

GUAM CODE ANNOTATED

TITLE 6

EVIDENCE

**UPDATED THROUGH P.L. 33-051
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DIV. 1 GUAM RULES OF EVIDENCE

DIVISION 1
GUAM RULES OF EVIDENCE

SOURCE: The Guam Rules of Evidence were promulgated by the Judicial Council of Guam on November 16, 1979 and enacted into law by P.L. 15-115:8 (Mar. 25, 1980). Public Law 28-138 (July 11, 2006) repealed and reenacted Division 1 in its entirety and replaced it with sections 101-103 below. The 2006 Guam Rules of Evidence promulgated by the Supreme Court of Guam in Promulgation Order No. 06-001 (Jan. 1, 2006) replace the Rules of Evidence formerly contained in this Division 1. The 2006 Guam Rules of Evidence are included here as appendix to Division 1.

NOTE: Repeal of the former Division 1 was necessary as it was enacted into law. Pursuant to Promulgation Order No. 06-001, the effective date of the 2006 Guam Rules of Evidence was immediately upon the passage of P.L. 28-138 on July 11, 2006. As to cases pending on the date of enactment of the 2006 Guam Rules of Evidence, section 102 may apply.

§ 101. The Supreme Court of Guam may *adopt* and from time-to-time *amend* the Rules of Evidence by Promulgation Order.

§ 102. Rules of Evidence as adopted by the Supreme Court of Guam through its Promulgation Order Number 06-00 1 apply to all actions, cases and proceedings brought after said Promulgation Order takes effect and to all actions, cases and proceedings commenced *prior* to the effective date hereof and still pending, *except* to the extent that application of the Rules to those pending actions, cases and proceedings would *not* be feasible, or would work injustice, in which event the evidentiary principles contained in the former Division 1 of Title 6 GCA shall apply, notwithstanding the repeal and reenactment thereof by this Act.

§ 103. Rules of Evidence adopted by the Supreme Court pursuant to this Title shall control regarding any conflict with other law and such other law shall therefore be of *no* further force or effect.

APPENDIX A

2006 GUAM RULES OF EVIDENCE



PREPARED BY
THE OFFICE OF THE COMPILER OF LAWS
HAGÁTÑA, GUAM
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2006 GUAM RULES OF EVIDENCE

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GUAM RULES OF EVIDENCE

NOTE: The 2006 Guam Rules of Evidence were adopted by the Supreme Court of Guam in Promulgation Order No. 06-001 on January 6, 2006, pursuant to its authority under the 48 U.S.C. § 1424-1(a)(6). The 2006 Rules of Evidence replace rules previously adopted by the Judicial Council of Guam on November 16, 1979 and approved by the Guam Legislature in Public Law 15-115:8 on March 25, 1980. The old rules were repealed by P.L. 28-138 on July 11, 2006.

The 2006 Rules of Evidence were drafted by the Supreme Court of Guam's Subcommittee on Rules of Evidence Revisions. This Subcommittee co-chaired by Associate Justice Robert J. Torres, Jr. and Judge Katherine A. Maraman, included Georgette Bello-Concepcion, Esq., William Gavras, Esq., Stephen Hattori, Esq., Stephanie Sato, Traylor T. Mercer, Esq., Julie Rivera, Esq., and Charles Troutman, Deputy Attorney General. The subcommittee reviewed the existing Evidence Law of Guam and proposed amendments to the Rules and Principles of Evidence. The old rules were based in part on the old Federal Rules of Evidence, and Guam and California Codes of Civil Procedure. The 2006 Guam Rules of Evidence incorporate many of the previous Rules of Evidence with revisions based on the changes that have been made to these old precedents. The Subcommittee also included comments and Supreme Court of Guam cases as references for guidance on how the rules have been interpreted.

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ART. I: GENERAL PROVISIONS**

ARTICLE I: GENERAL PROVISIONS

Rule 101. Scope.

These rules govern proceedings in the Courts of Guam to the extent and with the exceptions stated in rule 1101.

SOURCE: Rule 101, Federal Rules of Evidence (hereinafter referred to as "FRE").

COMMENT: These Rules are patterned after the FRE with minor variations to conform to the Guam court pattern and to remove references to state rules of evidence. Detailed explanations of modifications made to the FRE can be found in the comments following some individual rules.

Because these Rules are not the complete Code of Evidence, Title 6 of the Guam Code Annotated will encompass those Rules formerly contained in the 1970 Code of Civil Procedure, which have not been repealed by this division.

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.

SOURCE: Rule 102, FRE.

COMMENT: This Rule is identical to Rule 102, FRE. Compare Rule 1 of the Federal Rules of Civil Procedure.

Rule 103. Rulings on Evidence.

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

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

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. Once the court makes a definitive ruling on the record on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

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

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

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

SOURCE: Rule 103, FRE.

COURT DECISIONS: *See In the Interest of N.A.*, 2001 Guam 7, ¶ 23.

Rule 104. Preliminary Questions.

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

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

(c) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if he so requests.

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

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

SOURCE: Rule 104, FRE.

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COMMENT: Former Rule 104 of the Guam Rules of Evidence (hereinafter referred to as “GRE”) did not include Subsection (e) of Rule 104, FRE which provides that this Rule “does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.” The Committee is not aware of the reason for excluding this Subsection from the Guam Rule.

COURT DECISIONS: *See People v. Santos*, 1999 Guam 1, ¶ 15.

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.

SOURCE: Rule 105, FRE.

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.

SOURCE: Rule 106, FRE.

ARTICLE II: JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts.

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

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

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

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

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

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

SOURCE: Rule 201, FRE.

COURT DECISIONS: See *In the Interest of N.A.*, 2001 Guam 7, ¶ 55-57.

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ART. III: PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

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 Act of the Guam Legislature or by these Rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

SOURCE: Rule 301, FRE.

COMMENT: This Rule has been modified to refer to acts of the Guam Legislature.

Rule 302. (RESERVED)

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.

SOURCE: Rule 401, FRE.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Organic Act of Guam, by the laws of Guam, by these Rules or other rules prescribed by the Supreme Court of Guam pursuant to statutory authority. Evidence which is not relevant is not admissible.

SOURCE: Rule 402, FRE.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.

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

SOURCE: Rule 403, FRE.

Rule 404. Character Evidence 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 alleged victim. Evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by

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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 that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

SOURCE: Rule 404, FRE.

Rule 405. Methods of Proving Character.

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

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

SOURCE: Rule 405, FRE.

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.

SOURCE: Rule 406, FRE.

Rule 407. Subsequent Remedial Measures.

When, after an injury or harm allegedly caused by an event, measures

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are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in the 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.

SOURCE: Rule 407, FRE.

Rule 408. Compromises 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.

SOURCE: Rule 408, FRE.

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.

SOURCE: Rule 409, FRE.

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;

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(3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state, territorial, or commonwealth procedure regarding either of the foregoing pleas; or

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

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

SOURCE: Rule 410, FRE.

Rule 411. Liability Insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether he 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.

SOURCE: Rule 411, FRE.

Rule 412. Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition.

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

(1) evidence offered to prove that any alleged victim engaged in other sexual behavior; 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:

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

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

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

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

(c) Procedure to determine admissibility.

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

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

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

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

SOURCE: Rule 412, FRE.

NOTES, REFERENCES & ANNOTATIONS

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NOTE: Former Title 6 GCA § 412 is now GRE 416.

Rule 413. Evidence of Similar Crimes in Criminal Sexual Conduct Cases.

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

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

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

(d) For purposes of this rule and Rule 415, "offense of criminal sexual conduct" means a crime under Federal law, Guam law, or the law of a State (as defined in section 513 of title 18, United States Code) that involved:

(1) any conduct proscribed by chapter 25 of Title 9, Guam Code Annotated;

(2) any conduct proscribed by chapter 109A of title 18, United States Code;

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

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

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

(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(5).

SOURCE: Rule 413, FRE.

Rule 414. (RESERVED)

Rule 415. Evidence of Similar Acts in Civil Cases Concerning Criminal

Sexual Conduct.

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

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

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

SOURCE: Rule 415, FRE.

NOTE: The language of Rule 415, FRE has been modified slightly; the Committee replaced "sexual assault or child molestation" with "criminal sexual conduct."

Rule 416. Records of Medical Studies of In-Hospital Staff Committees.

(a) In-house medical, nursing or dental staff committees of a hospital which engage in medical or dental studies to reduce morbidity or mortality may make findings and recommendations thereon. Except as provided in subsection (b), the written records of interviews, reports, statements, or memoranda of such in-hospital medical, nursing or dental staff committees are subject to the provisions of this Title 6 and the Guam Rules of Civil Procedure (relating to discovery proceedings) but, subject to subsections (c) and (d), shall not be admitted as evidence in any action or before any administrative body, agency, or person.

(b) The disclosure, with or without the consent of the patient, of information concerning such patient to such in-hospital medical, nursing or dental staff committees does not make unprivileged any information that would otherwise be privileged under said laws or rules, and such information subject to discovery under subsection (a) except that the identity of any patient may not be discovered under subsection (a) unless the patient consents to such disclosure.

(c) This section does not affect the admissibility in evidence of the original medical or dental records of any patient.

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(d) This section does not exclude evidence which is relevant evidence in a criminal action.

SOURCE: Former Rule 412, GRE or former 6 GCA § 412.

Rule 417. Review of Quality Care, Health Care Provider Peer Review Committees, Immunity from Liability; Privileged Communications; Discovery; Testimony; Delegation of Authority.

(a) Every health care provider may establish procedures for continuously reviewing and improving the quality of care, performance of medical personnel, utilization of services and facilities, and costs. Notwithstanding any other provision of law, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against any person, partnership, corporation, firm, society or other entity arising from, relating to, or regarding:

(1) participation in quality of care or utilization reviews by plan or health care provider peer review committees which are licensed health care providers composed mainly of physicians and surgeons, dentists, nurses, allied health professionals, optometrists or any of the above;

(2) communication of information, the making or issuance of any recommendation or evaluation to any governmental agency, medical or specialists society, regarding the qualifications, fitness, professional conduct or practices of health care professionals, which communication, recommendation, and evaluation are the results of peer reviews or quality of care or utilization reviews;

(3) any act performed during peer reviews or quality of care utilization reviews if the person acts in good faith without malice. Neither the proceedings nor the records of the reviews shall be subject to discovery except as provided in Subsection (f). Nor shall any person in attendance at, serving on, or communicating information to any review committee described in this Section disclose or be examined as to any communication thereto, what transpired therein or the findings thereof, except to the extent necessary to carry out one or more of the purposes of the review organization. Disclosure of the proceedings or records to the governing body of a health care provider, to the person who is the subject of committee review or to any person or entity designated by the health care provider to review activities of the

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ART. IV: RELEVANCY AND ITS LIMITS

committees shall not alter the status of the records or of the proceedings as privileged communications.

(b) The prohibitions in this Section do not prevent any person who is party to any action or proceeding from being examined in such action or proceeding regarding his or her statements to the committee when his or her conduct is being reviewed.

(c) This section shall not be construed to confer immunity from liability on any health care provider. In any case in which, for but the enactment of the preceding provisions of this Section, a cause of action would arise against a health care provider, the cause of action shall exist notwithstanding the provisions of this Section.

(d) Medical records and non-privileged information discovered by independent means are not included in this Section's prohibition relating to discovery. For the purposes of this Section, "proceedings and records of review committees" include, but are not limited to: recordings, transcripts, minutes, summaries and reports of committee meetings, and the conclusions contained therein.

(e) Nothing in this section shall be construed to prevent a health care provider from utilizing subcommittees to participate in peer review activities, nor to prevent a plan or health care provider from delegating the responsibilities required by this section, as it determines to be appropriate, to subcommittees including subcommittees composed of a majority of non-physician health care providers licensed pursuant to Guam law, so long as the plan or health care provider controls the scope of authority delegated and may revoke all or part of this authority at any time. Persons who participate in the subcommittees shall be entitled to the same immunity from monetary liability and actions for civil damages as persons who participate in provider peer review committees pursuant to this section.

(f) The prohibitions in this Section shall not affect the discovery or the use of relevant evidence in any criminal action; provided, however, that the materials afforded protection under this Section may only be discovered in criminal matters upon an adequate showing that exceptional circumstances exist requiring their discovery and the administration of justice would otherwise be impeded without production thereof. Protection from discovery shall not apply to judicial proceedings in which a health care practitioner contests the denial, restriction or termination of clinical privileges by a

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hospital or clinic.

(g) “Health care providers” as the term is used in this Section, means a licensed organization engaged in the providing of personal health service to the public. Such licensed organizations include hospitals, clinics, health maintenance organizations and nursing homes, but do not include individual or sole practitioners.

(h) In all cases, the peer review committee or subcommittee shall make its findings available within the reporting guidelines of the National Practitioner Data Bank under the Health Care Quality Improvement Act of 1986 and within twenty-one (21) days to:

- (i) the medical or dental professional being assessed,
- (ii) each licensure entity or board which has licensed the person reviewed,
- (iii) the employer, if any, of the person reviewed, and
- (iv) Guam Memorial Hospital Authority, if such committee or subcommittee finds any one (1) of the following:
 - (i) the person reviewed has an alcohol or substance abuse problem;
 - (ii) there are serious quality of care issues regarding the person’s practice;
 - (iii) to permit the person reviewed to continue practicing that person’s profession would represent a significant threat to the health or lives of patients;
 - (iv) the person reviewed has refused to or failed to take remedial actions recommended by the committee or subcommittee;
 - (v) the person reviewed has violated any law relating to controlled substances;
 - (vi) the person reviewed was or is licensed or has continued to be licensed based upon fraudulent documents or statements;
 - (vii) the person reviewed is physically or mentally incapable of performing some or all of the duties normally performed by a practitioner of his or her specialty or profession;

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- (viii) the person reviewed has consistently failed to follow generally accepted medical or dental procedures;
- (ix) the person reviewed has violated the ethical standards of his or her profession; or
- (x) convicted of a felony.

If either subitems (v) or (x) is found to apply, the committee or subcommittee making the review shall notify the Guam Police Department, the National Practitioners Databank, the Attorney General, and the U. S. Attorney (if a federal crime is involved). In addition, such committee or subcommittee may make its findings available to any of the above named organizations or persons if such committee or subcommittee finds it are necessary to protect the patients of the person reviewed.

SOURCE: Former Title 6 GCA § 413. Added by P.L. 22-87:3 (3/4/94). Subsection (a) amended by P.L. 24-84:2. Subsection (b) amended by P.L. 24-84:3. Subsection (c) amended by P.L. 24-84:4. Subsection (d) relettered to (e) and new subsection (d) added. Subsection (e) relettered to (f) and amended. Subsection (f) relettered to (g) and amended. Subsection (g) relettered to (h) and amended.

NOTES, REFERENCES, AND ANNOTATIONS

NOTE: The Legislative Intent, enacted by P.L. 22-87:2 states:

“The Legislature finds that strong peer review policy as provided in this Act does not deprive patients, plaintiffs, or attorneys of any of the usual legal rights. These parties continue to have access to the complete medical record, and all physicians who are party to any action or who have special knowledge or expertise can still testify or be subpoenaed as in any other case. This Act only makes nondiscoverable those candid comments made at the peer review meetings.”

ARTICLE V. PRIVILEGES

Rule 501. General Rule.

Except as otherwise required by the Constitution of the United States, by the Organic Act of Guam, by these rules or by the laws of Guam or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, state, territory, commonwealth or political subdivision thereof, shall be governed by the principles of the common law as they may be interpreted by the courts of Guam in the light of reason and experience.

SOURCE: Rule 501, FRE.

NOTES, REFERENCES, AND ANNOTATIONS

NOTE: Former Title 6 GCA § 501 is now GRE 502.

Rule 502. Traditional Privileges.

Except as otherwise required by the Constitution of the United States, by the Organic Act of Guam, by the principles of the common law as interpreted by a court pursuant to GRE 501, by these rules or by the laws of Guam or in rules prescribed by the Supreme Court pursuant to statutory authority, no person has a privilege to:

- (a) refuse to be a witness; or
- (b) refuse to disclose any matter; or
- (c) refuse to produce any writing, object, or other thing; or
- (d) prevent another from being a witness or disclosing any matter or producing any writing, object, or other thing.

SOURCE: Former Title 6 GCA § 501.

NOTES, REFERENCES, AND ANNOTATIONS

NOTE: Former Title 6 GCA § 502 is now GRE 503.

COMMENT: This Guam Rule sets forth specific general statements stating when and where privileges do not exist. This Rule is adopted, almost verbatim, from the U.S. Supreme Court version of the Rules of Evidence, which was rejected by Congress.

Rule 503. Waiver of Privilege.

- (a) Except as otherwise provided in 504(c) (attorney-client privilege),
- (e) (privilege for confidential marital communications), (f) (physician-patient

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privilege), (g) (psychotherapist-patient privilege), (h) (clergyman-penitent), or (i) (privilege of clergyman) is waived with respect to a communication protected by such privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to such disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating his consent to the disclosure, including his failure to claim the privilege in any proceeding in which he has the legal standing and opportunity to claim the privilege.

(b) Where two or more persons are joint holders of a privilege provided by 504(c) (attorney-client privilege), (f) (physician-patient privilege), or (g) (psychotherapist-patient privilege), a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the privilege provided by 504(e) (privilege for confidential marital communications), a waiver of the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege.

(c) A disclosure that is itself privileged is not a waiver of any privilege.

(d) A disclosure in confidence of a communication that is protected by a privilege provided by 503(c) (attorney-client privilege), (f) (physician-patient privilege), or (g) psychotherapist-patient privilege), when such disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, physician, or psychotherapist was consulted, is not a waiver of the privilege.

SOURCE: Former Title 6 GCA § 502.

NOTES, REFERENCES, AND ANNOTATIONS

NOTE: Former Title 6 GCA § 503 is now GRE 504.

Rule 504. Particular Privileges.

Except as otherwise required by the Constitution of the United States, by the Organic Act of Guam, by these rules or by the laws of Guam or in rules prescribed by the Supreme Court of Guam pursuant to statutory authority, the privilege of a witness, person, government, state, territory, commonwealth or political subdivision thereof, shall include, but not necessarily limited to:

(a) the privilege of a Defendant in a criminal case not to be called

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as a witness and not to testify

- (b) the privilege against self-incrimination
- (c) the attorney-client privilege
- (d) the privilege not to testify against one's spouse
- (e) the privilege for confidential marital communication
- (f) the physician-patient privilege
- (g) the psychotherapist-patient privilege
- (h) the clergyman-penitent privileges
- (i) trade secret privileges.

SOURCE: Former Title 6 GCA § 503.

NOTES, REFERENCES AND ANNOTATIONS

CROSS-REFERENCES: 8 GCA § 1.11 -- Rights of Defendant Enumerated.

COMMENT: The FRE do not establish particular privileges, leaving it to the determination of the courts. The Committee has seen fit to set forth the particular privileges recognized under Guam Law without limiting the ability of the courts to recognize other privileges based upon the principles of common law.

Rule 504.1. Privileged Communications and Information to Crime Stoppers Organizations.

(a) Definitions. For purposes of this Section:

(1) Crime Stoppers organizations means a private, nonprofit organization that accepts and expends donations for rewards to persons who report to the organization information concerning criminal activity and that forwards the information to the appropriate law enforcement agency;

(2) Privileged communication means information provided by any person, in any manner whatsoever, to a Crime Stoppers organization in reporting alleged criminal activity;

(3) Protected information means the identity of the person reporting criminal activity to a Crime Stoppers organization, any records, statements (oral, written or recorded), papers, documents or any materials whatsoever utilized by a Crime Stoppers organization in reporting criminal activity or in processing such information, whether

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such information is in the possession of a Crime Stoppers organization, a police “Crime Stoppers” coordinator or his staff, or a law enforcement agency receiving such information from a Crime Stoppers organization or a third party or entity that was a part of the process of gathering or transmitting such records, statements (oral, written or recorded), papers, documents or any materials or information that could individually or collectively be used, either directly or indirectly, to reveal the identity of the informant.

(b) Nondisclosure of privileged communication or privileged information. No person, police “Crime Stoppers” coordinator or his staff, or member of a Crime Stoppers organization's board of directors, crime stoppers volunteer, or any other person or entity who has such information or knowledge of such information shall be required to disclose, by way of testimony or any other means, privileged communication or privileged information unless such failure to disclose infringes on the constitutional rights of the accused. Nor shall such persons be required to produce, under subpoena, any records, documentary evidence, opinions or decisions relating to such privileged communication or information (i) in connection with any criminal case, criminal proceeding, civil case, civil proceeding or any administrative hearing of whatever nature, or (ii) by way of any discovery procedure.

(c) Inspection of records. Any person arrested or charged with a criminal offense may petition the court for an in camera inspection of the records of a privileged communication or information concerning such person made to a Crime Stoppers organization. The petition shall allege facts showing that such records would (i) provide evidence favorable to the accused, (ii) be relative to the issue of guilt, and (iii) cause a deprivation of a constitutional right if such communication or information is not disclosed. If the court determines that, based on such criteria, the person is entitled to all or any part of such records, it may order production and disclosure as is necessary, protecting to the extent possible, the identity of the “Crime Stoppers” informant.

(d) Penalty for disclosure. Disclosure of a privileged communication or privileged information in violation of this section shall be a felony of the third degree.

(e) Although the Crime Stoppers organization is authorized to hire legal counsel to assure the enforcement of the provisions of this Section an

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to provide protection of information as set out in this Section, the Attorney General shall, to the extent possible, quash any subpoenas or other discovery efforts to obtain any protected information as defined in Subsection (a) above and shall, to the extent authorized by law, take whatever action is necessary to assure anonymity of the Crime Stoppers informant and to protect said protected information.

SOURCE: Former Title 6 GCA § 503.1, added by P.L. 22-104 (4/1/94).

Rule 504.2. Confidentiality of the Mediation Process.

Except where mediation or conciliation is part of an ongoing action already filed in either the courts of Guam or the United States, all memoranda, work products, or case files of a mediator or conciliator are privileged and not subject to disclosure in any judicial or administrative proceedings. Any communications relating to the subject matter of the resolution process by any participant, mediator, or other person present at the dispute resolution shall be privileged communication.

SOURCE: Former Title 6 GCA § 505, added by P.L. 22-98 (3/31/94).

ARTICLE VI: WITNESSES

Rule 601. General Rule of Competency.

Every person is competent to be a witness except as otherwise provided in these rules or by the laws of Guam.

SOURCE: First sentence of Rule 601, FRE, with changes.

NOTES, REFERENCES, AND ANNOTATIONS

COMMENT: The second sentence of Rule 601 FRE applies to exceptions brought about by state law. Since this is “state law”, the second sentence of the Federal Rules is inapplicable.

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.

SOURCE: Rule 602, FRE.

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.

SOURCE: Rule 603, FRE.

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.

SOURCE: Rule 604, FRE.

Rule 605. Competency of Judge as Witness.

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

SOURCE: Rule 605, FRE.

Rule 606. Competency of Juror as Witness.

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

(b) Inquiry into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

SOURCE: Rule 606, FRE.

COURT DECISIONS: See *People v. Castro*, 2002 Guam 23, ¶ 18.

Rule 607. Who May Impeach.

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

SOURCE: Rule 607, FRE.

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

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extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness

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

(2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

SOURCE: Rule 608, FRE.

Rule 609. Impeachment by Evidence of Conviction of Crime.

(a) General rule. For the purpose of attacking the credibility of a witness,

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

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

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

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provide the adverse party with a fair opportunity to contest the use of such evidence.

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

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

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

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

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

SOURCE: Rule 609, FRE.

NOTES, REFERENCE AND ANNOTATIONS

CROSS-REFERENCES: Compare 19 GCA § 5123 and § 5124 [Family Court Law]. These sections relate to limited disclosure of juvenile records and the sealing and destruction of those records after a certain period of time.

Rule 610. Religious Beliefs or Opinions.

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

SOURCE: Rule 610, FRE.

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

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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.

SOURCE: Rule 611, FRE.

COURT DECISIONS: See *People v. Santos*, 2003 Guam 1, ¶ 28; *People v. Guerrero*, 2003 Guam 18, ¶ 7.

Rule 612. Writing Used to Refresh Memory.

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

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice,

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

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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.

SOURCE: Rule 612, FRE.

NOTES, REFERENCES, AND ANNOTATIONS

COMMENT: The difference between the Federal and Guam Rule is that the Federal Rule refers to 18 U.S.C. § 3500 which is not applicable to the Superior Court.

Rule 613. Prior Statements of Witnesses.

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

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

SOURCE: Rule 613, FRE.

Rule 614. Calling and Interrogation of Witnesses by Court.

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

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

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

SOURCE: Rule 614, FRE.

Rule 615. Exclusion of Witnesses.

At the request of a party the court shall order witnesses excluded so that

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they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause, or (4) a person authorized by statute to be present.

SOURCE: Rule 615, FRE.

NOTES, REFERENCES, AND ANNOTATIONS

COURT DECISIONS: See *Camacho v People*, Criminal Case No. 76-010-A (App. Div., DC Guam) [1977]. At issue in the case was whether a discussion between the Attorney General and a medical witness regarding testimony given by the defendant in the case violated an exclusion order. This medical witness was used in rebuttal. The Appellate Division held that such medical witnesses were not excluded under the order given by the trial court.

ARTICLE VII: OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinions 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, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

SOURCE: Rule 701, FRE.

Rule 702. Testimony by Experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

SOURCE: Rule 702, FRE.

NOTES, REFERENCES, AND ANNOTATIONS

COURT DECISIONS: *See In the Interest of N.A.*, 2001 Guam 7, ¶ 34.

Rule 703. Bases of Opinion Testimony by Experts.

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

SOURCE: Rule 703, FRE.

Rule 704. Opinion on Ultimate Issue.

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

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

SOURCE: Rule 704, FRE.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion.

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

SOURCE: Rule 705, FRE.

COURT DECISIONS: *See In the Interest of N.A.*, 2001 Guam 7, ¶ 49.

Rule 706. Court Appointed Experts.

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

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just

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compensation under the fifth amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

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

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

SOURCE: Rule 706, FRE.

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ART. VIII: HEARSAY**

ARTICLE VIII: HEARSAY

Rule 801. Definitions.

The following definitions apply under this article:

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

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(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 sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

SOURCE: Rule 801, FRE.

COURT DECISIONS: *See People v. Santos*, 2003 Guam 1, ¶ 37.

Rule 802. Hearsay Rule.

Hearsay is not admissible except as provided by the laws of Guam, by these rules or by other rules prescribed by the Supreme Court of Guam pursuant to statutory authority.

SOURCE: Rule 802, FRE.

NOTES, REFERENCES, AND ANNOTATIONS

NOTE: This Rule differs from Rule 802, FRE only by the insertion "of Guam" and by the deletion of "or by Act of Congress."

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

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

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

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

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

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the

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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 or government instrumentality, setting forth

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

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or

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other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

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

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

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

(16) Statements in ancient documents. Statements in a document in existence of 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

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not be received as exhibits.

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

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

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

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

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

(24) [Other exceptions.][Transferred to Rule 807]

SOURCE: Rule 803, FRE.

NOTE: The only changes in this rule, from Rule 803, FRE, appear in subsection (8) where the phrase "or governmental instrumentality" was added following "agency" or "agencies".

COURT DECISIONS: See *People v. Salas*, 2000 Guam 2, ¶ 23; *People v. Moritok*, 2003 Guam 21, ¶ 32.

Rule 804. Hearsay Exceptions; Declarant Unavailable.

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

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

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

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

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

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

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

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

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

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement against interest. A statement which was at the time

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

(4) Statement of personal or family history.

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

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

(5) [Other exceptions.][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 the declarant as a witness.

SOURCE: Rule 804, FRE.

Rule 804.1. Protection of Child Witnesses.

(a) Conditions. In a case of physical, sexual or mental abuse of a child as defined in Guam law, a court may order that the testimony of a child victim be taken outside the courtroom and shown in the courtroom by means of closed-circuit television if:

(1) The testimony is taken during the proceeding; and

(2) The judge determines that testimony by the child victim in the defendant's presence will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

(b) Location of certain persons; question of child.

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(1) Only the following persons may be in the room with the child when the child testifies by closed-circuit television:

- (i) The prosecuting attorney;
 - (ii) The attorney for the defendant;
 - (iii) The operators of the closed-circuit television equipment;
- and
- (iv) Unless the defendant objects, any person whose presence, in the opinion of the court, contributes to the well-being of the child, including a person who has dealt with the child in a therapeutic setting concerning the abuse.

(2) During the child's testimony by closed-circuit television, the judge and the defendant shall be in the courtroom.

(3) The judge and the defendant shall be allowed to communicate with the persons in the room where the child is testifying by any appropriate electronic method.

(4) Only the prosecuting attorney, the attorney for any defendant, and the judge may question the child.

(c) Examination by judge.

(1) In determining whether testimony by the child victim in the defendant's presence will result in the child suffering serious emotional distress such that the child cannot reasonably communicate, the judge may observe and question the child either inside or outside the courtroom and hear testimony of a parent or custodian of the child or any other person, including a person who has dealt with the child in a therapeutic setting.

(i) Except as provided in subparagraph (ii) of this paragraph, any defendant, any defendant's attorney, and the prosecutor shall have the right to be present when the judge hears testimony on whether to allow a child victim to testify by closed-circuit television.

(ii) If the judge decides to observe or question the child in connection with the determination to allow closed-circuit television:

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1. Any defendant's attorney and the prosecutor shall have the right to be present; and

2. The judge may not permit a defendant to be present.

(d) Applicability. The provisions of this section do not apply if the defendant is an attorney pro se.

(e) Identification of defendant. This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time.

(f) Two-way closed-circuit television prohibited. This section may not be interpreted to permit the use of two-way closed-circuit television or any other procedure that would result in the child being exposed to the defendant.

SOURCE: Former Title 6 GCA § 804.1, added by P.L. 22-52:4 (12/2/93).

NOTES, REFERENCES, AND ANNOTATIONS

COMMENT: The Legislature enacting the following Findings in Section 3 of P.L. 22-52:

The Legislature finds that while a defendant has a constitutionally guaranteed right to confront an accuser during court proceedings, plaintiffs and witnesses, especially children, involved in child abuse cases in Guam should be accorded some witness comfort and protection as in many other jurisdictions. One such type of witness comfort and protection which has been deemed constitutionally permissible is the closed-circuit television testimony of children. The Legislature finds that such testimony would help to ensure justice.

Rule 805. Hearsay Within Hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements confirms with an exception to the hearsay rule provided in these rules.

SOURCE: Rule 805, FRE.

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

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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.

SOURCE: Rule 806, FRE.

Rule 807. Residual Exception.

A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it including the name and address of the declarant.

SOURCE: Rule 807, FRE.

COURT DECISIONS: *See Ada v. Gutierrez*, 2000 Guam 22, ¶ 30.

ARTICLE IX: AUTHENTICATION AND IDENTIFICATION

Rule 901. Requirement of Authentication or Identification.

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

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

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

(2) 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.

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

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

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

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

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

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

(10) Methods provided by statute or rule. Any method of authentication or identification provided by the Guam Legislature or by other rules prescribed by the Supreme Court of Guam pursuant to statutory authority.

SOURCE: Rule 901, FRE.

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 United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

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

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under seal that the signer has the official capacity and that the signature is genuine.

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

(A) of the executing or attesting person, or

(B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

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

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

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

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or

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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 laws of Guam. Any signature, document, or other matter declared by a law of Guam 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 laws of Guam or rule prescribed by the Supreme Court of Guam pursuant to statutory authority, certifying that the record —

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

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

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

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

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

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person certifying that the record:

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

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

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

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

SOURCE: Rule 902, FRE.

NOTES, REFERENCES, AND ANNOTATIONS

NOTE: Minor changes have been made to Rule 902, FRE; the language of subsections (4), (10), & (11) has been modified slightly to read “laws of Guam” and “Supreme Court of Guam” where appropriate.

Rule 903. Subscribing Witness’ Testimony Unnecessary.

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

SOURCE: Rule 903, FRE.

NOTES, REFERENCES, AND ANNOTATIONS

NOTE: Rule 903, FRE, has been modified slightly for our jurisdiction, adding the phrase “laws of Guam or” before “of the jurisdiction.”

**ARTICLE X: CONTENTS OF WRITINGS,
RECORDINGS, AND PHOTOGRAPHS**

Rule 1001. Definitions.

For purposes of this article the following definitions are applicable:

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

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

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

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

SOURCE: Rule 1001, FRE.

Rule 1002. Requirement of Original.

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

SOURCE: Rule 1002, FRE.

NOTES, REFERENCES, AND ANNOTATIONS

NOTE: Rule 1002, FRE has been changed to read “laws of Guam” instead of “Act of Congress.”

Rule 1003. Admissibility of Duplicates.

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

SOURCE: Rule 1003, FRE.

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.

SOURCE: Rule 1004, FRE.

COURT DECISIONS: *See Shorehaven Corp. v. Taitano*, 2001 Guam 16, ¶ 9-11.

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.

SOURCE: Rule 1005, FRE.

Rule 1006. Summaries.

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ART. X: CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

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

SOURCE: Rule 1006, FRE.

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 who offered or by that party's written admission, without accounting for the non-production of the original.

SOURCE: Rule 1007, FRE.

Rule 1008. Functions of Court and Jury.

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

SOURCE: Rule 1008, FRE.

ARTICLE XI: MISCELLANEOUS RULES

Rule 1101. Applicability of Rules.

These Rules apply to the courts of Guam in the actions, cases, and proceedings and to the extent hereinafter set forth.

(a) General applicability. These Rules apply generally to civil actions and proceedings, to criminal cases and proceedings, to contempt proceedings except those in which the court may act summarily.

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

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

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

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

(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.

SOURCE: Rule 1101, FRE.

COURT DECISIONS: See *People v. Santos*, 1999 Guam 1, ¶ 13.

NOTES, REFERENCES, AND ANNOTATIONS

NOTE: This rule is generally conformable with Rule 1101, FRE; however, specific references to numerous federal statutes were omitted as they are not within the purview of the Courts of Guam.

Rule 1102. Title.

These Rules may be known and cited as the Guam Rules of Evidence or GRE.