

AMENDMENTS TO UNIFORM RULES OF EVIDENCE (1988)*

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

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IN ALL THE STATES**

at its

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**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

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**AMENDMENTS TO
UNIFORM RULES OF EVIDENCE (1988)**

**ARTICLE I
GENERAL PROVISIONS**

RULE 101. ~~SCOPE~~ DEFINITIONS. In these Rules:

(1) “Person” means an individual, public or private corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(2) “Public record” means a record of a public office or agency in which the record is prepared, filed, or recorded pursuant to law.

(3) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

RULE 102. SCOPE, PURPOSE, AND CONSTRUCTION.

(a) Rules applicable. Except as otherwise provided in subdivision (b),

these Rules apply to all actions and proceedings in the courts of this State.

(b) Rules inapplicable. These Rules, other than those applicable with respect to privileges, do not apply in:

(1) the determination of questions of fact preliminary to admissibility of evidence if the issue is to be determined by the court under Rule 104(a);

(2) proceedings before grand juries;

(3) proceedings for contempt in which the court may act summarily; and

(4) miscellaneous proceedings, such as proceedings involving extradition or rendition; [preliminary] [probable cause] hearings in criminal cases; [sentencing]; granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and release on bail or otherwise.

(c) Purpose and construction. These rules ~~shall~~ must be construed to secure fairness, ~~in administration, elimination of~~ eliminate unjustifiable expense and delay, and ~~promotion of~~ promote the growth and development of the law of evidence, to the end that truth may be ascertained and ~~proceedings~~ issues justly determined.

RULE 103. RULINGS ON EVIDENCE.

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

(1) ~~Objection. In case~~ if 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~~ if 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.

(b) Record of offer and ruling. The court may add any other or further statement ~~which~~ that 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) Effect of pretrial ruling. If the court makes a definitive pretrial ruling on the record admitting or excluding evidence, a party need not renew an objection or offer of proof at trial to preserve a claim of error for appeal.

~~(c)~~ (d) Hearing of jury. In jury cases, proceedings ~~shall~~ must 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~~ within the hearing of the jury.

~~(d)~~ (e) Errors affecting substantial rights. ~~Nothing in this~~ This rule ~~precludes~~ does not preclude a court from taking notice of ~~errors~~ an error affecting a substantial ~~rights although they were~~ rights even if it was not brought to the attention of the trial court.

RULE 104. PRELIMINARY QUESTIONS.

(a) Questions of admissibility generally. Preliminary questions concerning

the qualification of ~~a person~~ an individual to be a witness, the existence of a privilege, or the admissibility of evidence ~~shall~~ must be determined by the court, subject to ~~the provisions of~~ subdivision (b). In making its determination, ~~it~~ the court is not bound by the rules of evidence except ~~those~~ the rules with respect to privileges.

(b) Determination of privilege. A person claiming a privilege must prove that the conditions prerequisite to the existence of the privilege are more probably true than not. A person claiming an exception to a privilege must prove that the conditions prerequisite to the applicability of the exception are more probably true than not. If there is a factual basis to support a good faith belief that a review of the allegedly privileged material is necessary, the court, in making its determination, may review the material outside the presence of any other person.

~~(b)~~ (c) Relevancy conditioned on fact. ~~Whenever~~ If the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon; or, in the court's discretion, subject to; the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

~~(c)~~ (d) Hearing of jury. ~~Hearings~~ A hearing on the admissibility of ~~a confession~~ confession in a criminal case ~~shall~~ must be conducted out of the hearing of the jury. ~~Hearings~~ A hearing on any other preliminary ~~matters in all cases, shall~~ matter must be so conducted ~~whenever~~ if the interests of justice require or, in a criminal case, ~~whenever~~ case, an accused is a witness, ~~if he~~ and so requests.

RULE 105. LIMITED ADMISSIBILITY. ~~Whenever~~ If evidence ~~which~~ that 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 instruct the jury accordingly.

**RULE 106. REMAINDER OF, OR RELATED, ~~WRITINGS OR~~
~~RECORDED STATEMENTS~~ RECORD.** ~~Whenever~~ If a writing or recorded ~~statement~~ record or part thereof is introduced by a party, an adverse party may require ~~him~~ the introduction at that time ~~to introduce~~ of any other part or any other ~~writing or recorded statement which~~ record that in fairness ought to be considered contemporaneously with it.

ARTICLE II
JUDICIAL NOTICE

RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS.

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

(b) Kinds of facts. A judicially noticed fact must be one that is not subject to reasonable dispute ~~in that~~ because it is: ~~either (1)~~

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

(ii) 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~~ earlier 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.

(g) Instructing jury. The court shall instruct the jury to accept as conclusive

~~any~~ a fact judicially noticed.

ARTICLE III
PRESUMPTIONS

RULE 301. ~~PRESUMPTIONS IN GENERAL; IN CIVIL ACTIONS AND~~
PROCEEDINGS DEFINITIONS. In this article:

~~(a) Effect. In all actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.~~

~~(b) Inconsistent Presumptions. If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies.~~

(1) “Basic fact” means a fact or group of facts that give rise to a presumption.

(2) “Inconsistent presumption” means that the presumed fact of one presumption is inconsistent with the presumed fact of another presumption.

(3) “Presumed fact” means a fact that is assumed upon the finding of a basic fact.

(4) “Presumption” means that when a basic fact is found to exist the presumed fact is assumed to exist until the non-existence of the presumed fact is determined as provided in Rules 302 and 303.

**RULE 302. ~~APPLICABILITY OF FEDERAL LAW IN CIVIL ACTIONS~~
~~AND PROCEEDINGS~~ EFFECT OF PRESUMPTIONS IN CIVIL CASES.**

~~In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which federal law supplies the rule of decision is determined in accordance with federal law.~~

(a) General rule. In a civil action or proceeding, unless otherwise provided by statute, judicial decision, or these Rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

(b) Inconsistent presumptions. If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight, neither presumption applies.

(c) Effect if federal law provides the rule of decision. The effect of a presumption respecting a fact that is an element of a claim or defense as to which federal law provides the rule of decision is determined in accordance with federal law.

RULE 303. SCOPE AND EFFECT OF PRESUMPTIONS IN CRIMINAL CASES.

(a) Scope. Except as otherwise provided by statute, ~~in criminal cases, or~~ judicial decision, this Rule governs presumptions against an accused ~~in criminal cases~~, recognized at common law or created by statute, including statutory

provisions that certain facts are prima facie evidence of other facts or of guilt, ~~are governed by this rule.~~

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

(c) Instructing the jury. ~~Whenever~~ When the existence of a presumed fact against the accused is submitted to the jury, the court shall instruct the jury that it may regard the basic facts fact as sufficient evidence of the presumed fact but is not required to do so. In addition, if ~~the~~ a presumed fact establishes guilt, ~~or~~ is an element of the offense, ~~or negatives~~ negates a defense, the court shall instruct the jury that its existence, on all the evidence, must be proved beyond a reasonable doubt.

ARTICLE IV
RELEVANCY AND ITS LIMITS

RULE 401. DEFINITION OF RELEVANT EVIDENCE. In this article
“~~Relevant~~ 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.** All relevant evidence is admissible, except as
otherwise provided by statute, ~~or by these rules~~ Rules, or ~~by~~ other rules applicable
in the courts of this State. Evidence ~~which~~ that 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 ~~his~~ character is not admissible for the purpose of proving ~~that he acted~~ the person acted in conformity therewith on a particular occasion, except:

(1) ~~Character of accused. Evidence~~ evidence of a pertinent trait of ~~his~~ the accused's character offered by an accused, or by the prosecution to rebut ~~the~~ same that evidence;

(2) ~~Character of victim. Evidence~~ evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut ~~the same~~ that evidence, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor; and

(3) ~~Character of witness. Evidence~~ evidence of the character of a witness, as provided in Rules 607, 608₂ 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 he acted~~ the person acted in conformity therewith. It may, however, be admissible for ~~other purposes~~ another purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Determination of admissibility. Evidence is not admissible under subdivision (b) unless:

(1) the proponent gives to all adverse parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the nature of the evidence the proponent intends to introduce at trial;

(2) if offered against an accused in a criminal case, the court conducts a hearing to determine the admissibility of the evidence and finds:

(A) by clear and convincing evidence, that the other crime, wrong, or act was committed;

(B) the evidence is relevant to a purpose for which the evidence is admissible under Rule 404(b); and

(C) the probative value of the evidence outweighs the danger of unfair prejudice; and

(3) upon the request of a party, the court gives an instruction on the limited admissibility of the evidence pursuant to Rule 105.

RULE 405. METHODS OF PROVING CHARACTER.

(a) Reputation or opinion. ~~In all cases in which~~ If 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~~ If 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 ~~his~~ the person's conduct.

RULE 406. HABIT: ROUTINE PRACTICE.

(a) Admissibility. Evidence of the habit of ~~a person~~ an individual or of the routine practice of ~~an organization~~ a person other than an individual, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the ~~person~~ individual or ~~organization~~ other person on a particular occasion was in conformity with the habit or routine practice.

(b) Method of proof. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

RULE 407. SUBSEQUENT REMEDIAL MEASURES. ~~Whenever~~ If, after an event, measures are taken ~~which~~ that, if taken previously, would have made ~~the event~~ injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, ~~or culpable conduct in connection with the event.~~ ~~This rule does not require the exclusion of evidence,~~ a defect in a product, a defect in a product's design, or a need for a warning or instruction. Evidence of subsequent measures may be admissible if offered for another purpose, such as ~~proving~~ impeachment or, if controverted, proof of ownership, control, or feasibility of precautionary measures, ~~if controverted, or impeachment.~~ An event includes the sale of a product to a user or consumer.

RULE 408. COMPROMISE AND OFFERS TO COMPROMISE.

Evidence of ~~(1)~~ furnishing, offering, ~~or~~ promising to furnish, ~~or~~ ~~(2)~~ accepting, offering, or promising to accept, a valuable consideration in compromising or attempting to compromise a claim ~~which~~ that was disputed as to either validity or amount, is not admissible to prove liability for, invalidity of, or amount of the claim, or any other claim. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of ~~any~~ evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion if the evidence is offered for another purpose, such as proving bias or prejudice of a witness, ~~negating~~ negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. ~~Compromise negotiations encompass mediation.~~

RULE 409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES.

Evidence of furnishing, 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. ~~WITHDRAWN PLEAS AND OFFERS~~ INADMISSIBILITY
OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS.**

~~Evidence of a plea later withdrawn, of guilty, or admission of the charge, or nolo contendere, or of an offer so to plead to the crime charged or any other crime, or of statements made in connection with any of the foregoing withdrawn pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer.~~

(a) General. Except as otherwise provided in subdivision (b), evidence of the following is not admissible in a civil or criminal proceeding against the defendant who made the plea or was a participant in the plea discussions:

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

(2) a plea of nolo contendere;

(3) a statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure, [Rules 443 and 444 of the Uniform Rules of Criminal Procedure, or comparable state procedure of this or any other State] regarding either of the foregoing pleas; and

(4) a 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 result in a plea of guilty later withdrawn.

(b) Exceptions. A statement described in subdivision (a) is admissible:

(1) in a proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and, in fairness, the statement should be considered contemporaneously with the other statement; and

(2) 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.

RULE 411. LIABILITY INSURANCE. Evidence that a person was or was not insured against liability is not admissible upon the issue as to whether ~~he~~ the person acted negligently or otherwise wrongfully. This ~~rule~~ 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. SEXUAL BEHAVIOR.

~~(a) When inadmissible. In a criminal case in which a person is accused of a sexual offense against another person, the following is not admissible:~~

~~(1) Reputation or opinion. Evidence of reputation or opinion regarding other sexual behavior of a victim of the sexual offense alleged.~~

~~(2) Specific instances. Evidence of specific instances of sexual behavior of an alleged victim with persons other than the accused offered on the issue of whether the alleged victim consented to the sexual behavior with respect to the sexual offense alleged.~~

~~(b) Exceptions. This rule does not require the exclusion of evidence of (i) specific instances of sexual behavior if offered for a purpose other than the issue of consent, including proof of the source of semen, pregnancy, disease, injury, mistake, or the intent of the accused; (ii) false allegations of sexual offenses; or (iii) sexual behavior with persons other than the accused which occurs at the time of the event giving rise to the sexual offense alleged.~~

(a) Definition. In this Rule, “sexual behavior” means behavior relating to the sexual activities of an individual, including the individual’s experience or observation of sexual intercourse or sexual contact, use of contraceptives, history of marriage or divorce, sexual predisposition, expressions of sexual ideas or emotions, and activities of the mind such as fantasies or dreams.

(b) Evidence of sexual behavior generally inadmissible. Except as otherwise provided in subdivisions (c) and (d), in a criminal proceeding involving

the alleged sexual misconduct of an accused, evidence may not be admitted to prove that the alleged victim engaged in other sexual behavior.

(c) Exceptions. Evidence of specific instances of an alleged victim's sexual behavior, if otherwise admissible under these rules, is admissible to prove:

(1) that a person other than the accused was the source of the semen, injury, disease, other physical evidence, or pregnancy;

(2) that a person other than the accused was the source of the alleged victim's knowledge of sexual behavior;

(3) consent, if the alleged victim's sexual behavior involved the accused or constituted conduct so distinctive and which so closely resembles the accused's version of the sexual behavior of the alleged victim at the time of the alleged sexual misconduct that it corroborates the accused's reasonable belief that the alleged victim had consented to the act or acts of alleged misconduct; or

(4) a fact of consequence whose exclusion would violate the constitutional rights of the accused.

(d) Procedure to determine admissibility. Evidence is not admissible under subdivision (c) unless:

(1) the proponent gives to all parties and to the alleged victim, or the alleged victim's guardian or representative, reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the nature of such evidence the proponent intends to introduce at trial;

(2) the court conducts a hearing in chambers, affords the alleged victim

and the parties a right to attend the hearing and be heard, and finds:

(A) that the evidence is relevant to a fact of consequence for which the evidence is admissible under subdivision (c); and

(B) that the probative value of the evidence is not substantially outweighed by the danger of harm to the alleged victim or of unfair prejudice to any party; and

(3) upon request, the court gives an instruction on the limited admissibility of the evidence, pursuant to Rule 105.

ARTICLE V
PRIVILEGES

RULE 501. PRIVILEGES RECOGNIZED ONLY AS PROVIDED.

Except as otherwise provided by constitution or statute or by these or other rules promulgated by [the Supreme Court of this State], no person has a privilege to:

- (1) refuse to be a witness;
- (2) refuse to disclose any matter;
- (3) refuse to produce any object or ~~writing~~ record; or
- (4) prevent another from being a witness or disclosing any matter or producing any object or ~~writing~~ record.

RULE 502. LAWYER-CLIENT PRIVILEGE.

(a) Definitions. ~~As used in~~ In this rule:

(1) “Client” means a person, ~~including a public officer, corporation, association, or other organization or entity, either public or private, who is rendered~~ for whom a lawyer renders professional legal services ~~by a lawyer,~~ or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

~~(5)~~ (2) A communication is “confidential” if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(3) “Lawyer” means a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any ~~state~~ State or ~~nation~~ country.

(4) “Representative of the client” means ~~(i)~~ a person having authority to obtain professional legal services, or to act on legal advice ~~thereby~~ rendered, on behalf of the client or ~~(ii) any other~~ person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the scope of employment for the client.

~~(4)~~ (5) “Representative of the lawyer” means a person employed or engaged, or reasonably believed by the client to be employed or engaged, by the lawyer to assist the lawyer in rendering professional legal services.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made for the purpose of facilitating the rendition of professional legal services to the client:

(i) between the client or a representative of the client and the client’s lawyer or a representative of the lawyer,

(ii) between the lawyer and a representative of the lawyer,

(iii) by the client or a representative of the client or the client’s lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein,

(iv) between representatives of the client or between the client and a representative of the client, or

(v) among lawyers and their representatives representing the same client.

(c) Who may claim the privilege. The privilege under this Rule may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. ~~The~~ A person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the client.

(d) Exceptions. There is no privilege under this ~~rule~~ Rule:

(1) ~~Furtherance of crime or fraud. If~~ if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known ~~to be~~ was a crime or fraud;

(2) ~~Claimants through same deceased client. As~~ as to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by transaction inter vivos;

(3) ~~Breach of duty by a lawyer or client. As~~ as to a communication relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer;

(4) as to a communication necessary for a lawyer to defend in a legal

proceeding a charge that the lawyer assisted the client in criminal or fraudulent conduct;

(4) ~~(5) Documents attested by a lawyer.~~ As as to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

(5) ~~(6) Joint Clients.~~ As as to a communication relevant to a matter of common interest between or among ~~2~~ two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients; or

(6) ~~(7) Public Officer or Agency.~~ As as to a communication between a public officer or agency and its lawyers unless the communication concerns a pending investigation, claim, or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to ~~process~~ act upon the claim or conduct a pending investigation, litigation, or proceeding in the public interest.

RULE 503. ~~PHYSICIAN AND PSYCHOTHERAPIST – PATIENT~~
PRIVILEGE [PSYCHOTHERAPIST] [PHYSICIAN AND
PSYCHOTHERAPIST] [PHYSICIAN AND MENTAL-HEALTH
PROVIDER] [MENTAL-HEALTH PROVIDER] – PATIENT PRIVILEGE.

(a) Definitions. ~~As used in~~ In this rule:

(4) ~~(1)~~ A communication is “confidential” if it is not intended to be

disclosed to third persons, except those persons present to further the interest of the patient in the consultation, examination, or interview, those persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis ~~and~~ or treatment of the patient under the direction of ~~the [physician or]~~ a [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider], including members of the patient's family.

[(2) "Mental-health provider" means a person authorized, in any State or country, or reasonably believed by the patient to be authorized, to engage in the diagnosis or treatment of a mental or emotional condition, including addiction to alcohol or drugs.]

~~(1) [(3) A "patient" is a person~~ "Patient" means an individual who consults or is examined or interviewed by a ~~[physician, or]~~ [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider]].

~~[(2) (4) A "physician" is~~ "Physician" means a person authorized ~~to practice medicine in any state~~ State or nation ~~country,~~ or reasonably believed by the patient ~~so~~ to be authorized to practice medicine.]

~~(3) [(5) A "psychotherapist" is (i)~~ "Psychotherapist" means a person authorized ~~to practice medicine in any state~~ State or nation ~~country,~~ or reasonably believed by the patient ~~so~~ to be authorized to practice medicine, while engaged in the diagnosis or treatment of a mental or emotional condition, including ~~alcohol or~~

~~drug addiction to alcohol or drugs~~, or (ii) a person licensed or certified as a psychologist under the laws of any ~~state~~ State or ~~nation~~ country, or reasonably believed by the patient to be licensed or certified as a psychologist, while similarly engaged.]

(b) General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of ~~his~~ the patient's [physical,] mental[, or emotional condition, including ~~alcohol or drug addiction~~ addiction to alcohol or drugs, among ~~himself~~ the patient, the patient's [~~physician or~~] [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider] and persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of the [~~physician, or~~] psychotherapist, including members of the patient's family [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider].

(c) Who may claim the privilege. The privilege under this Rule may be claimed by the patient, ~~his~~ the patient's guardian or conservator, or the personal representative of a deceased patient. The person who was the [~~physician, or~~] [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider] at the time of the communication is presumed to have authority to claim the privilege₂ but only on behalf of the patient.

(d) Exceptions. There is no privilege under this Rule for a communication:

~~(1) Proceedings for hospitalization. There is no privilege under this rule for communications~~ relevant to an issue in proceedings to hospitalize the patient for mental illness, if the ~~[psychotherapist]~~ [physician or psychotherapist] [physician or mental-health provider] [mental-health provider], in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization;

~~(2) Examination by order of court. If the court orders an~~ made in the course of a court-ordered or statutorily mandated investigation or examination of the [physical,] mental[,] or emotional condition of a ~~the~~ patient, whether a party or a witness, ~~communications made in the course thereof are not privileged under this rule~~ with respect to the particular purpose for which the examination is ordered, unless the court ~~orders otherwise.~~ or statute otherwise directs;

~~(3) Condition an element of claim or defense. There is no privilege under this rule as to a communications~~ relevant to an issue of the [physical,] mental[,] or emotional condition of the patient in any proceeding in which ~~he~~ the patient relies upon the condition as an element of ~~his~~ the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of ~~his~~ the party's claim or defense;

~~(4) if the services of the~~ [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider] were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew, or reasonably should have known, was a crime or fraud or mental or physical injury to the patient or another individual;

(5) in which the patient has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the patient or another individual;

(6) relevant to an issue in proceedings challenging the competency of the [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider]; or

(7) relevant to a breach of duty by the [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider].

(8) that is subject to a duty to disclose under [statutory law].

RULE 504. ~~HUSBAND-WIFE PRIVILEGE~~ SPOUSAL PRIVILEGE.

(a) Definition. A communication is confidential if it is made privately by an individual to the individual's spouse and is not intended for disclosure to any other person.

~~(a)~~ (b) Marital communications. An individual has a privilege to refuse to testify ~~or to~~ and to prevent ~~his or her~~ the individual's spouse or former spouse from testifying as to any confidential communication made by the individual to the spouse during their marriage. The privilege may be waived only by the individual holding the privilege or by the holder's guardian; or conservator, or the individual's personal representative if the individual is deceased.

~~(b)~~ (c) Spousal testimony in criminal proceedings. The spouse of an accused in a criminal proceeding has a privilege to refuse to testify against the

accused spouse.

~~(c)~~ (d) Exceptions. There is no privilege under this ~~rule~~ Rule:

(1) in any civil proceeding in which the spouses are adverse parties;

(2) in any criminal proceeding in which ~~a prima facie showing is made~~
~~that the spouses acted jointly in the commission of the crime charged, or;~~

(3) in any proceeding in which one spouse is charged with a crime or tort against the person or property of ~~(i)~~ the other, ~~(ii)~~ a minor child of either, ~~(iii)~~ an individual residing in the household of either, or ~~(iv)~~ a third person if the crime or tort is committed in the course of committing a crime or tort against ~~any of the individuals previously named in this sentence.~~ the other spouse, a minor child of either spouse, or an individual residing in the household of either spouse; or

(4) ~~The court may refuse to allow invocation of the privilege in any other proceeding,~~ in the discretion of the court, if the interests of a minor child of either spouse may be adversely affected by invocation of the privilege.

RULE 505. RELIGIOUS PRIVILEGE.

(a) Definitions. ~~As used in~~ In this rule:

(1) ~~A “clergyman” is~~ “Cleric” means a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the ~~person~~ individual consulting ~~him~~ the cleric.

(2) A communication is “confidential” if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. ~~A person~~ An individual has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the ~~person~~ individual to a “~~clergyman~~” cleric in ~~his~~ the cleric’s professional ~~character~~ capacity as spiritual adviser.

(c) Who may claim the privilege. The privilege under this Rule may be claimed by the ~~person, by his~~ individual or the individual’s guardian or conservator, or ~~by his~~ the individual’s personal representative if ~~he~~ the individual is deceased. The ~~person~~ individual who was the “~~clergyman~~” cleric at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

RULE 506. POLITICAL VOTE.

(a) General rule of privilege. ~~Every person~~ An individual has a privilege to refuse to disclose the tenor of ~~his~~ the individual’s vote at a political election conducted by secret ballot.

(b) Exceptions. ~~This~~ The privilege provided in subdivision (a) does not apply if the court finds that the vote was cast illegally or determines that ~~the~~ disclosure should be compelled pursuant to [the election laws of the State].

RULE 507. TRADE SECRETS. A person has a privilege, which may be claimed by ~~him~~ the person, or ~~his~~ the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by ~~him~~ the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege and of the parties and the interests of justice require.

RULE 508. SECRETS OF STATE AND OTHER OFFICIAL INFORMATION; GOVERNMENTAL PRIVILEGES.

(a) Claim of privilege under law of United States. If the law of the United States creates a governmental privilege that the courts of this State must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States.

(b) Privileges created by laws of State. No ~~other~~ governmental privilege is recognized except as provided in subdivision (a) or created by the Constitution or constitution, statutes, or rules of this State.

(c) Effect of sustaining claim. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant, or dismissing the action.

RULE 509. IDENTITY OF INFORMER.

(a) Rule of privilege. The United States or a ~~state or subdivision thereof~~ State has a privilege to refuse to disclose the identity of ~~a person~~ an individual who has furnished information relating to or ~~assisting~~ assisted in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who may claim. The privilege under this Rule may be claimed by an appropriate representative of the ~~public entity~~ government to which the information was furnished.

(c) Exceptions: ~~(1) Voluntary disclosure; informer a witness. No~~ There is no privilege under this rule if the identity of the informer or ~~his~~ the informer's interest in the subject matter of ~~his~~ the informer's communication has been disclosed by a holder of the privilege or by the informer's own action to those who would have cause to resent the communication ~~by a holder of the privilege or by the informer's own action~~, or if the informer appears as a witness for the government.

(d) Procedures. ~~(2) Testimony on relevant issue.~~ If it appears ~~in the case~~ that an informer may be able to give testimony relevant to ~~any~~ an issue in a criminal case, or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the informed public entity invokes the privilege, the court shall give the public entity an opportunity to show *in-camera* in chambers with all of the parties present facts relevant to ~~determining~~ whether the

informer can, in fact, supply ~~that~~ the testimony. The showing ~~will~~ ordinarily will be ~~in the form of affidavits~~ by affidavit, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose ~~his~~ the informer's identity, in criminal cases the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include one or more of the following: requiring the prosecuting attorney to comply, granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of ~~him~~ the defendant, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing charges. In civil cases, the court may make any order the interests of justice require. Evidence submitted to the court ~~shall~~ must be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents ~~shall~~ may not otherwise be revealed without consent of the informed public entity. All counsel and parties ~~are permitted to~~ may be present at every stage of the proceedings under this subdivision except a showing in camera, at which no counsel or party ~~shall~~ may be ~~permitted to be~~ present.

**RULE 510. WAIVER OF PRIVILEGE ~~BY VOLUNTARY~~
~~DISCLOSURE~~.**

(a) Voluntary disclosure. A person upon whom these rules confer a privilege against disclosure waives the privilege if ~~he~~ the person or ~~his~~ the person's

predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

(b) Involuntary disclosure. A claim of privilege is not waived by a disclosure that was compelled erroneously or made without an opportunity to claim the privilege.

**~~RULE 511. PRIVILEGED MATTER DISCLOSED UNDER
COMPULSION OR WITHOUT OPPORTUNITY TO CLAIM PRIVILEGE.~~**

~~A claim of privilege is not defeated by a disclosure which was (a) compelled erroneously or (b) made without opportunity to claim the privilege.~~

**RULE ~~512~~ 511. COMMENT UPON OR INFERENCE FROM CLAIM OF
PRIVILEGE; INSTRUCTION.**

(a) Comment or inference not permitted. ~~The~~ A claim of a privilege, whether in the present proceeding or upon a ~~prior~~ previous occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn ~~therefrom~~ from the claim.

(b) Claiming privilege without knowledge of jury. In jury cases, proceedings ~~shall~~ must be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Jury instruction. Upon request, any party against whom the jury might

draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

ARTICLE VI

WITNESSES

RULE 601. GENERAL RULE OF COMPETENCY. Every ~~person~~ individual is competent to be a witness except as otherwise provided in these rules.

RULE 602. LACK OF PERSONAL KNOWLEDGE. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that ~~he~~ the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony ~~of the witness himself~~. This ~~rule~~ Rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

RULE 603. OATH OR AFFIRMATION. Before testifying, ~~every~~ each witness ~~shall be required to~~ must declare under oath or affirmation that ~~he~~ the witness will testify truthfully, ~~by~~. The oath or affirmation must be administered in a form calculated to awaken ~~his~~ the witness's conscience and impress ~~his~~ the witness's mind with ~~his~~ the duty to ~~do so~~ testify truthfully.

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 he will~~ to make a true ~~translation~~ and complete rendition of all

communications made during the interpretive process to the best of the interpreter's knowledge and belief.

RULE 605. COMPETENCY OF JUDGE AS WITNESS. The judge presiding at ~~the~~ a trial may not testify in that trial as a witness. ~~No~~ An objection need not be made ~~in order~~ to preserve the point.

RULE 606. COMPETENCY OF JUROR AS WITNESS.

(a) At the trial. A member of ~~the~~ a jury may not testify as a witness before ~~that the~~ jury in the trial of the case in which ~~he~~ the juror is sitting ~~as a juror~~. If ~~he~~ the juror is called so to testify, the ~~opposing party shall~~ parties must be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, ~~a:~~

(1) A juror may not testify ~~as to any~~ to a matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon ~~his~~ that or any other juror's mind or emotions as influencing ~~him~~ the juror to assent to or dissent from the verdict or indictment or concerning ~~his~~ the juror's mental processes in connection therewith, ~~nor may his.~~

(2) A juror's affidavit or evidence of any statement by ~~him~~ the juror concerning a matter about which ~~he~~ the juror would be precluded from testifying may not be received, ~~but a.~~

(3) A juror may testify on the questions as to whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon ~~any~~ a juror.

RULE 607. WHO MAY IMPEACH. The credibility of a witness may be attacked by any party, including the party calling ~~him~~ the 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~~ the following:

(1) ~~the~~ The evidence may refer only to character for truthfulness or untruthfulness, and

(2) ~~evidence~~ 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 conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting ~~his~~ the witness's credibility, 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)~~ (i) concerning ~~his~~ the witness's character for truthfulness or untruthfulness, or ~~(2)~~ (ii) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(c) Privilege against self-incrimination. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of ~~his~~ the accused's or the witness's privilege against self-incrimination when examined with respect to matters ~~which~~ that relate only to credibility.

RULE 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME.

(a) General rule. For the purpose of attacking the credibility of a witness; evidence:

(1) Evidence that ~~he~~ a witness other than an accused has been convicted of a crime shall be admitted but only is admissible, subject to Rule 403, if the crime ~~(1)~~ was punishable by death or imprisonment in excess of one year under the law under which ~~he~~ the witness was convicted, and evidence that an accused has been convicted of such a crime is admissible if the court determines that the probative value of admitting this the evidence substantially outweighs its prejudicial effect the danger of unfair prejudice to a party or a witness, or (2) involved dishonesty or false statement, the accused.

(2) Evidence that a witness has been convicted of a crime of

untruthfulness or falsification is admissible, regardless of punishment, if the statutory elements of the crime necessarily involve untruthfulness or falsification.

(b) Time limit. Evidence of a conviction ~~under this rule~~ is not admissible under this rule if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for ~~that~~ the conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of evidence of the conviction supported by specific facts and circumstances substantially outweighs its unfair prejudicial effect.

(c) Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this ~~rule~~ Rule if ~~(1)~~ the conviction has been:

(1) the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person individual convicted, and that person individual has not been convicted of a subsequent crime which 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 a juvenile adjudications adjudication is generally not admissible under this ~~rule~~ Rule. Except as otherwise provided by statute, however, in a criminal case the court may allow evidence of a 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~~ of the evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of appeal. The pendency of an appeal ~~therefrom~~ from a conviction does not render evidence of a the conviction inadmissible. Evidence of the pendency of an appeal is admissible.

(f) Notice. Evidence is not admissible under this Rule unless the proponent of the evidence gives to all adverse parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the nature of the conviction.

(g) Record. If objection is made to evidence offered pursuant to subdivision (a)(1) or (2), the court shall state on the record the factors it considered in determining admissibility.

(h) Evidence. If admissible, evidence of a conviction may be by testimony of the witness during direct or cross-examination, by the introduction of a public record, or by other extrinsic evidence if the public record is not available and good cause is shown.

RULE 610. RELIGIOUS BELIEFS AND 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 ~~his~~ the witness's credibility is impaired or enhanced.

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, may 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~~ is necessary to develop ~~his~~ the witness's testimony. Ordinarily leading questions should be permitted on cross-examination. ~~Whenever a~~ A party ~~calls~~ may interrogate a hostile witness, an adverse party, or a witness identified with an adverse party, ~~interrogation may be~~ by leading questions.

RULE 612. ~~WRITING~~ RECORD OR OBJECT USED TO REFRESH MEMORY.

(a) While testifying. If, while testifying, a witness uses a ~~writing~~ record or object to refresh ~~his~~ memory, an adverse party is entitled to have the ~~writing~~ record or object produced at the trial, hearing, or deposition in which the witness is

testifying.

(b) Before testifying. If, before testifying, a witness uses a writing record or object to refresh ~~his~~ memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing record or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(c) Terms and conditions of production and use. A party entitled to have a writing record or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions ~~which~~ that relate to the testimony of the witness. If production of the writing record or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing record or object contains ~~matters~~ matter not related to the subject matter of the testimony, the court shall examine the writing record or object 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~~ must be preserved and made available to the appellate court in the event of an appeal. If a writing record or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, but in criminal cases if the prosecution elects not to comply, the order ~~shall~~ must be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

RULE 613. ~~PRIOR STATEMENTS~~ STATEMENT OF WITNESS.

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

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the ~~same~~ statement and the ~~opposite~~ opposing party is afforded an opportunity to interrogate ~~him~~ the witness thereon, or the interests of justice otherwise require. This ~~provision~~ subdivision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

RULE 614. CALLING AND INTERROGATION OF WITNESSES BY COURT.

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

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

(c) ~~Objections~~ Objection. ~~Objections~~ An objection to the calling or interrogation of ~~witnesses~~ a witness by the court ~~or to interrogation by~~ it may be

made at the time or 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~~ on its own motion. This ~~rule~~ Rule does not authorize exclusion of ~~(1)~~ (i) a party who is ~~a natural person~~ an individual, or ~~(2)~~ (ii) an officer or employee of a party that is not ~~a natural person~~ an individual designated as its representative by its attorney, or ~~(3)~~ (iii) ~~a person~~ an individual whose presence is shown by a party to be essential to the presentation of ~~his~~ the party's cause or is otherwise authorized by statute, judicial decision, or court rule.

RULE 616. BIAS OF WITNESS. For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against ~~any~~ a party to the case is admissible.

[As added 1986]

ARTICLE VII
OPINIONS AND EXPERT TESTIMONY

RULE 701. OPINION TESTIMONY BY LAY WITNESS. ~~If the witness is not testifying as an expert, his~~ a witness's testimony is not based on scientific, technical, or other specialized knowledge within the scope of Rule 702, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which that are (1) rationally based on the perception of the witness, and (2) helpful to a clear understanding of his the witness's testimony or the determination of a fact in issue.

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.~~

(a) General rule. If a witness's testimony is based on scientific, technical, or other specialized knowledge, the witness may testify in the form of opinion or otherwise if the court determines the following are satisfied:

(1) the testimony will assist the trier of fact to understand evidence or determine a fact in issue;

(2) the witness is qualified by knowledge, skill, experience, training, or

education as an expert in the scientific, technical, or other specialized field;

(3) the testimony is based upon principles or methods that are reasonably reliable, as established under subdivision (b), (c), (d) or (e);

(4) the testimony is based upon sufficient and reliable facts or data; and

(5) the witness has applied the principles or methods reliably to the facts of the case.

(b) Reliability deemed to exist. A principle or method is reasonably reliable if its reliability has been established by controlling legislation or judicial decision.

(c) Presumption of reliability. A principle or method is presumed to be reasonably reliable if it has substantial acceptance within the relevant scientific, technical, or specialized community. A party may rebut the presumption by proving that it is more probable than not that the principle or method is not reasonably reliable.

(d) Presumption of unreliability. A principle or method is presumed not to be reasonably reliable if it does not have substantial acceptance within the relevant scientific, technical, or specialized community. A party may rebut the presumption by proving that it is more probable than not that the principle or method is reasonably reliable.

(e) Other reliability factors. When determining the reliability of a principle or method, the court shall consider all relevant additional factors, which may include:

- (1) the extent to which the principle or method has been tested;
- (2) the adequacy of research methods employed in testing the principle or method;
- (3) the extent to which the principle or method has been published and subjected to peer review;
- (4) the rate of error in the application of the principle or method;
- (5) the experience of the witness in the application of the principle or method;
- (6) the extent to which the principle or method has gained acceptance within the relevant scientific, technical, or specialized community; and
- (7) the extent to which the witness's specialized field of knowledge has gained acceptance within the general scientific, technical or specialized community.

RULE 703. BASIS OF OPINION TESTIMONY BY ~~EXPERTS~~ EXPERT.

The facts or data in ~~the~~ a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to ~~him~~ 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 for the opinion or inference to be admissible.

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.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING

EXPERT OPINION. ~~The~~ An expert may testify in terms of opinion or inference and give ~~his~~ reasons therefor without ~~prior~~ previous 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 EXPERT WITNESS.

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

(b) Compensation. ~~Expert witnesses so~~ An expert witness appointed ~~are by~~
the court is entitled to reasonable compensation ~~in whatever sum as determined by~~
~~the court may allow.~~ The compensation ~~thus fixed~~ is payable from funds ~~which~~
~~may be~~ that are provided by law in criminal cases and in civil actions and
proceedings involving just compensation for the taking of property. In other civil
actions and proceedings the parties shall pay the compensation ~~shall be paid by the~~
~~parties~~ in such proportion and at such time as the court directs, and ~~thereafter~~ the
compensation is to be charged ~~in like manner as other~~ costs.

(c) Disclosure of appointment. ~~In the exercise of its discretion, the~~ 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~~ This Rule
does not limit the parties in calling expert witnesses of their own selection.

ARTICLE VIII

HEARSAY

RULE 801. DEFINITIONS; EXCLUSIONS.

(a) General. ~~As used in~~ In this Article ~~article:~~

(b) (1) “Declarant” means ~~an individual~~ a person who makes a statement.

(c) (2) “Hearsay” means 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.

(a) (3) “Statement” means (i) an oral ~~or written~~ assertion, an assertion in a record, or (ii) nonverbal conduct of ~~an individual~~ a person who intends it as an assertion.

(d) (b) Statements that are not hearsay. A statement is not hearsay if:

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

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

(ii) (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; and was made before the supposed fabrication,

influence, or motive arose; or

(iii) (C) one of identification made shortly after perceiving the individual identified.

(2) ~~The~~ the statement is offered against a party and is:

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

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

(iii) (C) a statement by an individual authorized by the party to make a statement concerning the subject;

(iv) (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

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

RULE 802. HEARSAY RULE. Hearsay is not admissible except as provided by law or by these rules.

RULE 803. HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL. The following are not excluded by the hearsay rule, even ~~though~~ if 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 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 sensation, 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 testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the ~~witness's~~ witness's memory and to reflect that knowledge correctly. ~~If admitted, the memorandum or, which~~ record may be read

into evidence but may not ~~itself~~ be received as an exhibit unless offered by an adverse party.

(6) ~~Records~~ Record of regularly conducted business activity. ~~As used in this paragraph, “business”~~ “Business,” as used in this paragraph, includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. 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) or (12), or with a statute providing for certification, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness. A public record inadmissible under paragraph (8) is inadmissible under this exception.

(7) Absence of entry in records kept in accordance with paragraph (6). Evidence that a matter is not included in the ~~memoranda, reports, records, or data compilations, in any form,~~ kept in accordance with 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, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11) or (12), or with a statute

providing for certification, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public ~~records and reports~~ record. Unless the sources of information or other circumstances indicate lack of trustworthiness, ~~records, reports, statements, or data compilations in any form~~ 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:

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

(ii) (B) ~~an~~ investigative ~~reports~~ report 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) (C) factual findings offered by the government in criminal cases;
and

(iv) (D) factual findings resulting from special investigation of a particular complaint, case, or incident, ~~except when~~ unless offered by an accused in a criminal case.

(9) ~~Records~~ Record of vital statistics. ~~Records or data compilations, in any form,~~ A record 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~~ Record of religious ~~organizations~~ organization. ~~Statements~~ A statement of ~~births~~ a birth, ~~marriages~~ marriage, ~~divorces~~ divorce, death, legitimacy, ancestry, relationship by blood or marriage, or other similar ~~facts~~ fact of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar ~~certificates~~ certified record. ~~Statements~~ A statement of fact contained in a ~~certificate~~ certified record that the maker performed a marriage or other ceremony or administered a sacrament, made by a ~~clergyman~~ cleric, 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~~ record. ~~Statements~~ A statement of fact concerning personal or family history contained in a family ~~Bibles~~ Bible, ~~genealogies~~ genealogy, ~~charts~~ chart, ~~engravings~~ engraving on a rings ring, ~~inscriptions~~ an inscription on a family ~~portraits~~ portrait, ~~engravings~~ an engraving on ~~urns~~ an urn, ~~crypts~~ crypt, or ~~tombstones~~ tombstone, or the like.

(14) ~~Records~~ Record of ~~documents~~ document affecting an interest in property. ~~The~~ A public record of a ~~document~~ purporting to establish or affect an interest in property, as proof of the content of ~~the original recorded document~~ another or duplicate record and its execution and delivery by each person by whom it purports to have been executed and delivered; ~~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~~ Statement in ~~documents~~ record affecting an interest in property. A statement contained in a ~~document~~ record purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the ~~document~~ record, unless ~~dealing~~ dealings with the property since the ~~document~~ record was made have been inconsistent with the truth of the statement or the purport of the ~~document~~ record.

(16) ~~Statements~~ Statement in ancient ~~documents~~ record. ~~Statements~~ A statement in a ~~document~~ record in existence ~~twenty~~ 20 years or more, the authenticity of which is established.

(17) Market ~~reports~~ report, commercial ~~publications~~ publication. Market ~~quotations~~ quotation, ~~tabulations~~ tabulation, ~~lists~~ list, ~~directories~~ directory, or other published or publicly recorded compilations, generally used and relied upon by the public or by persons in particular occupations.

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

examination, ~~statements~~ a statement contained in a published treatise ~~treatise~~, ~~periodicals~~ periodical, or ~~pamphlets~~ pamphlet on a subject of history, medicine, or other science or art, established as a reliable authority by 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 an individual's family by blood, adoption, or marriage, or among the individual's associates, or in the community, concerning the individual's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of the individual'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~~ land in the community, and reputation as to ~~events~~ an event of general history important to the community, ~~or state~~ State, or ~~nation~~ country in which located.

(21) Reputation as to character. Reputation of ~~an individual's~~ a person's character among the ~~individual's~~ person's 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,] 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 ~~state~~ State in a criminal prosecution for purposes other than impeachment, ~~judgments~~ a

judgment against ~~persons~~ a person other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) ~~Judgment~~ A judgment as to personal, family, or general history, or boundaries. ~~Judgments~~ A judgment as proof of ~~matters~~ a matter of personal, family or general history, or boundaries, essential to the judgment, if the matter ~~would be~~ is provable by evidence of reputation.

~~(24) 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 (i) the statement is offered as evidence of a material fact; (ii) 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 (iii) the general purpose of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance 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.~~

~~[As amended 1986.]~~

RULE 804. HEARSAY EXCEPTIONS: DECLARANT UNAVAILABLE.

(a) Unavailability as a witness. In this rule:

(1) “Unavailability as a witness” includes situations in which the declarant:

(1) (A) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of ~~his~~ the declarant’s statement;

(2) (B) persists in refusing to testify concerning the subject matter of ~~his~~ the declarant’s statement despite an order of the court to do so;

(3) (C) testifies to a lack of memory of the subject matter of ~~his~~ the declarant’s statement;

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

(2) A declarant is not unavailable as a witness if ~~his~~ the declarant’s exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of ~~his~~ the declarant’s statement for the purpose of preventing the ~~witness~~ declarant 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. A statement made by a declarant while believing that ~~his~~ the declarant's death was imminent, concerning the cause or circumstances of what ~~he~~ the declarant believed to be ~~his~~ the declarant's impending death.

(3) Statement against interest. A statement ~~which was~~ that at the time of its making was so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject ~~him [or her]~~ the declarant to civil or criminal liability or to render invalid a claim by ~~him [or her]~~ the declarant against another or to make ~~him~~ the declarant an object of hatred, ridicule, or disgrace, that a reasonable ~~person~~ individual in ~~his [or her]~~ the declarant's position would not have made the statement unless ~~he [or she]~~ the individual believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate ~~the~~ an accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. A statement or confession offered against the accused in a criminal case, made by a codefendant or other ~~person~~ individual implicating both ~~himself [or herself]~~ the codefendant or other individual and the accused, is not within this exception.

(4) Statement of personal or family history. (i) A statement concerning ~~the~~

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

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

~~[(5) Statement of recent perception. In a civil action or proceeding, a statement, not in response to the instigation of a person engaged in investigating, litigating, or settling a claim, which narrates, describes, or explains an event or condition recently perceived by the declarant, made in good faith, not in contemplation of pending or anticipated litigation in which the declarant was interested, and while the declarant's recollection was clear.]~~

~~(6) 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 (i) the statement is offered as evidence of a material fact; (ii) 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 (iii) the general purposes of these rules and the interests of~~

~~justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance 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.~~

~~[As amended 1986.]~~

(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.

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. If a hearsay statement, or a statement ~~defined~~ described in Rule ~~801(d)(2)(iii)~~ 801(b)(2)(C), ~~(iv)~~ (D), or ~~(v)~~ (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence ~~which~~ that would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant ~~at any time~~, inconsistent with the declarant's hearsay statement; is not subject to ~~any~~ a

requirement that the declarant ~~may have~~ has 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~~ may examine the declarant on the statement as if under cross-examination.

~~RULE 807. CHILD VICTIMS OR WITNESSES.~~

~~(a) A hearsay statement made by a minor who is under the age of [12] years at the time of trial describing an act of sexual conduct or physical violence performed by or with another on or with that minor or any [other individual] [parent, sibling or member of the familial household of the minor] is not excluded by the hearsay rule if, on motion of a party, the minor, or the court and following a hearing [in camera], the court finds that (i) there is a substantial likelihood that the minor will suffer severe emotional or psychological harm if required to testify in open court; (ii) the time, content, and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness; (iii) the statement was accurately recorded by audio-visual means as may be provided by statute; (iv) the audio-visual record discloses the identity and at all times includes the images and voices of all individuals present during the interview of the minor; (v) the statement was not made in response to questioning calculated to lead the minor to make a particular statement or is clearly shown to be the minor's statement and not the product of improper suggestion; (vi) the individual conducting the interview of the minor is available at trial for examination or cross-examination by any party;~~

~~and (vii) before the recording is offered into evidence, all parties are afforded an opportunity to view it and are furnished a copy of a written transcript of it.~~

~~(b) Before a statement may be admitted in evidence pursuant to subsection (a) in a criminal case, the court shall, at the request of the defendant, provide for further questioning of the minor in such manner as the court may direct. If the minor refuses to respond to further questioning or is otherwise unavailable, the statement made pursuant to subsection (a) is not admissible under this rule.~~

~~(c) The admission in evidence of a statement of a minor pursuant to subsection (a) does not preclude the court from permitting any party to call the minor as a witness if the interests of justice so require.~~

~~(d) In any proceeding in which a minor under the age of [12] years may be called as a witness to testify concerning an act of sexual conduct or physical violence performed by or with another on or with that minor or any [other individual] [parent, sibling or member of the familial household of the minor], if the court finds that there is a substantial likelihood that the minor will suffer severe emotional or psychological harm if required to testify in open court, the court may, on motion of a party, the minor or the court, order that the testimony of the minor be taken by deposition recorded by audio-visual means or by contemporaneous examination and cross-examination in another place under the supervision of the trial judge and communicated to the courtroom by closed-circuit television. Only the judge, the attorneys for the parties, the parties, individuals necessary to operate the equipment and any individual the court finds would contribute to the welfare~~

~~and well-being of the minor may be present during the minor's testimony. If the court finds that placing the minor and one or more of the parties in the same room during the testimony of the minor would contribute to the likelihood that the minor will suffer severe emotional or psychological harm, the court shall order that the parties be situated so that they may observe and hear the testimony of the minor and may consult with their attorneys, but the court shall ensure that the minor cannot see or hear them, except, within the discretion of the court, for purposes of identification.~~

~~(c) The requirements for admissibility of a statement under this rule do not preclude admissibility of the statement under any other exception to the hearsay rule.~~

~~[As added 1986.]~~

RULE 807. STATEMENT OF CHILD VICTIM.

(a) Statement of child not excluded. A statement made by a child under [seven] years of age describing an alleged act of neglect, physical or sexual abuse, or sexual contact performed against, with, or on the child by another individual is not excluded by the hearsay rule if:

(1) the court conducts a hearing outside the presence of the jury and finds that the statement concerns an event within the child's personal knowledge and is inherently trustworthy. In determining the trustworthiness of a child's statement, the court must consider the circumstances surrounding the making of the

statement, including:

(A) the child's ability to observe, remember, and relate the details of the event;

(B) the child's age and mental and physical maturity;

(C) whether the child used terminology not reasonably expected of a child of similar age, mental and physical maturity, and socioeconomic circumstances;

(D) the child's relationship to the alleged offender;

(E) the nature and duration of the alleged neglect, physical or sexual abuse, or sexual contact;

(F) whether the child's repetitions of the statement have been consistent;

(G) whether the child had a motive to fabricate the statement;

(H) the identity, knowledge and experience of the person taking the statement;

(I) whether there is a video or audio recording of the statement and, if so, the circumstances surrounding the taking of the statement; and

(J) whether the child made the statement spontaneously or in response to suggestive or leading questions.

(2) the child testifies at the proceeding [or pursuant to an applicable state procedure for the giving of testimony by a child], or the child is unavailable to testify at the proceeding, as defined in Rule 804(a), and, in the latter case, there is

evidence corroborative of the alleged act of neglect, physical or sexual abuse, or sexual contact.

(b) Making a record. The court shall state on the record the circumstances that support its determination of the admissibility of the statement offered pursuant to subdivision (a).

(c) Notice. Evidence is not admissible under the Rule unless the proponent gives to all adverse parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the nature of any such evidence the proponent intends to introduce at trial.

RULE 808. RESIDUAL EXCEPTION.

(a) ~~A~~ Exception. In exceptional circumstances a statement not specifically covered by any of the foregoing exceptions Rules 803, 804, or 807 but having possessing equivalent, though not identical, circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the court determines that all of the following are satisfied:

(i) ~~the~~ (1) The statement is offered as evidence of a ~~material fact~~ fact of consequence;

(ii) ~~the~~ (2) The statement is more probative on the point for which it is offered than any other evidence ~~which~~ that the proponent can procure through reasonable efforts; and

(iii) ~~the~~ (3) The general purposes of these rules and the interests of

justice will best be served by admission of the statement into evidence.

(b) Making a record. The court shall state on the record the circumstances that support its determination that a statement offered pursuant to subdivision (a) is admissible.

(c) Notice. A statement ~~may~~ is not ~~be admitted~~ admissible under this exception unless the proponent of it ~~makes known~~ gives to all parties ~~the adverse party sufficiently in advance 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~~ reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the substance of the statement and the identity of the declarant.

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 The following are examples of authentication or identification conforming with the requirements of this rule:

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

(2) Nonexpert opinion on handwriting. Nonexpert 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 an expert ~~witnesses~~ witness with ~~specimens which have~~ a specimen that has 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~~ conversation. ~~Telephone conversations~~ A telephone conversation, 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:

(i) (A) in the case of ~~a person~~ an individual, circumstances, including self-identification, show that the person answering to be individual who answered was the one called; or

(ii) (B) in the case of a ~~business~~ person other than an individual, 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;~~ public record or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of ~~this~~ the same nature are kept.

(8) ~~Ancient documents or data compilation~~ records. Evidence that a ~~document or data compilation, in any form,~~ (i) record is in such condition as to create no suspicion concerning its authenticity, (ii) was in a place where it, if authentic, would likely be, and (iii) has been in existence 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~~ Method provided by statute or rule. Any method of authentication or identification provided by [the Supreme Court of this State or by] a statute or as provided in the ~~Constitution~~ constitution of this State.

(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 of a witness with knowledge that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert 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 an expert ~~witnesses~~ witness with ~~specimens which have~~ a specimen that has 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:

(i) ~~in~~ (A) Individual. In the case of a ~~person~~ an individual, circumstances, including self-identification, ~~show which show that the person answering to be~~ individual who answered was the one called; or

(ii) ~~in~~ (B) Persons. In the case of a ~~business~~ person other than an individual, 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; public record 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~~ records. Evidence that a ~~document or data compilation, in any form,~~ (i) record is in such condition as to create no suspicion concerning its authenticity, (ii) was in a place where it, if authentic, would likely be, and (iii) has been in existence 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 [the Supreme Court of this State or by] a statute or as provided in the ~~Constitution~~ constitution of this State.

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~~ document under seal. A document bearing a seal purporting to be that of the United States, or of any ~~state~~ State, ~~district,~~ ~~commonwealth, territory, or insular possession thereof, or the Panama Canal Zone,~~ ~~or the Trust Territory of the Pacific Islands,~~ or of a political subdivision, department, officer, or agency ~~thereof~~ of one of the foregoing, and a signature purporting to be an attestation or execution.

(2) Domestic public ~~documents~~ document not under seal. A document purporting to bear a signature in the official capacity of an officer or employee of any entity designated in paragraph (1), 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~~ document. A document purporting to be executed or attested in the official capacity of an individual 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 (i) of

the executing or attesting individual, or (ii) of any foreign official whose certificate of genuineness of signature and official position 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 United States, or 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 ~~has been given to all parties~~ to investigate the authenticity and accuracy of an official documents document, the court may for good cause shown order that ~~they~~ it be treated as presumptively authentic without final certification or permit ~~them~~ it to be evidenced by an attested summary with or without final certification.

(4) Certified ~~copies~~ copy of public ~~records~~ record. A copy of ~~an official a~~ public 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 authorized person ~~authorized to make the certification~~, by certificate complying with paragraph (1), (2), or (3) or complying with any law of the United States or of this State.

(5) Official ~~publications~~ publication. ~~Books~~ A book, ~~pamphlets~~ pamphlet, ~~or other publications issued by public authority~~ publication, or other publicly issued record issued by public authority, if in a form indicative of the genuineness of such a record.

(6) ~~Newspapers and periodicals.~~ Printed Newspaper or periodical. Publicly distributed material purporting to be ~~newspapers~~ a newspaper or ~~periodicals~~ periodical.

(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~~ record. ~~Documents~~ A record 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~~ record. Commercial paper, ~~signatures~~ a signature thereon, and ~~documents~~ a record relating thereto or having the same legal effect as commercial paper, to the extent provided by general commercial law.

(10) ~~Presumptions~~ Presumption created by law. ~~Any~~ A signature, document, or other matter declared by any law of the United States or of this State; to be presumptively or prima facie genuine or authentic.

(11) Certified ~~records~~ domestic record of regularly conducted business activity. The original or a duplicate of a domestic record of ~~regularly conducted~~ activity, ~~within the scope of Rule 803(6), which the custodian thereof~~ acts, events, conditions, opinions, or diagnoses if:

(A) the document is accompanied by a written declaration under oath of the custodian of the record or another other qualified individual certifies that the

record (i) 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; (ii) is was kept in the course of the regularly conducted business activity; and (iii) was made by pursuant to the regularly conducted activity; ~~as a regular practice, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness, but a record so certified is not self-authenticating under this subsection unless the proponent makes an intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it. As used in this subsection, "certifies" means, with respect to a domestic record, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country. The certificate relating to a foreign record must be accompanied by a final certification as to the genuineness of the signature and official position (i) of the individual executing the certificate or (ii) of any foreign official who certifies the genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify the genuineness of signature and official position of the executing official. A final certification must be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country who is assigned or accredited to the United~~

States:

(B) the party intending to offer the record in evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record; and

(C) notice is not given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record.

(12) Certified foreign record of regularly conducted business activity. The original or a duplicate of a record from a foreign country of acts, events, conditions, opinions, or diagnoses if:

(A) the document is accompanied by a written declaration under oath of the custodian of the record or other qualified individual that the record 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, was kept in the course of a regularly conducted business activity, and was made pursuant to the regularly conducted activity;

(B) the party intending to offer the record in evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record; and

(C) notice is not given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record.

RULE 903. SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY.

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

ARTICLE X

~~CONTENTS~~ CONTENT OF WRITINGS, RECORDINGS AND

~~PHOTOGRAPHS~~ RECORD, WRITING, RECORDING,

PHOTOGRAPH, AND IMAGE

RULE 1001. DEFINITIONS. ~~For purposes of this Article the following definitions are applicable~~ In this article:

(4) (1) ~~Duplicate.~~ A “duplicate” is “Duplicate” means a counterpart reproduced by any technique that reproduces the original in perceivable form or that is 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 another equivalent techniques which technique that accurately reproduces the original.

(2) “Image” means a form of a record which consists of a digitized copy or image of information.

(3) ~~Original.~~ An “original” of a record, writing, or recording is means the record, writing, or recording itself, or any counterpart intended to have the same effect by a person executing or issuing it. An “original” of The term, when applied to a photograph, includes the negative or any print therefrom. If data are stored in a computer or similar device, including by stored images, any printout of a record or other perceivable output readable by sight, shown to reflect the data accurately, is an “original.”

~~(2)~~ (4) Photographs. ~~“Photographs” include~~ “Photograph” means a form of a record, a still photographs photograph, an X-ray films film, video tapes tape, and or a motion pictures picture.

~~(1)~~ (5) Writings and recordings. ~~“Writings”~~ “Writing” and ~~“recordings”~~ “recording” mean letters, words, sounds, or numbers, or their equivalent, set down ~~by~~ in perceivable form by handwriting, typewriting, printing, photostating, photographing, ~~magnetic impulse,~~ mechanical or electronic recording, or other ~~form of data compilation technique.~~

RULE 1002. REQUIREMENT OF ORIGINAL. To prove the content of a record, writing, recording, or photograph, the original record, writing, recording, or photograph is required, except as otherwise provided in these rules or by [rules adopted by the Supreme Court of this State or by] statute.

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 or continuing effectiveness 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 record is admissible if:

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

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

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

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

RULE 1005. PUBLIC RECORDS. The contents of an official record, or of a ~~document~~ private record authorized to be recorded or filed in the public records and actually recorded or filed, ~~including data compilations in any form~~, if otherwise admissible, may be proved by a copy in perceivable form, 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 complying with the foregoing cannot be obtained by the exercise of reasonable diligence, other evidence of the contents may be admitted.

RULE 1006. SUMMARIES. The contents of voluminous ~~writings,~~ ~~recordings, or photographs~~ records which cannot conveniently be examined in court

may be presented in the form of a chart, summary, ~~or calculation,~~ or other perceivable presentation. The ~~originals original,~~ or ~~duplicates duplicate,~~ shall must 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 IN RECORD
OF PARTY. ~~Contents~~ The contents of a record ~~writings, recordings, or~~
~~photographs~~ may be proved by the testimony or deposition of the party against whom offered or by ~~his~~ that party's written admission; without accounting for the nonproduction of the original.

RULE 1008. FUNCTIONS OF COURT AND JURY. ~~Whenever~~ If the admissibility under these rules of other evidence of the contents of a record ~~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~~ if an issue is raised as to whether (1) the asserted record writing ever existed, or (2) another record writing, recording, or photograph produced at the trial is the original, or (3) 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~~.

~~ARTICLE XI~~
~~MISCELLANEOUS RULES~~

~~RULE 1101. RULES APPLICABLE.~~

~~(a) Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the [courts of this State].~~

~~(b) Rules inapplicable. The rules other than those with respect to privileges do not apply in the following situations:~~

~~(1) Preliminary questions 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(a):~~

~~(2) Grand jury. Proceedings before grand juries.~~

~~(3) Miscellaneous proceedings. Proceedings for extradition or rendition; [preliminary examination] detention hearing in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.~~

~~(4) Contempt proceedings in which the court may act summarily.~~