

ONEIDA INDIAN NATION

RULES OF EVIDENCE

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ONEIDA INDIAN NATION

RULES OF EVIDENCE

CHAPTER 1 - GENERAL PROVISIONS

101. PURPOSE AND CONSTRUCTION

Rule 101. PURPOSE AND CONSTRUCTION

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

102. RULINGS ON EVIDENCE

Rule 102. RULINGS ON EVIDENCE

- a. Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
 1. Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
 2. Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.
- b. Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.
- c. Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.
- d. Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

103. PRELIMINARY QUESTIONS

Rule 103. PRELIMINARY QUESTIONS

- a. Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.
- b. Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.
- c. Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.
- d. Testimony by accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.
- e. Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

104. LIMITED ADMISSIBILITY

Rule 104. LIMITED ADMISSIBILITY

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

CHAPTER 2- JUDICIAL NOTICE

201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS

Rule 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS

- a. Scope of rule. This rule governs only judicial notice of adjudicative facts.
- b. Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- c. When discretionary. A court may take judicial notice, whether requested or not.
- d. When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.
- e. Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
- f. Time of taking notice. Judicial notice may be taken at any stage of the proceeding.
- g. Instructing jury. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

CHAPTER 3 - PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

301. PRESUMPTIONS IN GENERAL IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301. PRESUMPTIONS IN GENERAL IN CIVIL ACTIONS AND PROCEEDINGS

In all civil actions and proceedings not otherwise provided for by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

CHAPTER 4 - RELEVANCY AND ITS LIMITS

401. DEFINITION OF "RELEVANT EVIDENCE"

Rule 401. DEFINITION OF "RELEVANT EVIDENCE"

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

402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

Rule 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

All relevant evidence is admissible except as otherwise provided by these Rules. Evidence which is not relevant is not admissible.

403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME

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.

404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

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 character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
 1. Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

2. Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
 3. Character of witness. Evidence of the character of a witness, as provided in rules 607, 608, and 609.
- b. Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

405. METHODS OF PROVING CHARACTER

Rule 405. METHODS OF PROVING CHARACTER

- a. Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
- b. Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

406. HABIT, ROUTINE PRACTICE

Rule 406. HABIT; ROUTINE PRACTICE

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

407. SUBSEQUENT REMEDIAL MEASURES

Rule 407. SUBSEQUENT REMEDIAL MEASURES

When, after an event, measures are taken which, if taken previously, would have made the event 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 of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

408. COMPROMISE AND OFFERS TO COMPROMISE

Rule 408. COMPROMISE AND OFFERS TO COMPROMISE

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. 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 when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES

Rule 409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES

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

410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS

Rule 410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS

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

1. a plea of guilty which was later withdrawn;
2. a plea of nolo contendere;
3. any statement made in the course of any proceedings under Rule 205(c) of the Oneida Indian Nation Rules of Criminal Procedure.
4. any statement made in the course of plea discussions with the Nation Prosecutor which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

411. LIABILITY INSURANCE

Rule 411. LIABILITY INSURANCE

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

412. SEX OFFENSE CASES; RELEVANCE OF ALLEGED VICTIM'S PAST SEXUAL BEHAVIOR A SEXUAL PREDISPOSITION

Rule 412. SEX OFFENSE CASES; RELEVANCE OF ALLEGED VICTIM'S PAST SEXUAL BEHAVIOR OR ALLEGED SEXUAL PREDISPOSITION

- a. Evidence generally inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):
 1. Evidence offered to prove that any alleged victim engaged in other sexual behavior.
 2. Evidence offered to prove any alleged victim's sexual predisposition.
- b. Exceptions:
 1. In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:

- A. evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury or other physical evidence;
 - B. evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and
 - C. evidence the exclusion of which would violate the constitutional rights of the defendant under the Indian Civil Rights Act.
 2. In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.
- c. Procedure to determine admissibility.
 1. A party intending to offer evidence under subdivision (b) must
 - A. file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and
 - B. serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.
 2. Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

413. EVIDENCE OF SIMILAR CRIMES IN SEXUAL ASSAULT CASES

Rule 413. EVIDENCE OF SIMILAR CRIMES IN SEXUAL ASSAULT CASES

- a. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.
- b. In a case in which the Nation intends to offer evidence under this rule, the Nation prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.
- c. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.
- d. For purposes of this rule and Rule 415, "offense of sexual assault" means a crime under Nation law that involved:
 - 1. any conduct proscribed by the Penal Code of the Oneida Indian Nation;
 - 2. contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;
 - 3. contact, without consent, between the genitals or anus of the defendant and any part of another person's body;
 - 4. deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or
 - 5. an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

414. EVIDENCE OF SIMILAR CRIMES IN CHILD MOLESTATION CASES

Rule 414. EVIDENCE OF SIMILAR CRIMES IN CHILD MOLESTATION CASES

- a. In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

- b. In a case in which the Nation intends to offer evidence under this rule, the Nation prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.
- c. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.
- d. For purposes of this rule and Rule 415, "child" means a person below the age of fourteen, and "offense of child molestation" means a crime that involved:
 - 1. any conduct proscribed by the Penal Code of the Oneida Indian Nation, that was committed in relation to a child;
 - 2. contact between any part of the defendant's body or an object and the genitals or anus of a child;
 - 3. contact between the genitals or anus of the defendant and any part of the body of a child;
 - 4. deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or
 - 5. an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

415. EVIDENCE OF SIMILAR ACTS IN CIVIL CASES CONCERNING SEXUAL ASSAULT OR CHILD MOLESTATION

Rule 415. EVIDENCE OF SIMILAR ACTS IN CIVIL CASES CONCERNING SEXUAL ASSAULT OR CHILD MOLESTATION

- a. In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these rules.
- b. A party who intends to offer evidence under this Rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

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

CHAPTER 5 - PRIVILEGES

501. PRIVILEGE OF ACCUSED

Rule 502 PRIVILEGE OF ACCUSED

- a. Every person has in any criminal action in which he or she is an accused a privilege not to be called as a witness and not to testify.
- b. An accused in a criminal action has a privilege to prevent his or her spouse from testifying in such action with respect to any confidential communication had or made between them while they were husband and wife, excepting only (1) in an action in which the accused is charged with (i) a crime involving the marriage relation, or (ii) a crime against the person or property of the other spouse or the child of either spouse, or (iii) a desertion of the other spouse or a child of either spouse, or (2) as to the communication, in an action in which the accused offers evidence of a communication between himself or herself and his or her spouse.
- c. An accused in a criminal action has no privilege to refuse, when ordered by the judge, to present his or her person for identification or do any act in the presence of the judge or the trier of the facts, except to refuse to be a witness against himself or herself.

502. DEFINITION OF INCRIMINATION

Rule 502 DEFINITION OF INCRIMINATION

A matter will incriminate a person within the meaning of this chapter if it constitutes, or forms an essential part of, or, taken in connection with other matters disclosed, is a basis for a reasonable inference of such a violation of the laws of the Nation as to subject the person to liability to punishment therefor, unless he or she has become for any reason permanently immune from punishment for such violation.

503. SELF-INCRIMINATION

Rule 503 SELF-INCRIMINATION

Subject to Rule 501 and Rule 511, every natural person has a privilege, which he or she may claim, to refuse to disclose in an action or to a public official of the Nation or any Nation governmental agency or division thereof any matter that will incriminate such person.

504. LAWYER-CLIENT PRIVILEGE

Rule 504 LAWYER-CLIENT PRIVILEGE

- a. General rule. Subject to Rule 511, and except as otherwise provided by subsection (b) of this section communications found by the judge to have been between a lawyer and his or her client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (1) if he or she is the witness to refuse to disclose any such communication, and (2) to prevent his or her lawyer from disclosing it, and (3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated by the client, or (iii) as a result of a breach of the lawyer-client relationship. The privilege may be claimed by the client in person or by his or her lawyer, or if an incapacitated person, by either his or her guardian or conservator, or if deceased, by his or her personal representative.
- b. Exceptions. Such privileges shall not extend (1) to a communication if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the commission or planning of a crime or a tort, or (2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (3) to a communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer, or (4) to a communication relevant to an issue concerning an attested document of which the lawyer is an attesting witness, or (5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer whom they have retained in common when offered in an action between any of such clients.
- c. Definitions. As used in this section (1) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from the lawyer in his or her professional capacity; and includes an incapacitated person who, or whose guardian on behalf of the incapacitated person so consults the lawyer or the lawyer's representative in behalf of the incapacitated person; (2) "communication" includes advice given by the lawyer in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer incidental to the professional relationship; (3) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any state or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer.

505. PHYSICIAN-PATIENT PRIVILEGE

Rule 505 PHYSICIAN-PATIENT PRIVILEGE

a. As used in this section:

1. "Patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of such person's physical or mental condition, consults a physician, or submits to an examination by a physician.
2. "Physician" means a person licensed or reasonably believed by the patient to be licensed to practice medicine or one of the healing arts in the jurisdiction in which the consultation or examination takes place.
3. "Holder of the privilege" means the patient while alive and not under guardianship or conservatorship or the guardian or conservator of the patient, or the personal representative of a deceased patient.
4. "Confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

- b. Except as provided by subsections (c), (d), (e) and (f), a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor, other than a prosecution for a violation of Operating a Vehicle Under the Influence of Drugs or Alcohol, to refuse to disclose, and to prevent a witness from disclosing, a communication, if the person claims the privilege and the judge finds that: (1) The communication was a confidential communication between patient and physician; (2) the patient or the physician reasonably believed the communication necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor; (3) the witness (i) is the holder of the privilege, (ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or the physician's agent or servant; and (4) the claimant is the holder of the privilege or a person authorized to claim the privilege for

the holder of the privilege.

- c. There is no privilege under this section as to any relevant communication between the patient and the patient's physician: (1) Upon an issue of the patient's condition in an action to commit the patient or otherwise place the patient under the control of another or others because of alleged incapacity or mental illness, in an action in which the patient seeks to establish the patient's competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor; (2) upon an issue as to the validity of a document as a will of the patient; or (3) upon an issue between parties claiming by testate or intestate succession from a deceased patient.
- d. There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.
- e. There is no privilege under this section: (1) As to blood drawn at the request of a law enforcement officer; and (2) as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.
- f. No person has a privilege under this section if the judge finds that sufficient evidence, aside from the communication has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.
- g. A privilege under this section as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or the physician's agent or servant gained knowledge through the communication.
- h. Providing false information to a physician for the purpose of obtaining a prescription-only drug shall not be a confidential communication between physician and patient and no person shall have a privilege in any prosecution for obtaining a prescription-only drug by fraudulent means.

506. MARITAL PRIVILEGE, CONFIDENTIAL COMMUNICATIONS

Rule 506 MARITAL PRIVILEGE, CONFIDENTIAL COMMUNICATIONS

- a. General rule. Subject to Rule 511 and except as otherwise provided in subsections (b) and (c) of this section, a spouse who transmitted to the other the information which constitutes the communication, has a privilege during the marital relationship which he or she may claim whether or not a party to the action, to refuse to disclose and to prevent the other from disclosing communications found by the judge to have been had or made in confidence between them while husband and wife. The other spouse or either his or her guardian or conservator may claim the privilege on behalf of the spouse having the privilege.
- b. Exceptions. Neither spouse may claim such privilege (1) in an action by one spouse against the other spouse, or (2) in an action for damages for the alienation of the affections of the other, or for criminal conversation with the other, or (3) in a criminal action in which one of them is charged with a crime against the person or property of the other or of a child of either, or a crime against the person or property of a third person committed in the course of committing a crime against the other, or bigamy or adultery, or desertion of the other or of a child of either, or (4) in a criminal action in which the accused offers evidence of a communication between him or her and his or her spouse, or (5) if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the communication was made, in whole or in part, to enable or aid anyone to commit or to plan to commit a crime or a tort.
- c. Termination. A spouse who would otherwise have a privilege under this section has no such privilege if the judge finds that such spouse while the holder of the privilege testified or caused another to testify in any action to any communication between the spouses upon the same subject matter.

507 PENITENTIAL COMMUNICATION PRIVILEGE

Rule 507 PENITENTIAL COMMUNICATION PRIVILEGE

- a. Definitions. As used in this section, (1) the term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his or her regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization; (2) the term "regular minister of religion"

means one who as his or her customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he or she is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister; (3) the term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his or her church, sect, or organization; (4) "penitent" means a person who recognizes the existence and the authority of God and who seeks or receives from a regular or duly ordained minister of religion advice or assistance in determining or discharging his or her moral obligations, or in obtaining God's mercy or forgiveness for past culpable conduct; (5) "penitential communication" means any communication between a penitent and a regular or duly ordained minister of religion which the penitent intends shall be kept secret and confidential and which pertains to advice or assistance in determining or discharging the penitent's moral obligations, or to obtaining God's mercy or forgiveness for past culpable conduct.

- b. Privilege. A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he or she claims the privilege and the judge finds that (1) the communication was a penitential communication and (2) the witness is the penitent or the minister, and (3) the claimant is the penitent, or the minister making the claim on behalf of an absent penitent.

508. RELIGIOUS BELIEF.

Rule 508 RELIGIOUS BELIEF

Every person has a privilege to refuse to disclose his or her theological opinion or religious belief unless his or her adherence or non-adherence to such an opinion or belief is material to an issue in the action other than that of his or her credibility as a witness.

509. TRADE SECRET

Rule 509 TRADE SECRET

The owner of a trade secret has a privilege, which may be claimed by the owner or his or her agent or employee, to refuse to disclose the secret and to prevent other persons from disclosing it if the judge finds that the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.

510. IDENTITY OF INFORMER

Rule 510 IDENTITY OF INFORMER

A witness has a privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of a provision of the laws of the Nation made to a representative of the Nation governmental division thereof, charged with the duty of enforcing that provision, and evidence thereof is inadmissible, unless the judge finds that: (a) the identity of the person furnishing the information has already been otherwise disclosed; or (b) disclosure of such person's identity is essential to assure a fair determination of the issues. The privilege extends to documenting records as well as testimony.

511. WAIVER OF PRIVILEGE BY CONTRACT OR PREVIOUS DISCLOSURE.

Rule 511 WAIVER OF PRIVILEGE BY CONTRACT OR PREVIOUS DISCLOSURE

A person who would otherwise have a privilege to refuse to disclose or to prevent another from disclosing a specified matter has no such privilege with respect to that matter if the judge finds that such person or any other person while the holder of the privilege has (a) contracted with a party against whom the privilege is claimed that he or she would not claim the privilege or, (b) without coercion, or without any trickery, deception, or fraud practiced against him or her, and with knowledge of the privilege, made disclosure of any part of the matter or consented to such a disclosure made by anyone.

512. ADMISSIBILITY OF DISCLOSURE WRONGFULLY COMPELLED

Rule 512 ADMISSIBILITY OF DISCLOSURE WRONGFULLY COMPELLED

Evidence of a statement or other disclosure is inadmissible against the holder of the privilege if the judge finds that he or she had and claimed a privilege to refuse to make the disclosure but was nevertheless required to make it.

513. REFERENCE TO EXERCISE OF PRIVILEGE; PRESUMPTION AND ADVERSE INFERENCE NOT PERMITTED

Rule 513 REFERENCE TO EXERCISE OF PRIVILEGE; PRESUMPTION AND ADVERSE INFERENCE NOT PERMITTED

If a privilege is exercised not to testify or to prevent another from testifying, either in the action or with respect to particular matters, or to refuse to disclose or to prevent another from disclosing any matter, the judge and counsel may not comment thereon, no presumption shall arise with respect to the exercise of the privilege, and the trier of fact may not draw any adverse inference therefrom. In those jury cases wherein the right to exercise

a privilege, as herein provided, may be misunderstood and unfavorable inferences drawn by the trier of the fact, or may be impaired in the particular case, the court, at the request of the party exercising the privilege, may instruct the jury in support of such privilege.

514. EFFECT OF ERROR IN OVERRULING CLAIM OF PRIVILEGE

Rule 514 EFFECT OF ERROR IN OVERRULING CLAIM OF PRIVILEGE

A party may predicate error on a ruling disallowing a claim of privilege only if such party is the holder of the privilege.

CHAPTER 6 - WITNESSES

601. GENERAL RULE OF COMPETENCY

Rule 601. GENERAL RULE OF COMPETENCY

Every person is competent to be a witness except as otherwise provided in these rules.

602. LACK OF PERSONAL KNOWLEDGE

Rule 602. LACK OF PERSONAL KNOWLEDGE

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

603. OATH OR AFFIRMATION

Rule 603. OATH OR AFFIRMATION

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

604. INTERPRETERS

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 to make a true translation.

605. COMPETENCY OF JUDGE AS WITNESS

Rule 605. COMPETENCY OF JUDGE AS WITNESS

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

606. COMPETENCY OF JUROR AS WITNESS

Rule 606. COMPETENCY OF JUROR AS WITNESS

- a. At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.
- b. Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

607. WHO MAY IMPEACH

Rule 607. WHO MAY IMPEACH

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

608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

Rule 608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

- a. Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:
 1. the evidence may refer only to character for truthfulness or untruthfulness, and
 2. evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
- b. Specific instances of conduct. Specific instances of the conduct of a witness, for

the purpose of attacking or supporting the witness' 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. concerning the witness' character for truthfulness or untruthfulness, or
2. concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

Rule 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

- a. General rule. For the purpose of attacking the credibility of a witness,
 1. evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
 2. evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
- b. Time limit. Evidence of a conviction under this rule is not admissible 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 conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

- c. Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if:
 - 1. the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime 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 juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case 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 evidence is necessary for a fair determination of the issue of guilt or innocence.
- e. Pendency of appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

610. RELIGIOUS BELIEFS OR OPINIONS

Rule 610. RELIGIOUS BELIEFS OR OPINIONS

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

611. MODE AND ORDER OF INTERROGATION AND PRESENTATION

Rule 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION

- a. Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:
 - 1. make the interrogation and presentation effective for the ascertainment of the truth,
 - 2. avoid needless consumption of time, and
 - 3. protect witnesses from harassment or undue embarrassment.

- b. Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.
- c. Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

612. WRITING USED TO REFRESH MEMORY

Rule 612. WRITING USED TO REFRESH MEMORY

Except as otherwise provided in criminal proceedings by Rule 212(b) of the Rules of Criminal Procedures, if a witness uses a writing to refresh memory for the purpose of testifying, either--

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

613. PRIOR STATEMENTS OF WITNESSES

Rule 613. PRIOR STATEMENTS OF WITNESSES

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

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

614. CALLING AND INTERROGATION OF WITNESSES BY COURT

Rule 614. CALLING AND INTERROGATION OF WITNESSES BY COURT

- a. Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.
- b. Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party.
- c. Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

615. EXCLUSION OF WITNESSES

Rule 615. EXCLUSION OF WITNESSES

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

CHAPTER 7 - OPINIONS AND EXPERT TESTIMONY

701. OPINION TESTIMONY BY LAY WITNESSES

Rule 701. OPINION TESTIMONY BY LAY WITNESSES

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

702. TESTIMONY BY EXPERTS

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.

703. BASES OF OPINION TESTIMONY BY EXPERTS

Rule 703. BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

704. OPINION ON ULTIMATE ISSUE

Rule 704. OPINION ON ULTIMATE ISSUE

- a. Except as provided in subdivision (b), 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.
- b. No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

Rule 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to 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.

706. COURT APPOINTED EXPERTS

Rule 706. COURT APPOINTED EXPERTS

- a. Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.
- b. Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. In civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.
- c. Disclosure of appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.
- d. Parties' experts of own selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

CHAPTER 8 - HEARSAY

801. DEFINITIONS

Rule 801. DEFINITIONS

The following definitions apply under this article:

- a. **Statement.** A "statement" is
 1. an oral or written assertion or
 2. nonverbal conduct of a person, if it is intended by the person as an assertion.
- b. **Declarant.** A "declarant" is a person who makes a statement.
- c. **Hearsay.** "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- d. **Statements which are not hearsay.** A statement is not hearsay if:
 1. Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is
 - A. inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or
 - B. consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or
 - C. one of identification of a person made after perceiving the person; or
 2. **Admission by party-opponent.** The statement is offered against a party and is:

- A. the party's own statement in either an individual or a representative capacity or
- B. a statement of which the party has manifested an adoption or belief in its truth, or
- C. a statement by a person authorized by the party to make a statement concerning the subject, or
- D. a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
- E. a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

802. HEARSAY RULE

Rule 802. HEARSAY RULE

Hearsay is not admissible except as provided by these rules.

803. HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

Rule 803. HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

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

1. Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2. Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3. Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove

the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

4. Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
5. Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
6. Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
7. Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.
8. Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth
 - A. the activities of the office or agency, or

- B. matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or
 - C. in civil actions and proceedings and against the Nation in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.
9. Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.
 10. Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.
 11. Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.
 12. Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.
 13. Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.
 14. Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof

of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

15. Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.
16. Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.
17. Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.
18. Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.
19. Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.
20. Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.
21. Reputation as to character. Reputation of a person's character among associates or in the community.
22. Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo

contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Nation Prosecutor in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

23. Judgment as to personal, family, or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be 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 (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

Rule 804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

- a. Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant--
 1. is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
 2. persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
 3. testifies to a lack of memory of the subject matter of the declarant's statement; or
 4. is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

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

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

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

1. Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
2. Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
3. Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
4. Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

5. Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that
- A. the statement is offered as evidence of a material fact;
 - B. the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
 - C. the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

805. HEARSAY WITHIN HEARSAY

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.

806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT

Rule 806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT

When a hearsay statement, or a statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness.

Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

CHAPTER 9 - AUTHENTICATION AND IDENTIFICATION

901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

Rule 901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

- a. General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
- b. Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:
 1. Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.
 2. 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 expert witnesses with specimens which have been authenticated.
 4. Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.
 5. Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.
 6. Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.
 7. Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any

form, is from the public office where items of this nature are kept.

8. Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 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 a law of the Nation or by other rules prescribed by the Nation Court.

902. SELF-AUTHENTICATION

Rule 902. SELF AUTHENTICATION

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

1. Domestic public documents under seal. A document bearing a seal purporting to be that of the Oneida Indian Nation or of any Indian Nation or the United States, or of any 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, and a signature purporting to be an attestation or execution.
2. Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
3. Foreign public documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose 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 an 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 reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

4. Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule.
5. Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.
6. Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.
7. Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.
8. Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.
9. Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

903. SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY

Rule 903. SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY

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

CHAPTER 10 - CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

1001. DEFINITIONS

Rule 1001. DEFINITIONS

For purposes of this article the following definitions are applicable:

1. Writings and recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.
2. Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.
3. Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".
4. Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

1002. REQUIREMENT OF ORIGINAL

Rule 1002. REQUIREMENT OF ORIGINAL

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required.

1003. ADMISSIBILITY OF DUPLICATES

Rule 1003. ADMISSIBILITY OF DUPLICATES

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

1004. ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

Rule 1004. ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

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

1. Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
2. Original not obtainable. No original can be obtained by any available judicial process or procedure; or
3. Original in possession of opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or
4. Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

1005. PUBLIC RECORDS

Rule 1005. PUBLIC RECORDS

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

1006. SUMMARIES

Rule 1006. SUMMARIES

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

1007. TESTIMONY OR WRITTEN ADMISSION OF PARTY

Rule 1007. TESTIMONY OR WRITTEN ADMISSION OF PARTY

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

1008. FUNCTIONS OF COURT AND JURY

Rule 1008. FUNCTIONS OF COURT AND JURY

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

CHAPTER 11 - MISCELLANEOUS RULES

1101. APPLICABILITY OF RULES

Rule 1101. APPLICABILITY OF RULES

- a. Courts and judges. These rules apply to the Oneida Nation court, in the actions, cases, and proceedings and to the extent hereinafter set forth. The terms "judge" and "court" in these rules include Oneida Nation judges.
- b. Proceedings generally. These rules apply generally to civil actions and proceedings, to criminal cases and proceedings and to contempt proceedings except those in which the court may act summarily.
- c. Rule of privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.
- d. Rules inapplicable. The rules (other than 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.
 2. Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations 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.