmissibility of pleas, plea discussions, and related statements.

Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) a plea of nolo contendere;

(3) any statement made in the course of any proceedings under the rules of criminal procedure regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which results in a plea of guilty later withdrawn. However, such a statement is admissible;

(i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it; or

(ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel. **[amended in 2003 by P.L. 2003-87.]**

Rule 411. Liability insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This Rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Rule 412. Sex cases; relevance of victim's past behavior.

(a) *Evidence Generally Inadmissible*. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior; and **[Amended by P.L. No: 2005-23.]**

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

(b) *Exceptions.*

(1) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:

(A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury or other physical evidence;

(B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and

(C) evidence the exclusion of which would violate the constitutional rights of the defendant.

(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(c) *Procedure To Determine Admissibility*.

(1) A party intending to offer evidence under subdivision (b) must:

(A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and

(B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise. **[P.L. 2003-87.]**

Rule 413. Evidence of Similar Crimes in Sexual Assault Cases.

(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of specific instances of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant, subject to Rule 403. **[Amended by P.L. No: 2005-23.]**

(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415, "offense of sexual assault" means a crime under the laws of the Republic that involved;

(1) any conduct proscribed by Chapter 31, Sections 151-153 of the Marshall Islands Revised Code, and any amendments or replacements thereof;

(2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

(5) an attempt or conspiracy to engage in conduct described in paragraphs (1)–(4). **[New rule inserted by P.L. 2003-87][para (a) amended by P.L. No: 2005-23.]**

Rule 414. Evidence of Similar Crimes in Child Molestation Cases.

(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of specific instances of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant, subject to Rule 403. **[Amended by P.L. No: 2005-23.]**

(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415, "child" means a person below the age of fourteen, and "offense of child molestation" means a crime under the laws of the Republic that involved :

(1) any conduct proscribed by Chapter 31, Sections 151-153 of the Marshall Islands Revised Code, and any amendments or replacements thereof that was committed in relation to a child;

(2) reserved

(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;

(4) contact between the genitals or anus of the defendant and any part of the body of a child;

(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or

(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)–(5). **[New rule inserted by P.L. 2003-87][para (a) amended by P.L. No: 2005-23.]**

Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation.

(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these rules.

(b) A party who intends to offer evidence under this Rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule. **[New Rule inserted by P.L. 2003-87.]**

ARTICLE V - PRIVILEGES

Rule 501. General rule.

Except as otherwise required by the Constitution or provided by Act of Nitijela, these Rules, or in rules prescribed by a court pursuant to statutory authority, the privilege of a witness, person, government, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the Republic of the Marshall Islands in the light of reason and experience.

Rule 502. Specific privileges relating to confidential communications and information.

Communications made and information received within the following relationships are privileged against disclosure as follows;

(a) *Accountant-Client*. Confidential communications made by a client to an accountant in order to obtain accounting advice or assistance are privileged. This privilege survives termination of the relationship and death. The client is the holder of the privilege and only the client or the client's estate has the authority to claim or waive it; provided,

however, the accountant may claim the privilege on behalf of the client. This privilege is not applicable where a client seeks an accountant's assistance to commit a crime or fraud; in suits relating to a breach of duty arising out of the relationship itself; and where two or more clients consult an accountant and one client seeks to offer the evidence against the other

(b) *Attorney-Client*. Confidential communications made by a client to an attorney in order to obtain legal advice or assistance are privileged. This privilege survives termination of the relationship and death. The client is the holder of the privilege and only the client or the client's estate has the authority to claim or waive it; provided, however, the attorney may claim the privilege on behalf of the client. This privilege is not applicable where a client seeks an attorney's assistance to commit a crime or fraud; in suits relating to a breach of duty arising out of the relationship itself; if the communication relates to the intention of a client now deceased or the validity of any document executed by the client which purports to affect a property interest, and where two or more clients consult an attorney and one client seeks to offer the evidence against the other.

(c) *Government*. Information confidentially communicated to public officers acting within the scope of their official duties are privileged where the government believes the public interest would suffer by disclosure. This privilege survives the termination of office and the death of the public official. The government is the holder of this privilege and only the government may claim or waive it; provided, however, a public official may claim the privilege on behalf of the government.

(d) *Husband-Wife*. Confidential communications made during marriage, whether the marriage is legal or customary, are privileged. This privilege survives separation, divorce, or death of a spouse. Both spouses are holders of this privilege and either spouse or their estate may oppose disclosure. This privilege is not applicable in civil proceedings between the spouses; and in criminal proceedings against a spouse for any crime committed against the other spouse or the children of either, testimony may not be compelled, but may be volunteered by the witness.

(e) *Parent-Child*. Confidential communications made during the parent-child relationship, whether natural or adopted, legal or customary,

are privileged. This privilege survives termination of the relationship and death. Both parent and child are holders of this privilege and either, or their estates, may oppose compelled disclosure. This privilege is not applicable in civil proceedings between the parent and child, and in criminal proceedings against either the parent or child for any crime committed against the other or the other parent or other children, testimony may not be compelled, but may be volunteered by the witness.

(f) *Penitent-Priest or Clergy*. Confidential communications made by a penitent to a priest or member of the clergy made in accordance with the rules or practice of a religious denomination are privileged. This privilege survives termination of the relationship and death. Both the penitent and priest or member of the clergy are holders of this privilege and either may oppose compelled disclosure.

(g) *Physician-Patient*. Information acquired by a physician or surgeon in attending a patient, which is necessary for the purposes of treatment or diagnosis is privileged . This privilege covers a patient's medical and hospital records, direct communication between the physician and the patient, and observations of physical facts made during an examination or operation. This privilege survives termination of the relationship and death. The patient is the holder of this privilege and only the patient, the patient's guardian, or the patient's estate has the authority to claim or waive it . This privilege is not applicable in criminal proceedings; where the patient or the patient's guardian or estate puts the patient's medical condition at issue; in suits relating to a breach of duty arising out of the relationship itself; and to court ordered examinations.

(h) *Psychotherapist-Patient*. Information acquired by a psychotherapist, psychiatrist, psychologist, or other mental health therapist, necessary for purposes of treatment or diagnosis is privileged . This privilege survives termination of the relationship and death. The patient is the holder of the privilege and only the patient or the patient's estate has the authority to claim or waive it. This privilege is not applicable where the psychotherapist believes that a patient will cause physical harm to the patient or others; in suits relating to a breach of duty arising out of the relationship itself; to court ordered examinations; and where the patient puts the patient's own mental condition in issue.

ARTICLE VI - WITNESSES

Rule 601. General Rule of competency.

Every person is competent to be a witness except as otherwise provided in these Rules. **[amended 2003 by P.L. 2003-87.]**

Rule 602. Lack of 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 testimony of the witness. This Rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 603. Oath or affirmation.

Before testifying, witnesses shall be required to declare that they will testify truthfully, by oath or affirmation administered in a form calculated to awaken their conscience and impress their mind with the duty to do so.

Rule 604. Interpreters.

An interpreter is subject to the provisions of these Rules relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation. Unless a party or counsel to the litigation or legal proceedings timely objects before taking any testimony, a Clerk of Courts or an assistant shall be presumed to be an expert in the Marshallese and English languages and need not be administered an oath or affirmation that the Clerk or assistant will make a true translation.

Rule 605. Competency of judge as witness.

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Rule 606. Competency of juror as witness.

(a) *At the trial*. A member of the jury may not testify as a witness before that jury in the trial of the case in which the witness is sitting as a juror. If a member of the jury is called so to testify, the opposing party

shall be afforded an opportunity to object out of the presence of the jury.

(b) *Inquiry into validity of verdict*. Upon an inquiry into the validity of a verdict, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or concerning the juror's mental processes in connection therewith. But a juror may testify about:

(1) whether extraneous prejudicial information was improperly brought to the jury's attention;

(2) whether any outside influence was improperly brought to bear upon any juror; or

(3) whether there was a mistake in entering the verdict onto the verdict form. A juror's affidavit or evidence of any statement the juror may not be received on a matter about which that juror would be precluded from testifying. **[Subsection (b) amended by P.L. 2007-87.]**

Rule 607. Who may impeach.

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

Rule 608. Evidence of character and conduct of witness.

(a) *Opinion and reputation evidence of character*. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) the evidence may refer only to character for truthfulness or untruthfulness: and;

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

(b) *Specific instances of the conduct*. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may,

however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

(1) concerning the witness's character for truthfulness or untruthfulness; or

(2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the witness's privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness. **[amended by P.L. No: 2005-23.]**

Rule 609. Impeachment by evidence of conviction of crime.

(a) *General rule*. For the purpose of attacking the character for truthfulness of a witness:

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime require proof or admission of an act of dishonesty or false statement by the witness.

(b) *Time limit*. Evidence of a conviction under this Rule is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten (10) years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient

advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence

(c) *Effect of pardon, annulment, or certificate of rehabilitation*. Evidence of a conviction is not admissible under this Rule if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime that was punishable by death or imprisonment in excess of one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) *Juvenile adjudications*. Evidence of juvenile adjudications is generally not admissible under this Rule. The court may, however, in a criminal case allow evidence of juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) *Pendency of appeal*. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible. **[subsection (a) amended by P.L. 2003-87][Rule 609 Amended by P.L. 2007-87.]**

Rule 610. Religious beliefs or opinions.

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's character for truthfulness is impaired or enhanced. **[Amended by P.L. No: 2005-23.]**

Rule 611. Mode and order of interrogation and presentation.

(a) *Control by court*. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the ascertainment of the truth;

(2) avoid needless consumption of time, and

(3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of cross-examination*. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

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

Rule 612. Writing used to refresh memory.

If a witness uses a writing to refresh memory for the purpose of testifying, either:

(1) while testifying; or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this Rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial. **[amended by P.L. 2003-87.]**

Rule 613. Prior statements of witnesses.

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

(b) *Extrinsic evidence of prior inconsistent statement of witness*. Extrinsic evidence of prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 80l(d)(2).

Rule 614. Calling and interrogation of witnesses by court.

(a) *Calling by court*. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) *Interrogation by court*. The court may interrogate witnesses, whether called by itself or by a party.

(c) *Objections.* Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or in a jury trial at the next available opportunity when the jury is not present.

Rule 615. Exclusion of Witnesses.

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This Rule does not authorize exclusion of:

(1) a party who is a natural person; or

(2) an officer or employee of a party which is not a natural person designated as its representative by its attorney; or

(3) a person whose presence is shown by a party to be essential to the presentation of the party's cause; or

(4) a person authorized by statute to be present. **[amended by P.L. 2003-87.]**

ARTICLE VII - OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, the witness's testimony in the form of opinion or inferences is limited to those opinions or inferences which are:

(1) rationally based on the perception of the witness; and

(2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue; and

(3) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. **[amended by P.L. 2003-87.]**

Rule 702. Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if

(1) the testimony is based upon sufficient facts or data;

(2) the testimony is the product of reliable principles and methods, and

(3) the witness has applied the principles and methods reliably to the facts of the case. **[amended by P.L. 2003-87.]**

Rule 703. Bases of opinion testimony by experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect. **[amended by P.L. 2003-87.]**

Rule 704. Opinion on ultimate issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. **[Amended by P.L. No: 2005-23.]**

Rule 705. Disclosure of facts or data underlying expert opinion.

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

Rule 706. Court appointed experts.

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

(b) *Compensation.* Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. In criminal actions, before an appointment is made, the court shall determine if government funds are available and if so shall direct payment pursuant to governmental procedures. In all other criminal actions and in civil actions and proceedings the compensation shall be paid by the parties in such amount, if any, and at such times as the court directs, and thereafter charged in like manner as other costs.

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

(d) *Parties' experts of own selection*. Nothing in this Rule limits the parties in calling expert witnesses of their own selection.

ARTICLE VIII - HEARSAY

Rule 801. Definitions.

The following definitions apply under this Article

(a) *Statement*. A "statement" is:

(1) an oral or written assertion, or

(2) non-verbal conduct of a person, if it is intended by the person as an assertion.

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

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

(d) *Statements which are not hearsay*. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

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

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or

(C) one of identification of a person made after perceiving that person; or

(2) Admission by party-opponent. The statement is offered against a party and is:

(A) the party's own statement, in either an individual or a representative capacity; or

(B) a statement of which the party has manifested adoption or belief in its truth;

(C) a statement by a person authorized by the party to make a statement concerning the subject;

(D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E). **[amended by P.L. 2003-87.]**

Rule 802. Hearsay Rule.

Hearsay is not admissible except as provided by these Rules or by other rules prescribed by a court pursuant to statutory authority or by Act of Nitijela. In respect to land title disputes, also see Rule 110l(d)(2).

Rule 803. Hearsay exceptions; availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present sense impression*. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

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

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

(4) *Statements for purposes of medical diagnosis or treatment*. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) *Recorded recollection*. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) *Records of regularly conducted activity*. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this Paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Absence of entry in records kept in accordance with the provisions of Paragraph (6)*. Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of Paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and

preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Record or report of public office*. Unless the sources of information or other circumstances indicate lack of trustworthiness, a record of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule:

(A) an investigative report by police and other law enforcement personnel, except when offered by an accused in a criminal case;

(B) an investigative report prepared by or for a government, public office, or agency when offered by it in a case in which it is a party;

(C) factual findings offered by the government in criminal cases; and

(D) factual findings resulting from special investigation of a particular complaint, case, or incident, unless offered by an accused in a criminal case. **[Amended by P.L. No: 2005-23.]**

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

(10) *Absence of public record or entry*. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) *Records of religious organizations*. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship

by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Marriage, baptismal, and similar certificates*. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization, or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family records*. Statements of fact concerning personal or family history contained in family Bibles, genealogies, menmenbwij, charts, engravings on rings, inscriptions of family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) *Records of documents affecting an interest in property*. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) *Statements in documents affecting an interest in property*. A statement contained in a document purporting to establish or affect an interest in property if the matter statement was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in ancient documents*. Statements in a document in existence twenty (20) years or more the authenticity of which is established.

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

(18) *Learned treatises*. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the

expert in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

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

(20) *Reputation concerning boundaries or general history*. Reputation in a community, arising before the controversy, as to boundaries of, or customs affecting lands in the community, and reputation as to events of general history important to the community, island, atoll, or nation in which located.

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

(22) *Judgment of previous conviction*. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) *Judgment as to personal, family or general history, or boundaries*.Judgments as proof of matters of personal, family, menmenbwij or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation. **[subsection (6) amended, and original subsection (24) titled "Other Exceptions" deleted and re-codified in new Rule 807 below [P.L. 2003-87.]**

Rule 804. Hearsay exceptions; declarant unavailable.

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

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement:

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

(3) testifies to a lack of memory of the subject matter of the statement;

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

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

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

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

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

(2) *Statement under belief of impending death*. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that declarant's own death was

imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death.

(3) *Statement against interest*. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of personal or family history*.

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

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

(5) *Forfeiture by wrongdoing*. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness. **[subsection (b) paragraph (5) " Other Exceptions" deleted and re-codified in new section 807, and new (6) inserted, re-numbered as (5). (P.L. 2003-87.]**

Rule 805. Hearsay within hearsay.

Hearsay included within hearsay is not excluded under the Hearsay Rule if each part of the combined statements conforms with an exception to the Hearsay Rule provided in these Rules.

Rule 806. Attacking and supporting credibility of declarant.

When a hearsay statement, or a statement defined in Rule 80l(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the witness on the statement as if under cross-examination.

Rule 807. Other Exceptions.

Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

(A) the statement is offered as evidence of a material fact;

(B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(C) the general purposes of these Rules and the interests of justice will best be served by admission of the statement into evidence.

However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. **[New Rule inserted by P.L. 2003-87, codifying the "Other Exceptions" formerly contained in original 803(24) and 804(b)(5).]**

ARTICLE IX - AUTHENTICATION AND IDENTIFICATION

Rule 901. Requirement of authentication or identification.

(a) *General provision*. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) *Illustrations*. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:

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

(2) *Non-expert opinion on handwriting*. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by trier or expert witness*. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive characteristics and the like*. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations*. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if.

(A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public records or reports*. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient documents or data compilation*. Evidence that a document or data compilation, in any form:

(A) is in such condition as to create no suspicion concerning its authenticity;

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

(C) has been in existence twenty (20) years or more at the time it is offered.

(9) *Process or system*. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) *Methods provided by statute or rule*. Any method of authentication or identification provided by Act of Nitijela or by other rules prescribed by a court pursuant to statutory authority.

Rule 902. Self-authentication.

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

(1) *Domestic public documents under seal* A document bearing a seal purporting to be that of the Republic of the Marshall Islands, or a Local Government, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic public documents not under seal*. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in Paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) *Foreign public documents*. A document purporting to be executed or attested in a person's official capacity by one authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position

(A) of the executing or attesting person, or

(B) of any foreign official;

whose certification relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the Marshall Islands, or a diplomatic or consular official of the foreign country assigned or accredited to the Marshall Islands. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) *Certified copies of public records*. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations, in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with Paragraph(1), (2), or(3) of this Rule or complying with any act of Nitijela or rule prescribed by a court pursuant to statutory authority

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

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

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

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

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

(10) *Presumptions under Acts of Nitijela*. Any signature, document, or other matter declared by Act of Nitijela to be presumptively or prima facie genuine or authentic.

(11) *Certified domestic records of regularly conducted activity*. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of the Nitijela or rule prescribed by the High Court pursuant to statutory authority, certifying that the record;

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

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

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

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

(12) *Certified foreign records of regularly conducted activity*. In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record;

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

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

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

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the

country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them. **[new rules 902(11) and 902 (12) inserted by P.L. 2003-87.]**

Rule 903. Subscribing witness' testimony unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

ARTICLE X - CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions.

For purposes of this Article the following definitions are applicable:

(1) *Writings and recordings*. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) *Photographs*. "Photographs" include still photographs, X-ray films, video tapes. and motion pictures.

(3) *Original*. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

(4) *Duplicate*. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques, which accurately reproduces the original.

Rule 1002. Requirement of original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these Rules or by Act of Nitijela.

Rule 1003. Admissibility of duplicates.

A duplicate is admissible to the same extent as an original unless:

(1) a genuine question is raised as to the authenticity of the original, or

(2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004. Admissibility of other evidence of contents.

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

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

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

(3) *Original in possession of opponent*. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing, or

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

Rule 1005. Public Records.

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the

foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1006. Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

Rule 1007. Testimony or written admission of party.

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

Rule 1008. Functions of court and jury.

When the admissibility of other evidence of contents of writings, recordings, or photographs under these Rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised:

(a) whether the asserted writing ever existed;

(b) whether another writing, recording, or photograph produced at the trial is the original; or

(c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact. **[amended by P.L. 2003-87.]**

ARTICLE XI - MISCELLANEOUS RULES

Rule 1101. Applicability of Rules.

(a) These Rules apply generally to civil actions and proceedings, including admiralty and maritime cases, to criminal cases and

proceedings, and to contempt proceedings except those in which the court may act summarily.

(b) *Rule of privilege*. The Rule with respect to privileges applies to all stages of all actions, cases, and proceedings.

(c) *Rules inapplicable*. The Rules (other than with respect to privileges) do not apply in the following situations:

(1) *Preliminary question of fact*. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104.

(2) *Miscellaneous proceedings*. Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants of arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

(d) *Special rules applicable to land matters*.

(1) In respect to any weto, or part thereof, substantial weight shall be given to determinations by the person holding the title of Iroijlaplap, or if there is no Iroijlaplap, the title of Iroijerik, as to who are the Alap, Senior Dri Jerbal, Dri Jerbal, and other title holders.

(2) In respect to any weto, or part thereof, the affidavit of the person holding the title of Iroijlaplap, or if there is no Iroijlaplap, the title Iroijerik, as to who are the Alap, Senior Dri Jerbal, Dri Jerbal, and other title holders shall not be inadmissible as hearsay; provided the affiant is available for cross-examination. In the event that the affiant is not available for cross-examination, the affidavit is admissible only pursuant to hearsay exceptions provided under Rule 803 and Rule 804(b).

Rule 1102. Title.

These Rules may be known and cited as the Marshall Islands Rules of Evidence.

Note: The decision was made to leave this Act in its original heading and numbering system, although it does not correspond to the format and style of this code].