RULES OF EVIDENCE FOR THE COURTS OF THE REPUBLIC OF PALAU

Promulgated by the Palau Supreme Court
March 21, 2022

PREFACE

The Republic of Palau Supreme Court is a Court of Record consisting of an Appellate Division and a Trial Division. Pursuant to Article X, Section 14 of the Palau Constitution, the Supreme Court is constitutionally authorized to promulgate rules of practice and procedure in civil and criminal matters. Among these rules are the Rules of Evidence.

The present Rules of Evidence, which mirror and follow the format of the Federal Rules of Evidence for United States Courts and Magistrates ("the Federal Rules"), were last promulgated in February 2014. The 2014 Rules superseded the 2005 Rules of Evidence promulgated by the Supreme Court. A majority of the Comments to the 2014 Rules reveal that there were no changes to most of the 2005 Rules.

A recent review of the 2014 Rules demonstrated a need to make some changes and update a few of the Rules, or adopt new ones. That painstaking process took more than three months and has been completed. For the convenience of the user, the Comment to each Rule explains if the Rule has remained the same, is altogether new, or has changed, and whether the change is stylistic, technical, or substantial.

Consistent with the command of ROP Const. Article X, Section 14, the Rules have been reviewed and approved by all the full-time justices of the Palau Supreme Court. The members of the Palau Bar were also given the opportunity to review the Rules and provide comments.

The Chief Justice takes this opportunity to thank all the justices and members of the Palau Bar for taking the time to review the Rules and provide helpful comments. Special thanks go to Court Counsel, Taylor Kilpatrick, who worked on the Rules tirelessly with the Chief Justice from start to the final product.

February 18, 2022.

Oldiais Ngiraikelau
Chief Justice
Palau Supreme Court

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ARTICLE I. GENERAL PROVISIONS

RULE 101. SCOPE.

These rules govern proceedings in the courts of the Republic of Palau, to the extent and with the exceptions stated in Rule 1101.

Comment:

These rules are promulgated pursuant to the Article X, Section 14 of the Palau Constitution. They supersede the previous rules promulgated by this Court in 2005 ("the 2005 Rules") and those promulgated in 2014 ("the 2014 Rules"). They follow the format of the Federal Rules of Evidence for United States Courts and Magistrates ("the Federal Rules"). No changes have been made to this rule from the 2005 or 2014 Rules.

RULE 102. PURPOSE AND CONSTRUCTION.

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

Comment:

No changes have been made from the 2005 or 2014 Rules.

RULE 103. RULINGS ON EVIDENCE.

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

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

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

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

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

(c) Hearings with a jury. To the extent practicable, the court must conduct a jury trial sothat inadmissible evidence is not suggested to the jury by any means.

(d) Plain error. Nothing in this rule precludes taking notice of plain errors affectingsubstantial rights although they were not brought to the attention of the court.

Comment:

Subdivision (c) was amended in 2014 to provide for jury trials pursuant to 4 PNC § 602.

RULE 104. PRELIMINARY QUESTIONS.

(a) Questions of admissibility generally. Preliminary questions concerning the qualifications 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 conditions.

(c) Hearings with a jury. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves the admissibility of a confession;

(2) a defendant in a criminal case is a witness and so requests; or

(3) justice so requires.

(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 beforethe jury evidence relevant to weight or credibility.

Comment:

Subdivision (c) is amended to provide for jury trials pursuant to 4 PNC § 602. The amendment in subdivision (e) was technical. No changes have been made from the 2014 Rules.

RULE 105. LIMITED ADMISSIBILITY.

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

Comment:

The above amendment was modified in 2014 to provide for jury trials pursuant to 4 PNC § 602. No changes have been made from the 2014 Rules.

RULE 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part—or any other writing or recorded statement—which ought in fairness to be considered contemporaneously with it.

Comment:

Technical amendments were made in 2014. No substantive change from the 2005 Rules was intended. No changes have been made from the 2014 Rules.

ARTICLE II. JUDICIAL NOTICE

RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS.

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

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

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

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

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

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

(e) Opportunity to be heard. A party is entitled, upon timely request, to an opportunity to beheard 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) Hearings with a jury. In jury trials the court must instruct the jury that it may or may not accept the noticed facts as conclusive.

Comment:

In 2014, subdivision (g) was modified to provide for jury trials pursuant to 4 PNC § 602. No changes have been made from the 2014 Rules.

ARTICLE III. PRESUMPTIONS 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.

Comment:

No changes have been made from the 2005 or 2014 Rules.

RULE 302. VACANT.

ARTICLE IV. RELEVANCY AND ITS LIMITS

RULE 401. DEFINITION OF "RELEVANT EVIDENCE.

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

Comment:
No changes have been made from the 2005 or 2014 Rules.

RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCEINADMISSIBLE.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the Republic of Palau, by these rules, or by other rules prescribed by the Supreme Court pursuant toconstitutional authority. Evidence which is not relevant is not admissible.

Comment:
No changes have been made from the 2005 or 2014 Rules.

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 bythe danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Comment:
The above amendment was modified in 2014 to provide for jury trials pursuant to 4 PNC § 602. No changes have been made from the 2014 Rules.

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, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404(a)(2), evidence of the same trait of character of the accused offered by the prosecution;

(2) Character of victim. 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.

(1) Notice in a criminal case. In a criminal case, the prosecutor must:

(A) provide reasonable notice of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it;

(B) articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and

(C) do so in writing before trial—or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

Comment:

The Rule is amended in 2022 to provide additional clarity as to what constitutes sufficient notice of a prosecutor's intent to use evidence referenced in subsection (b).

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 specific instances of that person's conduct.

Comment:

No changes have been made from the 2005 or 2014 Rules.

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.

Comment:

No changes have been made from the 2005 or 2014 Rules.

RULE 407. SUBSEQUENT REMEDIAL MEASURES.

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

measures, if controverted, or impeachment.

Comment:
No changes have been made from the 2005 or 2014 Rules.

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.

Comment:
The 2014 amendment was technical. No substantive changes were made from the 2005 Rules. No changes have been made from the 2014 Rules.

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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

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 11 of the Rules of Criminal Procedure regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney or trial assistant for the prosecuting authority which do not result in a plea of guilty or which result in a plea ofguilty 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.

Comment:
No changes have been made from the 2005 or 2014 Rules. Previously, this rule adopted the changes made to clarify Rule 410 ofthe Federal Rules. As has been said of the Federal Rule:

The Rule now protects only four types of statements and the protection afforded has two notable exceptions. The four types of statements are: (1) a plea of guilty later withdrawn; (2) a plea of nolo contendere; (3) any statement made in the course of a Rule 11 proceeding involving (1) or (2); and (4) any statement made during plea negotiations with a government attorney, unless a plea of guilty is entered and not withdrawn. Protection is unavailable in all these situations: (1) in a criminal prosecution for perjury or false statements where the statements were made under oath, on the record, and with counsel present; and (2) where any related statement has already been introduced. Protection where it is available prevents admission of the protected statement against a defendant or participant in the plea negotiations in a subsequent civil or criminal proceeding.

Moore's Federal Practice, 11.08[4] (Rel.26-6/81 Pub.201/410).

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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

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

(a) Evidence generally inadmissible. The following evidence is not admissible in any civilor 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 sexualbehavior; and

(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 ofthe defendant.

(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise

admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(c) Procedure to determine admissibility.

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

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

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

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the alleged 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.

Comment:

The original language of this rule was modeled after the 1978 version of Federal Rule 412. However, experience showed that the original Federal Rule was unsatisfactory in some respects. The rule proved to be too narrow. The Federal rule was extensively revised in 1994. Some of the changes were to improve clarity and conciseness, but there were substantive changes as well. In general, the rule was extended to apply to all cases, both civil and criminal, when a party seeks to introduce evidence of the alleged victim's prior sexual activity. Past amendments to this rule incorporated the 1994 amendments to the Federal Rules, including the amendment to Rule 412's title. No changes have been made from the 2005 or 2014 Rules.

In 1995, the United States Congress adopted Federal Rules 413, 414, and 415. These rules allow the admission of prior acts of sexual misconduct in criminal cases in which the defendant has been accused of sexual assault or child molestation and in civil cases in which the party's claim is based on such acts. The rules provoked strong opposition from the United States Judicial Conference, the organized bar, and the academic community. In its report to Congress, the Judicial Conference noted the overwhelming majority of judges, lawyers, law professors, and legal organizations who commented on the proposed rules opposed their enactment. *Report of the Judicial Conference on the Admission of Character Evidence in Certain Sexual Misconduct Cases*, 159 F.R.D. 51, 56 (1995). The opposition to these rules was based on the recognition that they marked a significant erosion of the long-established doctrine prohibiting the admission of prior bad acts to prove "action in conformity therewith on a particular occasion." *See* Rule 404(b). Federal Rules 413, 414, and 415 have not been incorporated into these rules.

ARTICLE V. PRIVILEGES

RULE 501. GENERAL RULE.

Except as otherwise required by the Constitution of the Republic of Palau or the rules prescribed by the Supreme Court, privileges of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law of the United States as they may be interpreted by the courts of the Republic of Palau in the light of reason and experience.

Comment:

The High Court of the Trust Territory of the Pacific Islands adopted (with some relatively minor

variations) the Uniform Rules of Evidence promulgated by the National Conference of Commissioners on Uniform State Laws. *See Trust Territory Code*, 1970 ed., at Preface 113. These Uniform Rules included the following privileges: self-incrimination, lawyer- client, physician-patient, spousal, clergy, political vote, trade secret, state secret and related government privileges. The rules also provided for waiver of a privilege, as well as when inferences could be drawn because a privilege was invoked. *Id*. at 122- 130.

Comparable rules were included in the Rules of Evidence proposed by the United States Supreme Court and transmitted to Congress in 1973. Advisory Committee Notes to Rule 501. However, these rules were challenged on a number of grounds. "Many of these attacks, predictably, came from groups specifically interested in the preservation or creation of particular privileges." *McCormick on Evidence*, 1984 ed. p. 186. A more general argument was that each state's laws regarding privileges ought to prevail in diversity cases. "Since it was clear that no agreement was likely to be possible as to the content of specific privilege rules, and since the inability to agree threatened to forestall or prevent passage of an entire rules package, the determination was made that the specific privilege rules proposed by the court should be eliminated and a single rule (Rule 501) substituted…." *Moore's Federal Practice*, ¶ 500.14, p. V-7, (Rel. No. 35-10/76).

When amending its evidence rules in 1976, the Trust Territory High Court closely adhered to the Federal Rules as amended by Congress, and hence the High Court rules detailing privileges were eliminated at that time.

In 1983, this Court's Rules of Evidence followed the 1976 High Court approach, and did not include a listing of privileges, or provisions regarding when they would, or would not, apply. However, because Palau has a unitary judicial system, conflicts between state and federal procedure do not occur. While it may be prudent to allow the further development of evidentiary rules of privilege "in light of reason and experience," there is no reason not to mention the privileges most often invoked, what inferences are permissible, and when a privilege is, or is not, to be considered waived. Consequently, the rules regarding the most frequently encountered privileges were included in this article. The 2014 amendment was technical. No substantive change from the 2005 Rules was intended. No changes have been made from the 2014 Rules.

RULE 502. VACANT.

RULE 503. LAWYER-CLIENT PRIVILEGE.

(a) Definitions. As used in this rule:

(1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal servicesby a lawyer, or who consults a lawyer with a view to obtaining professional legal services.

(2) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(3) A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.

(4) A communication is "confidential" if 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 transmissionof the communication.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, or (2) between the client's lawyer and the lawyer's representative, or (3) by the client or the client's lawyer to a lawyer representing another in a matter of common interest, or (4) between representatives of the client

or between the client and a representative of the client, or (5) between lawyers representing the client.

(c) Who may claim the privilege. The privilege may be claimed by a client, the client's guardian or conservator of a client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association or organization, whether or not in existence. The 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:

(1) **Furtherance of crime or fraud.** 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 a crime or fraud; or

(2) **Claimants through same deceased client.** 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 inter vivos transaction; or

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

(4) **Document attested by lawyer.** As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(5) **Joint clients.** As to a communication relevant to a matter of common interest between 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 any of the clients.

Comment:

This rule is adopted to describe the scope of the attorney-client privilege. The phrasing tracks the comparable rule ofevidence proposed by United States Supreme Court in 1973. No changes have been made from the 2005 or 2014 Rules.

RULE 504. PHYSICIAN AND PSYCHOTHERAPIST-PATIENT PRIVILEGE.

(a) Definitions. As used in this rule:

(1) A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A "psychotherapist" is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or, (B) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation while similarly engaged.

(4) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(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 the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the physician or psychotherapist of the person, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) Who may claim the privilege. The privilege may be claimed by the patient, by the guardian or conservator of the patient, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(d) Exceptions.

(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 in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

(2) **Examination by order of judge.** If the judge orders an examination of the mental or emotional condition of the patient, communications made in the course thereof are not privileged unless the judge orders otherwise.

(3) **Condition an element of claim or defense.** There is no privilege under this rule as to communications relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, or of any party claiming through or under the patient or because of the patient's condition, or claiming as a beneficiary of the patient, through a contract to which the patient is or was a party, or after the patient's death, in any proceeding in which any party puts the condition in issue.

Comment:

This rule is adopted to describe the scope of the physician and psychotherapist-patient privilege. The phrasing tracks the comparable rule of evidence proposed by the United States Supreme Court in 1973. No changes have been made from the 2005 or 2014 Rules.

RULE 505. SPOUSAL PRIVILEGE.

(a) Adverse Spousal Testimony Privilege. A witness may refuse to testify in a criminal proceeding against the witness' spouse.

(b) Confidential Marital Communications Privilege.

(1) Statements made in confidence between spouses during a valid

marriage are privileged.

(2) This privilege may be asserted either by a witness, or by the spouse of that witness, from whom evidence is being sought regarding a communication that is privileged pursuant to this subdivision.

(3) There is no confidential marital communications privilege: (A) in proceedings in which one spouse is charged with a crime against the person or property of the other or of a child of either, or with a crime against the person or property of a third personcommitted in the course of committing a crime against the other, or (B) as to matters occurring prior to the marriage, or (C) in proceedings in which a spouse is charged with importing an alien for prostitution or similar statutes involving an immoral purpose in violation of a provision of the Palau National Code.

Comment:

This rule's wording reflects changes in the law of spousal privilege subsequent to proposed Federal Rule 505, and therefore does not track its language. Furthermore, it places the two common law rules of testimonial privilege relating to spouses under one heading. Although both privileges protect communications between spouses, they are nevertheless distinct legal concepts. *See United States v. Byrd*, 750 F.2d 585 (7th Cr. 1984).

The adverse spousal testimony privilege originally allowed a criminal defendant to invoke a privilege to prevent the defendant's spouse from offering testimony against the defendant and was justified by "its perceived role in fostering the harmony and sanctity of the marriage relationship." *Trammel v. United States*, 445 U.S. 40, 44 (1980). The privilege, however, was roundly criticized by commentators, *see*, *e.g.*, 8 J. Wigmore, Evidence § 2228, at 221 (McNaughton rev. 1961) ("This privilege has no longer adequate reason for retention . . . [it] is the merest anachronism in legal theory and an indefensible obstruction to truth in practice."), and was eventually narrowed in *Trammel v. United States* where the Court held that "the witness spouse alone has a privilege to refuse to testify adversely." *Trammel*, 445 U.S. at. 53 (emphasis added). The marital communication privilege, on the other hand, can be asserted by either spouse and excludes confidential communications made by either spouse to the other during the marriage. This privilege "exists to insure that spouses generally, prior to any involvement in criminal activity or a trial, feel free to communicate their deepest feelings to each other without fear of eventual exposure in a court of law." *Byrd*, 750 F.2d at 590.

The exceptions listed in subdivision (b)(3) track the language of the proposed Federal Rule 505(c). No changes have been made from the 2005 or 2014 Rules.

RULE 506. RELIGIOUS PRIVILEGE.

(a) Definition. As used in this rule:

(1) A "member of the clergy" is a minister, priest, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the personseeking consultation.

(2) A communication is "confidential" if 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 has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the professional character as spiritual adviser.

(c) Who may claim the privilege. The privilege may be claimed by the person, by a guardian or conservator on behalf of a person, or by the personal representative if the person is deceased. The person who was the member of the clergy who received the communication is presumed to have authority to claim the

privilege but only on behalf of the communicant.

Comment:

This rule was adopted to describe the scope of the religious privilege. The phrasing tracks the comparable rule ofevidence proposed by the United States Supreme Court in 1973. No changes have been made from the 2005 or 2014 Rules.

RULE 507. POLITICAL VOTE.

(a) General rule of privilege. Every person has a privilege to refuse to disclose the tenor of that person's vote at a political election conducted by secret ballot.

Comment:

This rule was adopted to describe the scope of the political vote privilege. The phrasing tracks the comparable rule ofevidence proposed by the United States Supreme Court in 1973. No changes have been made from the 2005 or 2014 Rules.

RULE 508. TRADE SECRETS.

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

Comment:

This rule was adopted to describe the scope of the trade secrets privilege. Except for some technical changes, the phrasing tracks the comparable rule of evidence proposed by the United States Supreme Court in 1973. The proposed Federal Rule provided no definition of "trade secrets." Most courts have used for guidance Restatement of Torts § 757 comment b (1939) or the Uniform Trade Secrets Act § 1(4). No changes have been made from the 2005 or 2014 Rules.

RULE 509. VACANT.

RULE 510. VACANT.

RULE 511. WAIVER OF PRIVILEGE BY VOLUNTARY DISCLOSURE.

(a) Voluntary disclosure. A person upon whom these rules confer a privilege against disclosure of the confidential matter or communication waives the privilege if the person or the person's predecessor, while holder of the privilege, voluntarily discloses, or consents to disclosure of, any significant part of the matter or communication. This rule does not apply if disclosure is itself a privileged communication.

(b) Inadvertent disclosure. A disclosure does not operate as a waiver if:

(1) the disclosure is inadvertent;

(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

(3) the holder promptly took reasonable steps to rectify the error.

Comment:

This rule was adopted to describe when a privilege is waived by voluntary disclosure. Except for some technical changes, the phrasing tracks the comparable rule of evidence proposed by the United States Supreme Court in 1973. The 2014 amendment was technical. This rule was amended in 2022 to address inadvertent disclosures that may occur with more frequent use of electronic discovery, in which a large volume of files may be delivered at once.

RULE 512. PRIVILEGED MATTER DISCLOSED UNDER COMPULSION OR WITHOUTOPPORTUNITY TO CLAIM PRIVILEGE.

Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

Comment:

This rule was adopted to explain when disclosure of privileged information does not operate as a waiver of the privilege. The phrasing tracks the comparable rule of evidence proposed by the United States Supreme Court in 1973. No changes have been made from the 2005 or 2014 Rules.

RULE 513. COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE IN CRIMINALCASES; INSTRUCTION.

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

(b) Claiming privilege without disclosure to the jury. In criminal cases tried pursuant to 4 PNC § 602, the proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims or privilege without disclosure to the jury.

(c) Instruction to jury. Upon request, any accused in a criminal case against whom the jurymight draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

Comment:

Subdivision (c) was modified in 2014 to provide for jury trials pursuant to 4 PNC § 602. No changes have been made from the 2014 Rules.

ARTICLE VI. WITNESSES

RULE 601. GENERAL RULE OF COMPETENCY.

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

Comment:

No changes have been made from the 2005 or 2014 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 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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

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. Court-employed translators have taken an oath to make true translations in all assigned cases. Unless a party or counsel to the litigation or legal proceedings timely objects before taking any testimony, the translator assigned by the court shall be presumed to be an expert in the language to be translated and need not be separately administered an oath or affirmation that the translation will be true and correct for each proceeding.

Comment:
No changes have been made from the 2005 or 2014 Rules.

RULE 605. COMPETENCY OF JUDGE AS WITNESS.

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

Comment:
The rule was amended in 2014 to omit language addressing special judges given their replacement by juries pursuant to 4 PNC § 602. No changes have been made from the 2014 Rules.

RULE 606. COMPETENCY OF JUROR AS WITNESS.

(a) At the trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give the parties an opportunity to object outside the jury's presence.

(b) During an inquiry into the validity of a verdict.

(1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror'sstatement on these matters.

(2) Exceptions. A juror may testify about whether: (A) extraneous prejudicial information was improperly brought to the jury's attention; (B) an outside influence was improperly brought to bear on any juror; or (C) a mistake was made in entering the verdict on the verdict form.

Comment:
The rule was amended in 2014 to address jury trials pursuant to 4 PNC § 602. No changes have been

made from the 2014 Rules.

RULE 607. WHO MAY IMPEACH.

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

Comment:
No changes have been made from the 2005 or 2014 Rules.

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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

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 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 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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

RULE 610. RELIGIOUS BELIEFS OR OPINIONS.

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

Comment:
No changes have been made from the 2005 or 2014 Rules.

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.

Comment:

No changes have been made from the 2005 or 2014 Rules.

RULE 612. WRITING USED TO REFRESH MEMORY.

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

(1) while testifying, or

(2) before testifying,

and if the court in its discretion determines it is necessary in the interest 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 reminder 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.

Comment:

The amendment in 2014 was technical. No substantive change from the 2005 Rules was intended. No changes have been made from the 2014 Rules.

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. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

Comment:

No changes have been made from the 2005 or 2014 Rules.

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 that time or at the next opportunity when the jury is not present.

Comment:

Subdivision (c) was amended in 2014 to address jury trials pursuant to 4 PNC § 602. No changes have been made from the 2014 Rules.

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 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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

RULE 702. TESTIMONY BY EXPERTS.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand theevidence 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.

Comment:
No changes have been made from the 2005 or 2014 Rules. The comparable Federal Rule was amended in 2000 to codify the principles articulated in series of cases beginning with *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1983). However, because of important differences between the use of expert testimony in Palau and the United States - most notably, theuse of expert testimony to prove Palauan custom – no change in this rule is necessary.

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 bethose 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. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Comment:
The rule was amended in 2014 to provide for jury trials pursuant to 4 PNC § 602. No changes have been made from the 2014 Rules.

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.

Comment:

No changes have been made from the 2005 or 2014 Rules. The comparable Federal Rule was amended in 1984 to conform to statutory changes in the insanity defense. *U.S. v. Valle*, 72 F.3d 210 (1st Cir. 1995). No changes in Palau's insanity defense have been made, and therefore no change in this rule is necessary.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION.

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

Comment:

No changes have been made from the 2005 or 2014 Rules.

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 will allow. The compensation thus fixed is payable from funds which may be provided by law, or by court order, in criminal cases. In civil actions and proceedings thecompensation 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. The court may authorize disclosure to the jury that the court appointed the expert.

(d) Parties' experts of own selection. Nothing in this rule limits the parties in calling expertwitnesses of their own selection.

Comment:

Subdivision (c)was amended in 2014 to provide for jury trials pursuant to 4 PNC § 602. No changes have been made from the 2014 Rules.

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 ofa 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 testifyingat 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 to rehabilitate the declarant's credibility as a witness when attacked on another ground, 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. The contents of the statement shall be considered but are not alone sufficientto establish the declarant's authority under subdivision (C), the agency or employment relationship and the scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

Comment:

Prior amendments to Rule 801 incorporated the 1997 amendments to Federal Rule 801(d)(2). These amendments were made in response to three issues raised by *Bourjaily v. United States*, 107 S.Ct. 2773 (1987). First, the amendment states that a court shall consider the contents of a coconspirator's statement in determining "the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered." According to *Bourjaily*, Rule 104(a) requires these preliminary questions to be established by a preponderance of the evidence. Second, the amendment provides that the contents of the declarant's statement do not alone suffice to establish a conspiracy in which the declarant and the defendant participated. The court must consider in addition the circumstances surrounding the statement, such as the identity of the speaker, the context in which the statement was made, or evidence corroborating the contents of the statement in making its determination as to each preliminary question.

Third, the amendment extends the reasoning of *Bourjaily* to statements offered under subdivisions (C) and (D).

In a 2022 amendment, Rule 801(d)(1)(B) was modified to include additional scenarios for admitting a prior statement by a witness. The intent of the amendment is to extend substantive effect to consistent statements that rebut other attacks on a witness—such as the charges of inconsistency or faulty memory. This amendment does not change the traditional limits on bringing prior consistent statements before the factfinder for credibility purposes.

RULE 802. HEARSAY RULE.

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court.

Comment:
No changes have been made from the 2005 or 2014 Rules.

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 diagnosis, 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 Government 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. Testimony—or a certification under Rule 902—that a diligent search failed to disclose a public record or statement if: (A) the testimony or certification is admitted to prove that (i) the record or statement does not exist; or (ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and (B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice — unless the court sets a different time for the notice or the objection.

(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 member of the clergy, 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 prepared before January 1, 1998 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 his 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 his 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 imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family, 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) [Transferred to Rule 807].

Comment:

Rule 803(10) was modified in 2014 to reflect changes made to the Federal Rule. Rule 803(16) was modified in 2022, to reflect changes made to the Federal Rules, and to account for the concern that the ancient document provision would be used to admit vast amounts of electronically stored information. No other substantive changes from the 2005 or 2014 Rules are intended.

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 otherreasonable 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 ofthe 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 subjectthe 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) [Transferred to Rule 807].

(6) 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 a declarant as a witness.

Comment:

Rule 804(b)(6) was previously adopted to reflect changes made to the Federal Rules. Federal Rule 804(b)(6) was added by the United States Congress in 1997. It provides that a party forfeits the right to object on hearsay grounds to the admission of a declarant's prior statement when the party's deliberate wrongdoing or acquiescence therein procured the unavailability of the declarant as a witness. The wrongdoing need not consist of a criminal act and must be proven only by a preponderance of the evidence. No changes have been made from the 2005 or 2014 Rules.

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.

Comment:

No changes have been made from the 2005 or 2014 Rules.

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.

Comment:

No changes have been made from the 2005 or 2014 Rules.

RULE 807. RESIDUAL EXCEPTION.

(a) In general. Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under Rule 803 or 804 if:

(1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and

(2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

(b) Notice. The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement—including its substance and the declarant's name—so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing—or in any form during the trial or hearing of the court, for good cause, excuses a lack of earlier notice.

Comment:

This Rule was amended in 2022, in accordance with the Federal Rules, and to provide greater clarity as to what qualifies under the exception.

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 inquestion 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 beenin 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 rule. Any method of authentication or identification provided by other rules prescribed by the Supreme Court.

Comment:
No changes have been made from the 2005 or 2014 Rules.

RULE 902. SELF-AUTHENTICATION

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

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the Republic of Palau 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. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official

documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

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

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

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

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

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

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

(10) Presumptions under Acts of the Olbiil Era Kelulau. Any signature, document, or other matter declared by an Act of the Olbiil Era Kelulau to be presumptively or prima facie genuine or authentic.

(11) Certified domestic records of regularly conducted activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of the Olbiil Era Kelulau or rule prescribed by the Supreme Court certifying that the record

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

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

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

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

(12) Certified foreign records of regularly conducted activity. In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written

declaration by its custodian or other qualified person certifying that the record

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

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

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

That declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Comment:

In conformity with the amendments to the Federal Rules in 2000, subdivisions (11) and (12) were previously added tothe rule on self-authentication. No changes have been made from the 2005 Rules.

RULE 903. SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY.

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

Comment:

No changes have been made from the 2005 or 2014 Rules.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

RULE 1001. DEFINITIONS.

For purposes of this article the following definitions are applicable:

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

(2) Photographs. "Photographs" include still photographs, X-ray films, videotapes, 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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

RULE 1002. REQUIREMENT OF ORIGINAL.

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

Comment:
No changes have been made from the 2005 or 2014 Rules.

RULE 1003. ADMISSIBILITY OF DUPLICATES.

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

Comment:
No changes have been made from the 2005 or 2014 Rules.

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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

RULE 1006. SUMMARIES.

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

Comment:
No changes have been made from the 2005 or 2014 Rules.

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.

Comment:
No changes have been made from the 2005 or 2014 Rules.

RULE 1008. FUNCTIONS OF THE COURT AND JURY.

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines—in accordance with Rule 104(b)—any issue about whether: (a) an asserted writing, recording, or photograph ever existed; (b) another one produced at the trial or hearing is the original; or (c) other evidence of content accurately reflects the content.

Comment:
This Rule was amended in 2014 to address jury trials pursuant to 4 PNC § 602. No changes have been made from the 2014 Rules.

ARTICLE XI. MISCELLANEOUS RULES

RULE 1101. APPLICABILITY OF RULES.

(a) Courts. These rules apply to proceedings in the Trial Division of the Supreme Court, the National Court, and the Court of Common Pleas of the Republic of Palau.

(b) Proceedings generally. These rules apply generally to civil actions and proceedings, including admiralty and maritime cases, to criminal cases and proceedings, and to contempt proceedings except those in which the court may act summarily.

(c) Rules of privilege. The rules with respect to privileges apply 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. When the issue to be determined is a preliminary question to the admissibility of evidence under Rule 104.

(2) Vacant.

(3) 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.

Comment:

No substantive change from the 2005 Rules was intended in any 2014 modifications. No changes have been made from the 2014 Rules.

RULE 1102. AMENDMENTS.

Amendments to these Rules of Evidence may be made by the Supreme Court pursuant to ArticleX, Section 14 of the Constitution of the Republic of Palau.

Comment:

No changes have been made from the 2005 or 2014 Rules.

RULE 1103. TITLE.

These rules may be known and cited as the ROP Rules of Evidence. (ROP R. Evid.__)

Comment:

This rule was previously amended slightly to conform to *The Bluebook* citation format for the Federal Rules. No changes have been made from the 2005 or 2014 Rules.

RULE 1104. EFFECTIVE DATE.

These rules take effect on March 21, 2022. They govern all proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

Comment:

This rule was added in 2022 to clarify when newly promulgated rules go into effect.