RULES OF EVIDENCE OF PUERTO RICO

SUPREME COURT OF PUERTO RICO

RULES OF EVIDENCE OF PUERTO RICO*

* Adopted by the Supreme Court of Puerto Rico through Resolution ER-2009-01 of February 9, 2009, *In re Aprobación Reglas de Evidencia*, 175 DPR 478 [75 PR Offic. Trans. 35] (2009), and enacted with amendments by the Legislative Assembly through Law No. 46 of July 30, 2009.

The official translation of Resolution ER-2009-01 of February 9, 2009, was prepared by the Bureau of Translations of the Supreme Court of Puerto Rico. This document compiles the official translations of amendments introduced by the Legislative Assembly as made available by the Legislature of Puerto Rico. The following statutes were not available at the time of this compilation: Law No. 174 of August 5, 2018. Please consult the Spanish version. Revised October 2023.

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RULES OF EVIDENCE OF PUERTO RICO

CHAPTER I
GENERAL PROVISIONS

Rule 101. Title

These Rules shall be known as the Rules of Evidence of Puerto Rico.

Rule 102. Construction

These Rules shall be construed so as to secure a fair, speedy, and inexpensive solution to any problem with regard to the law of evidence. The main purpose of the Rules is that the truth be ascertained in all judicial proceedings.

Rule 103. Applicability of Rules

(a) Applicability to the General Court of Justice

(1) Court of First Instance

These Rules apply to all parts of the Court of First Instance.

(2) Supreme Court and Court of Appeals

These Rules apply to proceedings before the Supreme Court and the Court of Appeals to the extent set forth in their respective Rules.

(b) Civil and criminal actions

These Rules apply to all civil and criminal actions, except in proceedings for contempt in which the court may act summarily.

(c) Privileges and judicial notice

The rules with respect to privileges and judicial notice apply at all stages of all civil and criminal proceedings, actions, and cases.

[(d)] These Rules do not apply to:

(1) the determination of questions of fact preliminary to admissibility of evidence, pursuant to Rule 109(a),

(2) interlocutory or post judgment proceeding, among others:

[(A)] proceedings related to determination of probable cause to arrest or to file an information,

[(B)] sentencing proceedings in criminal cases,

(C) proceedings with respect to the setting of bail or conditions for release in criminal cases,

(D) probation or parole revocation hearings,

(E) proceedings related to the issuance temporary restraining orders or preliminary injunctions, and

(3) ex parte proceedings.

[(e)] Proceedings under special laws

These Rules apply to proceedings established under special laws, except when expressly provided otherwise or when these are incompatible with the nature of the special proceeding contemplated in the law.

[(f)] Proceedings for determining cause for indictment (preliminary hearing)

In hearings for determining cause for indictment (preliminary hearing), even when the Rules of Evidence do not apply, the determination of cause shall be made with evidence admissible in trial.

Rule 104. Erroneous Admission or Exclusion of Evidence

(a) Objection required

The party prejudiced by an erroneous admission of evidence must file a timely, specific, and proper objection or a motion to strike from the record any evidence erroneously admitted when the grounds of objection arise afterward. If the ground for objection is apparent from the context of the evidence offered, there is no need to state the grounds.

(b) Offer of proof

In case the ruling is one erroneously excluding evidence, the party prejudiced by the exclusion may invoke the specific ground for admitting the evidence presented and offer proof to clarify which evidence was excluded and the character, purpose, and relevance of the same. There is no need to invoke the specific grounds or make an offer of proof when these grounds are apparent from the context of the offer.

The Court will allow the offer of proof and will determine if it should be made by narrative statement of the evidence or by the appropriate examination in question and answer form. The Court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objections made, and the ruling thereon.

(c) Continuous objection or offer of proof

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

(d) Hearing of jury

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

Rule 105. Effect of Erroneous Admission or Exclusion of Evidence

(a) General rule

A ruling admitting or excluding evidence shall not be set aside, nor shall a judgment or other decision based thereon be reversed by reason of the erroneous admission of evidence unless:

(1) the party prejudiced by the admission or exclusion of evidence has met all the requirements of objection, grounds, or offer of proof set forth in Rule 104 and

(2) the court which passes upon the effect of the erroneous admission or exclusion deems that the evidence was a decisive or substantial element of the judgment or decision whose reversal is sought.

(b) Constitutional error

If the erroneous admission or exclusion of evidence constitutes a violation of a constitutional right of the accused, the appellate court shall affirm the decision if it is convinced beyond a reasonable doubt that the outcome would have been the same if the error had not been committed.

Rule 106. Plain Error

An appellate court may consider an assignment of error in the admission or exclusion of evidence and reverse a judgment or decision even where the party making the assignment has not met the Rule 104 requirements if:

(a) there is no doubt that a gross error was committed,

(b) the error was harmful because it had a decisive or substantial effect on the judgment or decision whose reversal is sought, and

(c) failure to correct said errors would result in a miscarriage of justice.

Rule 107. Limited Admissibility

When evidence is admissible as to one party or for one purpose and is inadmissible as to another party or for another purpose, the court, upon request, shall restrict admissibility of the evidence to its proper scope and immediately instruct the jury accordingly, in the case of a jury trial.

Rule 108. Related Evidence

When a writing, video or tape recording, or part thereof is introduced as evidence by a party, an adverse party may require the introduction at that time of the rest of the writing, video or tape recording which was partially introduced. It may likewise require the presentation of any other writing, video or tape recording which ought to be introduced at the same time for a full understanding of the matter. No otherwise inadmissible evidence will be

admitted under the pretext that it is the remainder of the writing, video, or tape recording.

Rule 109. Preliminary Determinations on Admissibility of Evidence

(a) Questions of admissibility generally

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

(b) Relevance conditioned on fact

When the relevance of the evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon the introduction of evidence sufficient to support a finding of the fulfillment of the condition. The court may also admit the evidence subject to a subsequent introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Determinations concerning a confession by the accused out of the hearing of the jury

In cases before a jury, all the evidence concerning the admissibility of a confession by the accused shall be heard and weighed by the judge out of the hearing of the jury. If the judge determines that the confession is admissible, the accused may introduce to the jury, and the prosecution may rebut, evidence relevant to the weight or credibility of the confession and to the circumstances under which the confession was obtained. Other preliminary determinations may also be considered out of the hearing of the jury when the interests of justice so require or when the accused, as a witness, so requests.

(d) Testimony by accused

An accused, by testifying upon a preliminary matter, does not become subject to cross-examination as to other issues in the case. The accused's testimony on a preliminary matter is not admissible against him or her except for impeachment purposes.

(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 of the evidence admitted after the corresponding preliminary determination made by the court.

Rule 110. Weight and Sufficiency of Evidence

The trier of facts shall weigh the evidence introduced in order to determine which facts have been established or proven, subject to the following principles:

(a) The burden of proof is on the party who would be defeated if no evidence were introduced by either side.

(b) The burden of producing evidence primarily rests on the party holding the affirmative of the issue.

(c) To establish a fact, the degree of proof required is not that which, excluding the possibility of error, produces absolute certainty.

(d) Direct evidence from a witness who deserves full credit is sufficient proof of any fact, unless otherwise provided by law.

(e) The trier of facts is not bound to decide in conformity with the statements of any number of witnesses that are not deemed convincing against a lesser number of witnesses or against other evidence deemed more convincing.

(f) In civil cases, the trier's finding shall be in accordance with the preponderance of evidence on the basis of probability, unless otherwise provided. In criminal cases, guilt must be established beyond a reasonable doubt.

(g) When it seems that a party offers evidence that is weaker and less satisfactory than the one that could have been offered, the evidence introduced should be viewed with distrust.

(h) Any fact in controversy may be established through direct, indirect, or circumstantial evidence. "Direct evidence" is that which proves the fact in controversy without inference or presumption and which, if true, establishes that fact conclusively. "Indirect or circumstantial evidence" is that which tends to establish the fact in controversy by proving another one from which—together with other established facts—one could reasonably infer the fact in controversy.

CHAPTER II
JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

[(a)] This Rule governs only judicial notice of adjudicative facts.

(b) A court may only take judicial notice of adjudicative facts not subject to reasonable dispute because these are 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) A court may take judicial notice on its own initiative and shall take judicial notice when requested by a party and supplied with the necessary information.

(d) A party is entitled to an opportunity to be heard as to the propriety of taking judicial notice. In the absence of a timely notification by the court or moving party, the request may be made after judicial notice has been taken.

(e) Judicial notice may be taken at any stage of the proceedings, including the appellate stage.

[(f)] In a criminal case by Jury, the Judge shall instruct the Jury that it may, but is not required to, accept as conclusive any fact that has been judicially noticed.

Rule 202. Judicial Notice of Questions of Law

[(a)] A court shall take judicial notice of:

(1) the Constitution and the laws of the Commonwealth of Puerto Rico and

(2) the Constitution and the laws of the United States of America.

[(b)] The Court may take judicial notice of:

(1) [t]he rules and regulations of the United States of America and the Commonwealth of Puerto Rico[,]

(2) the laws and regulations of the states and territories of the United States of America,

(3) the ordinances approved by the municipalities of the Commonwealth of Puerto Rico, [and]

(4) [t]reaties to which the United States of America is a party and that apply to Puerto Rico.

CHAPTER III
PRESUMPTIONS

Rule 301. Presumption – Definitions

(a) A presumption is a deduction of fact that the law authorizes or requires to be made from another fact or group of facts previously established in the action. Said previously established fact or group of facts is known as the "basic fact"; the fact deduced by presumption is called the "presumed fact."

(b) A presumption is conclusive when the law does not allow the introduction of evidence to destroy or rebut the presumption, that is, to show the nonexistence of the presumed fact. All other presumptions are rebuttable.

(c) This chapter only refers to rebuttable presumptions.

Rule 302. Effect of Presumptions in Civil Cases

In a civil action, a presumption imposes on the party against whom it is directed the burden of proving the nonexistence of the presumed fact. If the party against whom the presumption is established fails to offer evidence showing the nonexistence of the presumed fact, the trier shall accept the existence of said fact. If evidence is introduced in support of a finding as to the nonexistence of said fact, the party seeking to rebut the presumption shall persuade the trier that nonexistence of the presumed fact is more likely than its existence.

Rule 303. Effect of Presumptions in Criminal Cases

In a criminal action, a presumption that affects the defendant allows the trier to infer the presumed fact where no evidence is produced to rebut said presumption. Where there is reasonable doubt as to the presumed fact, the presumption is rebutted. The presumption does not shift the burden of proof on the elements of the offense or rebut a defense asserted by the defendant.

(a) When a presumption is favorable to the defendant, it shall have the same effect as provided in Rule 302.

(b) When instructing the jury as to the effect of a presumption against the defendant, the judge shall establish that:

(1) the defendant need only cast reasonable doubt as to the presumed fact to rebut the presumption, and

(2) the jury is not required to infer the presumed fact, even when the defendant did not produce any evidence to the contrary. However, the jury shall be instructed that it may deduce or infer the presumed fact if it considers the basic fact proven.

Rule 304. Specific Presumptions

Presumptions are those established by law or by judicial decisions. The following are recognized among such rebuttable presumptions:

(1) A person is innocent of crime or wrong.

(2) An unlawful act was done with an unlawful intent.

(3) A person intends the ordinary consequence of his or her voluntary act.

(4) A person takes ordinary care of his or her own concern.

(5) Evidence willfully suppressed would be adverse if produced.

(6) Money paid by one to another was due to the latter.

(7) A thing delivered by one to another belonged to the latter.

(8) An obligation delivered up to the debtor has been paid.

(9) Former rent or installments have been paid when a receipt for the latter is produced.

(10) Things which a person possesses are owned by him or her.

(11) A person is the owner of property from exercising acts ownership over it, or from common reputation of his or her ownership.

(12) A person in possession of an order on himself or herself for the payment of money, or the delivery of a thing, has paid the money or delivered the thing accordingly.

(13) A person acting in a public office was regularly elected or appointed to it.

(14) Official duty has been regularly performed.

(15) A court or judge, acting as such, whether in Puerto Rico, a state of the United States of America, or any other country, was acting in the lawful exercise of its jurisdiction.

(16) A judicial record, even when not conclusive, correctly determines or sets forth the rights of the parties.

(17) All matters within an issue were laid before the judges or jury and passed upon by them. Likewise, all matters within an issue submitted to arbitration were laid before the arbitrators and passed upon by them.

(18) Private transactions have been fair and regular.

(19) The ordinary course of business has been followed.

(20) A promissory note or bill of exchange was given or endorsed for a sufficient consideration.

(21) An endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill.

(22) A writing is truly dated.

(23) A letter duly directed and mailed was received in the regular course of the mail.

(24) Proof of a person's name establishes the person's identity.

(25) Acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact.

(26) Things have happened according to the ordinary course of nature and the ordinary habits of life.

(27) Persons acting as copartners have entered into a contract of copartnership.

(28) A man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.

(29) Children born in wedlock are the children of the husband.

(30) A thing once proved to exist continues as long as is usual with things of that nature.

(31) The law has been obeyed.

(32) A document or writing more than twenty years old is authentic when the same has been since generally acted upon as authentic by persons having an interest in the matter, and its custody has been satisfactorily explained.

(33) A printed and published book, purporting to be printed or published by public authority, was so printed or published.

(34) A printed and published book, purporting to contain reports of cases adjudged in the tribunals of the state or nation where the book is published contains correct reports of such cases.

(35) A trustee or other person, whose duty was to convey real property to a particular person, has actually conveyed to him or her, when such presumption is necessary to perfect title of such person or his or her successor in interest.

(36) The uninterrupted use by the public of land for a burial ground, for five years, with the consent of the owner and without a reservation of his or her rights, is presumptive evidence of his or her intention to dedicate the land to the public for such purpose.

(37) There was a good and sufficient consideration for a written contract.

(38) When two persons perish in the same disaster, such as a shipwreck, a battle or a conflagration, and it is not shown who died first, and there are no particular circumstances from which it can be inferred, survivorship is presumed from the probabilities resulting from the strength and age, according to the following rule:

First: If both of those who have perished were under the age of fifteen, the older is presumed to have survived.

Second: If both were above the age of sixty, the younger is presumed to have survived.

Third: If one is under fifteen and the other above sixty, the former is presumed to have survived.

Fourth: If both are over fifteen and under sixty, the older is presumed to have survived.

Fifth: If one is under fifteen or over sixty, and the other between those ages, the latter is presumed to have survived.

(39) A receipt for the purchase of goods or the payment of services is authentic and reflects the fair market value of the goods acquired from the providers or the services received from a provider.

Rule 305. Incompatible Presumptions

In case two incompatible presumptions arise, both presumptions shall be disregarded and the fact in controversy shall be decided based on the evidence.

CHAPTER IV
ADMISSIBILITY AND RELEVANCE

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 such evidence. This includes evidence that may be used to impeach or uphold the credibility of a witness or deponent.

Rule 402. Relationship Between Relevance and Admissibility

All relevant evidence is admissible, except as otherwise provided by constitutional mandate, by statute or by these Rules. Evidence which is not relevant is not admissible.

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

Relevant evidence may be excluded when its probative value is substantially outweighed by any of these factors:

(a) danger of causing unfair prejudice
(b) danger of confusing the issues
(c) danger of misleading the jury
(d) considerations of undue delay in the proceedings
(e) needless presentation of cumulative evidence.

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Evidence of Other Crimes

[(a)] Evidence of the character of a person or of a trait of his/her character shall not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Evidence offered by the defense of a pertinent trait of character of the accused.

(2) Evidence offered by the defense of a pertinent trait of character of the victim, subject to the provisions of Rule 412.

(3) Evidence offered by the prosecution, of a pertinent trait of character of the accused to rebut the same offered by the defendant party under [paragraph] (1) or (2) of this [subdivision].

(4) Evidence offered by the prosecution of a pertinent trait of character of the victim to rebut the same offered by the defense under paragraph (2) of this subdivision.

(5) Evidence of a character trait of peacefulness of the victim offered by the prosecution in a murder or homicide case to rebut evidence introduced by the defense that the victim was the first aggressor.

(b) Evidence of specific conduct, including the commission of other offenses, civil damages or other acts, is not admissible to establish the tendency to incur this type of conduct or the purpose of inferring that the person acted in conformity therewith; however, said evidence is admissible if it is relevant for other purposes, such as to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, or to establish or rebut a defense.

Upon request by the accused, the prosecution 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 under this subdivision (b).

(c) The admissibility of evidence offered to uphold or impeach the credibility of a witness is governed by the provisions of Rules 608 or 609.

Rule 405. Methods of Proving Character

(a) Reputation or opinion

When evidence of character is admissible under Rule 404, it shall be admitted only through the testimony of a character witness or by testimony in the form of an opinion about a relevant character trait, without prejudice that on cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct

When a person's character or trait is an essential element of a charge, claim, or defense, character evidence may be admissible not only through testimony of a character witness or by testimony in the form of opinion, but also through relevant specific instances of the person's conduct.

Rule 406. Habit or Routine Practice

(a) Evidence of the habit of a person or of the routine practice of an organization may be admitted to prove that the conduct of the person or

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

(b) Method of proof

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

Rule 407. Subsequent Remedial or Precautionary Measures

Evidence of remedial or precautionary measures that are taken after the occurrence of an event which, if taken previously, would have made the event less likely to occur is not admissible to prove negligence or culpable conduct in connection with the event. This does not preclude the admissibility of such evidence for other pertinent purposes, such as proving ownership or control, or feasibility of precautionary measures, if controverted by the opposing party, or impeachment.

Rule 408. Compromise and Offers to Compromise

(a) Evidence of the following is not admissible to prove liability for or invalidity of, or amount of a claim, or to impeach a witness based on a prior inconsistent statement or contradiction:

(1) evidence that a person has furnished or offered or promised to furnish, or has accepted or offered or promised to accept a valuable consideration in compromising or attempting to compromise a claim that was disputed as to either validity or amount, or

(2) evidence of conduct or statements made in compromise negotiations.

(b) This Rule does not require exclusion of evidence when offered for any other purpose, such as to prove a witness's bias or prejudice, to negate a contention of undue delay, or to prove an effort to obstruct a criminal investigation or prosecution. For the purposes of this Rule, conduct directed at compromising an action arising from a crime as authorized by the Rules of Criminal Procedure, the Penal Code, or special legislation shall not be considered as an effort to obstruct a criminal investigation or prosecution.

(c) This Rule applies in civil and criminal cases.

Rule 409. Payment and Offer of Payment of Medical Expenses

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

Rule 410. Plea Bargaining

Evidence of a plea bargaining, its terms or conditions, details and pertaining conversations, is not admissible in a criminal or civil proceeding if said plea has been rejected by the court, nullified in any subsequent recourse, or validly withdrawn by the defendant or by the prosecution. However, such evidence is admissible by exception in a criminal proceeding for perjury against the defendant for statements made by the defendant under oath and in the presence of counsel.

Rule 411. Initial Liability Determination System

(a) Traffic accident liability adjudicated by using diagrams prescribed in the Initial Liability Determination System provided by law is not admissible in any criminal or civil action arising from the particular facts of the accident at issue. However, any amount paid on account of liability adjudicated as a result of the use of said diagrams in the claim arising from said traffic accident is admissible solely for the purpose of crediting such amount to any additional sum awarded inside or outside the court system to any of the parties involved in said action.

(b) The friendly car accident report filled out, signed, and submitted by the parties involved in the accident to an insurer or authorized representative is also inadmissible as evidence in a civil or criminal proceeding, except in administrative or criminal proceedings brought about by filing false or fraudulent claims.

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

(a) Evidence generally inadmissible

The following evidence is not admissible in any criminal proceeding involving alleged sexual misconduct:

(1) Evidence of the victim's past sexual conduct or history or opinion or reputation offered to prove that any alleged victim engaged in other sexual behavior.

(2) Any other evidence offered to prove any alleged victim's sexual predisposition.

(b) Exceptions

In criminal cases, the following evidence is admissible, unless otherwise inadmissible under these Rules:

(1) 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,

(2) 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

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

(c) Procedure to determine admissibility

(1) A party intending to offer evidence under the exceptions set forth in subdivision (b) must:

(A) file a motion specifically describing the evidence in question, supported by a sworn statement, and stating the purpose for which it is offered,

(B) file a motion at least 14 days before trial unless the court, for good cause, requires a different time for filing or permits filing during trial, and

(C) serve the motion on all parties and notify the alleged victim. If the victim is a minor or incapacitated person, notice will be served on the victim's guardian or representative.

(2) Before admitting evidence under this Rule, the Court must conduct a hearing in chambers and afford the parties a right to be heard. In bench trials, the finding on the admissibility of the evidence will be made by a judge other than the one presiding over the trial. Only the victim, the accused, the prosecution, defense counsel, and court support staff or the party's support person may attend the hearing. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the Court orders otherwise.

(3) If the court determines at the conclusion of the hearing that the evidence to be presented by the accused is relevant and that its probative value does not outweigh its inflammatory and prejudicial nature, it shall issue a written order specifying what evidence may be offered by the accused and the nature of questions allowed. The accused may then offer evidence pursuant to the court order.

Rule 413. Sexual Harassment; Sexual Assault; Evidence of Reputation and Opinion on the Sexual Conduct of the Plaintiff; Inadmissibility; Exception; Cross-examination

(a) Admission and exclusion of evidence

(1) In any civil action alleging conduct which constitutes sexual harassment or sexual assault, evidence offered by the defendant, whether of opinion or reputation or specific instances of plaintiff's sexual conduct, is not admissible to prove consent by the plaintiff or the absence of injury to the

plaintiff. This rule of exclusion does not apply when the injury alleged by the plaintiff is in the nature of loss of consortium.

(2) Subdivision (a)(1) of this Rule does not apply to evidence of the plaintiff's sexual conduct with the alleged perpetrator.

(3) If the plaintiff introduces evidence regarding his or her sexual conduct, including the plaintiff's own testimony or that of another witness, the defendant may cross-examine the witness or the party who gives the testimony and offer relevant evidence limited specifically to the rebuttal of the evidence introduced or given by the plaintiff.

(b) Procedure to determine admissibility

(1) The determination as to the admissibility of the evidence under subdivision (a) of this Rule shall be made by a judge other than the one who intervenes in the consideration of the merits of the claim. The defendant shall:

(A) file a motion specifically describing the evidence in question, supported by a sworn statement, and stating the purpose for which it is offered,

(B) file a motion at least 14 days before trial unless the court, for good cause, requires a different time for filing or permits filing during trial, and

(C) serve the motion on the plaintiff.

(2) Before admitting evidence under this Rule, the Court shall conduct a hearing in chambers. Only the parties, their counsel, and court support staff or the party's support person may attend the hearing. The motion, the related papers, and the record of the hearing will be sealed and must remain under seal unless the court orders otherwise. If the court determines that the evidence will be admitted, it will issue an order specifying what evidence may be offered by the defendant and the nature of the questions allowed.

(c) Nothing in this Rule shall affect the admissibility of any evidence offered to attack the credibility of a witness.

CHAPTER V
PRIVILEGES

Rule 501. Privileges of Defendant

To the extent that such privilege exists under the Constitution of the United States or the Commonwealth of Puerto Rico, a defendant in a criminal case has a privilege not to be called as a witness and not to testify, and no inference shall be drawn against such party for the exercise of such right.

Rule 502. Self-incrimination

To the extent that such privilege exists under the Constitution of the United States or the Commonwealth of Puerto Rico, a person has a privilege to refuse to disclose any matter that may tend to incriminate him or her.

Rule 503. Attorney-Client Relationship

(a) As used in this Rule, the following terms shall have the following meanings:

(1) *Attorney*: A person authorized, or reasonably believed by the client to be authorized, to practice law in Puerto Rico or in any other jurisdiction. This includes such person and his or her partners, aides, and office employees.

(2) *Client*: A natural or artificial person who, directly or through an authorized representative, consults an attorney for the purpose of retaining the attorney or securing legal service or advice from the attorney in his or her professional capacity. This includes an incompetent who personally consults the attorney or whose guardian or conservator so consults the attorney in behalf of the incompetent.

(3) *Authorized representative*: A person having authority to obtain professional legal services, or to act on legal advice rendered pursuant thereto, on behalf of the client or a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting within the scope of employment for the client.

(4) *Confidential communication*: Information transmitted between a client and his or her attorney in the course of that relationship, based on an understanding that such information will not be disclosed to third persons other than those to whom disclosure is necessary to accomplish the purpose for which it is transmitted.

(b) Subject to the provisions of this Rule, the client, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and attorney. The privilege may be claimed not only by the holder of the privilege—who is the client—but also by a person who is authorized to do so in behalf of the client or by the attorney who received the confidential communication if the privilege is claimed in the interest and behalf of the client.

(c) There is no privilege under this Rule if:

(1) The services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(2) The communication is relevant to an issue between the heirs of a deceased client, regardless of whether the claim is by testate or intestate succession or by inter vivos transaction.

(3) The communication is relevant to an issue of breach, by the attorney or by the client, of a duty arising out of the attorney-client relationship.

(4) The communication is relevant to an issue of a document drawn by the attorney in his or her capacity as notary.

(5) The communication is relevant to a matter of common interest between or among two or more clients of an attorney, in which case none of them may claim a privilege under this Rule against another of such clients.

(d) Where two or more clients retained or consulted the same attorney on a matter of common interest, none of them may waive the attorney-client privilege without the other clients' consent.

Rule 504. Certified Public Accountant and Client Relationship

(a) As used in this Rule, the following terms shall have the following meanings:

(1) *Certified public accountant*: Any person who holds a license to practice public accounting in Puerto Rico or in the United States of America.

(2) *Client*: A natural or artificial person who consults a certified public accountant—or someone thought to be authorized to render professional accounting services—for the purpose of retaining or obtaining professional services from the accountant.

(3) *Confidential communication*: Information transmitted between a client and his or her certified public accountant, including his or her associates, assistants and office employees, in the course of that relationship in the context of the practice of public accounting, based on an understanding that such information will not be disclosed to third persons other than those to whom disclosure is necessary to accomplish the purpose for which it is transmitted.

(b) Subject to the provisions of this Rule, the client, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and his or her certified public accountant. The privilege may only be claimed by the holder of the privilege, who is the client.

(c) There is no privilege under this Rule if:

(1) The services of the certified public accountant were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(2) The communication is relevant to an issue of breach, by the certified public accountant or by the client, of a duty arising out of the certified public accountant-client relationship.

(3) The communication is relevant to a matter of common interest between or among two or more clients of a certified public accountant, in which case none of them may claim a privilege under this Rule against another such client.

(4) The contents of the communication is required in the course of a civil or criminal proceeding under the Weapons Law, the Controlled Substances Act, the Explosives Act, the Act Against Organized Crime, the provisions of the Penal Code and the special laws on these matters.

(5) The rules that govern the public accounting profession require disclosure of the information transmitted.

(6) The communication between the certified public accountant and his or her client may be disclosed by legal mandate or by a compelling public interest.

(d) When two or more persons join as clients of the same certified public accountant on a matter of common interest, none of them may waive the privilege without the consent of the others.

Rule 505. Waiver of Attorney-Client and Certified Public Accountant-Client Privilege; Waiver of Protection of the Work Product Prepared by One of the Parties or Representatives Thereof in Anticipation of Litigation or for Trial

(a) Applicability of this Rule

The provisions of this Rule apply to disclosure of a communication or information covered by the attorney-client or the certified public accountant-client privilege or work-product protection, as defined below:

(1) "Attorney-client privilege or certified public accountant-client privilege" means the protection applicable law provides for confidential attorney-client and certified public accountant-client communications.

(2) "Work-product protection" means the protection that applicable law provides for information that is the work product of a party or of an attorney, consultant, surety, insurer, or agent of said party, drafted or obtained in anticipation or as part of an investigation, or of a civil, administrative or criminal proceeding.

(b) Voluntary disclosure

Voluntary disclosure of information protected by the attorney-client privilege, the certified public accountant-client privilege, or work-product protection operates as a waiver of such privileges, which does not extend to an

undisclosed communication or information that concerns the same subject matter. This Rule does not apply if the undisclosed communication or the information in question ought to be considered to better understand the disclosed information.

(c) Inadvertent disclosure

Disclosure of information protected by the attorney-client privilege, the certified public accountant-client privilege, or work-product protection does not operate as a waiver of such privileges if the following requirements are met:

(1) the disclosure is inadvertent,

(2) disclosure was made within a judicial or administrative proceeding in which the privilege was waived,

(3) the holder of the privilege or protection promptly took reasonable steps to prevent disclosure, and

(4) the holder of the privilege promptly took reasonable steps to rectify the error once he or she knew or should have known of the disclosure.

(d) Effects of a party agreement

An agreement between the parties to the action regarding the effect of disclosing information or a communication that is protected by the attorney-client privilege or the certified public accountant-client privilege or work-product protection is binding only on the parties to the action, unless it is incorporated into a court order.

(e) Court orders

An order issued in connection with a litigation pending in a court of the Commonwealth of Puerto Rico providing that the attorney-client privilege or the certified public accountant-client privilege or work-product protection is not waived by disclosure of information made in said proceeding is binding on all persons or entities in all judicial or administrative proceedings in the Commonwealth of Puerto Rico, regardless if such persons or entities were parties to the judicial proceeding, if the party agreement is incorporated into a court order, or, where there is a controversy between the parties as to whether the privilege was waived by disclosure, the order provides that there was no such waiver of the privilege in question.

Rule 506. Physician-Patient Privilege

(a) As used in this Rule, the following terms shall have the following meanings:

(1) *Physician*: Person authorized, or reasonably believed by the patient to be authorized, to practice medicine in the place where the consultation or the examination is performed.

(2) *Patient*: Person who consults a physician or submits to an examination by a physician for the sole purpose of securing medical treatment or a diagnosis prior to such treatment.

(3) *Confidential communication*: Information transmitted between a patient and his or her physician in the course of that relationship, based on an understanding that such information will not be disclosed to third persons other than those to whom disclosure is necessary to accomplish the purpose for which it is transmitted.

(b) Subject to the provisions of this Rule, the patient, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and physician if either one of them reasonably believes that the communication was necessary to make the diagnosis or to help diagnose a condition of the patient or to give a prescription or treat the patient's condition. The privilege may be claimed not only by the holder of the privilege—who is the patient—but also by a person who is authorized to do so in behalf of the patient. It may also be claimed by the physician who received the confidential communication if the privilege is claimed in the interest and behalf of the patient.

(c) There is no privilege under this Rule if:

(1) The communication is relevant to an issue concerning the patient's condition, whether it be in a proceeding to commit the patient or otherwise place the patient under the custody and control of another because of his or her alleged mental incompetence, or in an action in which the patient tries to establish his or her competence.

(2) The services of the physician were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(3) Disclosure is requested in a criminal proceeding.

(4) The proceeding is a civil action to recover damages on account of the conduct of the patient and good cause for disclosure of the communication is shown.

(5) The proceeding involves an issue concerning the validity of a will allegedly executed by the patient.

(6) The controversy is between parties who claim through the deceased patient, regardless of whether such claims are by testate or intestate succession.

(7) The communication is relevant to an issue of breach, by the physician or by the patient, of a duty arising out of the physician-patient relationship.

(8) The patient's condition is an element of the patient's claim or defense, or of the claim or defense of any person claiming through or under the

patient as a beneficiary of the patient through a contract to which the latter is or was a party.

(9) The holder of the privilege had the physician or his or her agent or employee testify in an action as to information acquired by such physician, agent, or employee through confidential communication.

(10) The communication is relevant to an issue concerning a physical examination of a patient which was made by order of the court, regardless of whether the patient is a party to the action or a witness therein.

Rule 507. Victim-Counselor Privilege

(a) As used in this Rule, the following terms shall have the following meanings:

(1) *Victim counselor*: Person who is authorized, certified, or licensed by the Commonwealth of Puerto Rico to render counseling, orientation, advice, and therapeutic services to the victims of crime; or any employee or volunteer under the supervision of a help and counseling center that offers assistance and treatment to crime victims.

(2) *Victim*: A person who has suffered emotional or psychological harm caused by a crime committed against said person and who consults a victim counselor or a help and counseling center for assistance or treatment.

(3) *Confidential communication*: Information transmitted between the crime victim and a victim counselor, whether in private or before a third person whose presence is necessary to establish communication between the victim and the counselor to enable the victim to receive the counseling services needed, when such information is disclosed during the course of the counselor's treatment for the victim's emotional or psychological condition which was caused by the commission of a crime. Such information is understood to be confidential and will not be disclosed to third persons.

(4) *Help and counseling center:* Any person or private or government entity whose main purpose is the rendering of assistance and treatment to the victims of crime.

(5) *Counseling*: The assistance, diagnosis or treatment offered to the victim to mitigate the adverse emotional or psychological effects caused by a crime committed against said person. It includes, but is not limited to, treatment during periods of emotional or mental crisis.

(b) Subject to the provisions of this Rule, any victim of a crime, whether or not a party to the action, has a privilege to refuse to disclose or to prevent another from disclosing a confidential communication between victim and counselor if either one of them reasonably believes that the communication was necessary for the treatment and help required. The privilege may be claimed

not only by the holder of the privilege, but also by a person authorized by the victim, his or her legal counsel, or by the victim counselor who received the confidential communication.

(c) Subject to the provisions of this Rule, neither the victim counselor nor the victim, whether or not a party to the action or litigation, may be compelled to provide the name, address, location or telephone number of a help center, shelter or another facility that gives temporary shelter to crime victims, unless the facility in question is a party to the action.

(d) The fact that a victim testifies in court regarding the crime does not constitute waiver of the privilege.

(1) However, if, as part of such testimony the victim discloses part of the confidential communication, it shall be understood as a waiver of the privilege with respect to that part of the testimony only.

(2) Any waiver of the privilege shall only be extended to that part which is necessary to answer the questions made by the attorney concerning the confidential communication and that are relevant to the facts and circumstances of the case.

(e) The victim cannot waive the privilege through his or her legal counsel. However, if the victim files an action for professional malpractice against the victim counselor or against the help and counseling center in which the victim counselor is employed or serves as a supervised volunteer, said counselor may testify without being subject to the privilege and will not be held liable for said testimony.

Rule 508. Patient-Psychotherapist Privilege

(a) As used in this Rule, the following terms shall have the following meanings:

(1) *Psychotherapist*: A person who is or is reasonably believed by the patient to be authorized to practice medicine or psychology in Puerto Rico or in any other jurisdiction, to diagnose or treat a patient's mental or emotional condition, including addiction to drugs or alcohol.

(2) *Patient*: A person who consults a psychotherapist or submits to an examination or interview by a psychotherapist.

(3) *Confidential communication*: A communication of information that is not intended to be disclosed to third persons other than:

(A) those present when the information was transmitted and whose presence furthers the interest of the patient in the consultation, examination, or interview, or

(B) those to whom disclosure is reasonably necessary for the transmission of the information, or

(C) persons who are participating in the diagnosis and treatment of the patient under the direction of a psychotherapist, including members of the patient's family.

(b) A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's mental or emotional condition, including addiction to drugs or alcohol, among the patient, the patient's psychotherapist and other persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of a psychotherapist.

(c) The privilege under this Rule may be claimed by the patient, the patient's guardian or conservator, or the personal representative of the patient if the patient is dead. The person who was the psychotherapist at the time of the communication is presumed to have authority to claim the privilege, absent evidence to the contrary, but only on behalf of the patient.

(d) There is no privilege under this Rule if:

(1) The communication is relevant to an issue concerning proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

(2) A court orders an examination of the patient's mental or emotional condition.

(3) The communication is relevant to an issue of the patient's mental or emotional condition in any proceeding in which the patient is asserting such condition and relies upon it as an element of a claim or defense. This exception does not apply when the patient to whom the psychotherapist offers or has offered diagnostic services or treatment is a minor and the privilege is claimed by the person authorized to act in behalf of the patient.

Rule 509. Privilege Not to Testify Against Spouse

(a) A married person has a privilege not to testify against his or her spouse in any proceeding.

(b) A married person whose spouse is a party to a proceeding has a privilege not to be called to testify as a witness by an adverse party to that proceeding without the prior express consent of the spouse having the privilege unless the party calling the spouse does so in good faith without knowledge of the marital relationship.

(c) A married person does not have the privilege under subdivisions (a) and (b) of this Rule in:

(1) A proceeding brought by or on behalf of one spouse against the other.

(2) A proceeding to commit or otherwise place his or her spouse or his or her spouse's property, or both, under the control of another because of the spouse's alleged mental or physical condition.

(3) A proceeding brought by or on behalf of any of the spouses to establish his or her competence.

(4) A proceeding brought under the Puerto Rico Minors' Act or a child custody proceeding with regard to the child of one or both spouses.

(5) A criminal proceeding in which one spouse is charged with:

(A) a crime against the person or property of the other spouse or of a child of either,

(B) a crime against the person or property of a third person committed in the course of committing a crime against the person or property of the other spouse,

(C) bigamy or adultery, or

(D) nonperformance of the duty to support a child of either spouse.

(d) Waiver of privilege

(1) Unless erroneously compelled to do so, a married person who testifies in a proceeding to which his or her spouse is a party, or who testifies against his or her spouse in any proceeding, does not have a privilege under this Rule in the proceeding in which such testimony is given. For a waiver to be valid under this subdivision, the married person must receive prior notice from the pertinent authorities about the existence of such privilege and of his or her right to claim it.

(2) There is no privilege under this Rule in a civil proceeding brought or defended by a married person for the immediate benefit of one or both spouses.

Rule 510. Privilege for Confidential Marital Communications

(a) *Confidential communication between spouses*: Information transmitted in private, without the intention of communication it to third persons and in the belief that such information would not be disclosed.

(b) Subject to the provisions of Rule 517 on waiver of privilege of confidential communications, a spouse or his or her guardian or conservator (when he or she has a guardian or conservator), whether or not a party, has a privilege during the course of the marriage and afterwards to refuse to disclose or to prevent another from disclosing, a confidential communication between the spouses made while they were spouses.

(c) There is no privilege under this Rule if:

(1) The communication was made in whole or in part, to enable or aid anyone to commit or plan to commit a crime, a fraud, or a tortious act.

(2) The communication was made in a proceeding to commit either spouse or otherwise place or his or her property, or both, under the control of another because of the spouse's alleged mental or physical condition.

(3) The communication was made in a proceeding brought by or on behalf of either spouse to establish his or her competence.

(4) The communication was made in a proceeding brought by or on behalf of one spouse against the other spouse.

(5) The communication was made in a proceeding between a surviving spouse and a person who claims through the deceased spouse, regardless of whether such claim is by testate or intestate succession or by inter vivos transaction.

(6) The communication was made in a criminal proceeding in which one spouse is charged with:

(A) a crime against the person or property of the other spouse or of a child of either,

(B) a crime against the person or property of a third person committed in the course of committing a crime against the person or property of the other spouse,

(C) bigamy or adultery, or

(D) nonperformance of the duty to support a child of either spouse.

(7) The communication was made in a proceeding brought under the Puerto Rico Minors' Act or a child custody proceeding with regard to the child of one or both spouses.

(8) The communication is offered in evidence in a criminal proceeding by a defendant who is one of the spouses between whom the communication was made.

Rule 511. Religious Privilege

(a) As used in this Rule, the following terms shall have the following meanings:

(1) *Member of the clergy*: Priest, pastor, minister, rabbi, religious practitioner, or similar functionary of a church, sect, or of a religious denomination or religious organization.

(2) *Penitent*: A person who has made a penitential or confidential communication to a member of the clergy.

(3) *Penitential or confidential communication*: A communication made by a penitent in confidence, in the presence of no third person, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, sect, denomination, or organization, is authorized or accustomed to hear those communications and, under such discipline has a duty to keep those communications secret.

(b) A member of the clergy or a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential or confidential communication.

Rule 512. Political Vote

A person has a privilege to refuse to disclose the tenor of his or her vote at a public election unless it is found that he or she voted illegally.

Rule 513. Trade Secret

The owner of a trade secret has a privilege, which may be claimed by such person or by his or her agent or employee, to refuse to disclose and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the owner of a trade secret and of the parties and the interests of justice require.

Rule 514. Privilege for Official Information

(a) As used in this Rule, "official information" means information acquired in confidence by a public officer or employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public officer or employee has the privilege to refuse to disclose any matter on the grounds that it constitutes official information. Evidence of such matter is not admissible if the court finds that said matter is official information and disclosure is forbidden by law, or that disclosure of such information in the proceeding is against government interests.

Rule 515. Privilege for Identity of Informer

A public entity has a privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of a law of the Commonwealth of Puerto Rico or of the United States of America if the information is given in confidence by the informer to a law enforcement officer, a representative of the administrative agency charged with the administration or enforcement of the law allegedly violated or to any person

for the purpose of transmitting it to such officer or representative. Evidence of the informer's identity is inadmissible unless the court determines that it has otherwise been disclosed or that the information about his or her identity is necessary for a fair determination of an issue, particularly where such information is material to the defense of the accused.

Rule 516. Privilege for Alternative Dispute Resolution Proceedings

(a) Any information offered and the work documents and files related to an alternative dispute resolution proceeding, as recognized by law or regulation, shall be considered privileged and confidential.

(b) Evidence otherwise admissible or subject to discovery outside of an alternative dispute resolution proceeding shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use therein.

(c) Waiver of this privilege shall be governed by the provisions that may be prescribed by law or regulation.

Rule 517. Waiver of Privilege

(a) Express waiver

A person who would otherwise have a privilege to refuse to disclose or prevent another from disclosing any specific matter waives the right to claim such privilege if the court determines that such person, or any other person who was the holder of the privilege, is bound by word given to another not to claim the privilege, or that, without coercion and having full knowledge of the privilege, said person disclosed or permitted disclosure by another of any part of the privileged matter.

(b) Implied waiver

Regardless of the provisions of subdivision (a) of this Rule, the presiding judge may admit an otherwise privileged communication if he or she finds that the conduct of the holder of the privilege constitutes a waiver of such privilege.

(c) This Rule does not apply to the privileges under Rules 501, 502 and 512.

Rule 518. Strict Construction

The rules on privileges shall be strictly construed with regard to the determination of the existence of a privilege, except Rules 501, 502 and 512 relating to constitutionally protected privileges.

CHAPTER VI
CREDIBILITY AND IMPEACHMENT OF WITNESSES

Rule 601. Competency and Disqualification of Witness

Every person is competent to be a witness except as otherwise provided in these Rules or by statute. A person is disqualified to be a witness if, acting on an objection by a party or on its own initiative, the court finds that the person is not capable of expressing himself or herself concerning the matter on which he or she would give testimony so as to be understood, either directly or through interpretation, or is incapable of understanding the duty of a witness to tell the truth. This determination shall be made pursuant to Rule 109(a).

Rule 602. Personal Knowledge of Witness

Except as provided in these Rules with respect to opinion testimony by expert witnesses, a witness may not testify to a matter unless he or she has personal knowledge thereof. Against the objection of a party, such personal knowledge must be shown before the witness may testify concerning the matter. A witness's personal knowledge of a matter may be shown by any otherwise admissible evidence, including his or her own testimony. If after the testimony is offered, it is found that the witness lacked personal knowledge of the matter, on motion of party, the court must strike it from the record and instruct the jury accordingly.

Rule 603. Oath

Before testifying, every witness will be required to state his or her purpose to testify truthfully, by oath or affirmation or by any other solemn manner which, in the court's opinion, binds the witness to tell the truth or otherwise be subject to be punished for perjury or found in summary contempt for perjury.

Rule 604. Confrontation

A witness may be heard only in the presence and subject to the examination of all the parties to the action, if they choose to attend and examine the witness.

Rule 605. Judge as Witness

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

Rule 606. Juror as Witness

(a) "Jury" means the whole body of persons and "juror" is a member of that body.

(b) A juror sworn and impaneled in the trial of an action may not be called to testify before the jury in that trial as a witness. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence and hearing of the jury.

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

However, a juror may testify about:

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

(2) whether any outside influence was improperly brought to bear on any juror, or

(3) whether there was a mistake in entering the verdict onto the verdict form.

A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying.

Rule 607. Mode and Order of Interrogation and Presentation of Evidence

[(a)] The presiding judge at a trial or hearing shall have ample discretion over the mode and order of presenting evidence and interrogating witnesses so as to:

(1) make the presentation of evidence as effective as possible for the ascertainment of the truth, assuring the speediness of the proceedings and avoiding needless delay.

(2) protect the witnesses' right against inappropriate, humiliating, or offensive questions, and harassment.

(3) protect the witnesses' right not to be held any longer than the interests of justice so require and to be examined only as to the subject matter pertaining the issue in question.

[(b)] As a rule, the examination of the witnesses will be conducted in the following order:

(1) *Direct examination*: The first examination of a witness upon a subject matter that is not within the scope of a previous examination of the witness.

(2) *Cross-examination*: The first examination of a witness by a party other than the direct examiner. Cross-examination shall be limited to the subject matter of the direct examination and to matters affecting the credibility of the witness. However, the Court may, in the exercise of its discretion, permit inquiry into additional matters as if on direct examination.

(3) *Redirect examination*: An examination of a witness by the direct examiner subsequent to the cross-examination of the witness. Redirect examination shall be limited to the subject matter of the cross-examination.

(4) *Recross-examination*: An examination of a witness by the cross-examiner subsequent to the redirect examination of the witness. Recross-examination shall be limited to the subject matter of the redirect examination.

[(c)] A witness must give responsive answers to the questions made, and answers that are not responsive shall be stricken on motion of any of the parties. A responsive answer is a witness's direct and concrete answer to a question.

[(d)] A leading question may not be asked of a witness on direct or redirect examination, except as may be necessary to develop the witness's testimony or when a party calls a hostile witness, an adverse party, a witness identified with an adverse party, a person who, due to his or her age, poor education or other condition, is mentally deficient and has difficulty in expressing himself or herself, or a person who, because of embarrassment, is not willing to speak freely, or where the interests of justice otherwise require. As a rule, leading questions may be asked of a witness on cross-examination or recross-examination. A leading question is a question which suggests to the witness the answer desired by the examiner.

[(e)] After close of evidence, a plaintiff, movant, or the prosecution may submit rebuttal evidence to rebut the evidence presented by the defendant, nonmovant or the accused. During this turn, the plaintiff, movant, or the prosecution may not bring evidence that otherwise should have been offered during the initial turn to present evidence. After rebuttal evidence is presented, the defendant, nonmovant or the accused may present surrebuttal evidence.

[(f)] The Judge may, on his/her own motion or by petition of a party, call witnesses to testify, which would allow all parties to cross-examine the witness thus called. The Judge may also, in any case, interrogate witnesses, whether called by him/herself o[r] by a party. The examination by the Judge shall be directed to clarifying any doubts that he/she may have or clarifying the record. At all times, the Judge shall avoid turning into the attorney of one of the parties, so as to avoid suggesting the witness a particular answer.

[(g)] At the request of a party, the court shall exclude from the courtroom witnesses who shall testify so that they cannot hear the testimony of the other witnesses. This Rule does not authorize the exclusion of the following witnesses:

(1) a party who is a natural person.

(2) a person whose presence is shown to the court to be essential to the presentation of evidence of a party.

(3) an official, officer or employee of a party which is not a natural person designated as its representative by its attorney. In criminal proceedings, the court shall require that the representative of the People designated by the Office of the Prosecutor testify prior to remaining in the courtroom if the prosecution intends to call him or her as a witness. Once the witness is heard, he or she may not be called to testify again except on rebuttal. In no case shall the representation of the People fall on more than one person, who shall not be substituted without leave of the court.

Rule 608. Credibility and Impeachment of Witnesses

(a) Who may impeach

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

(b) Ways of impeaching

The credibility of a witness may be attacked or supported by means of any relevant evidence, including any of the following:

(1) the witness's demeanor while testifying and the manner in which he or she testifies,

(2) the nature or character or his or her testimony,

(3) the extent of his or her capacity to perceive, recollect or communicate any matter about which he or she testifies,

(4) a statement previously made by him or her, subject to the provisions of Rule 611,

(5) the existence or nonexistence of prejudice, interest, or other motive for bias, subject to the provisions of Rule 611,

(6) the existence or nonexistence, falsehood, vagueness, or inaccuracy of any fact testified to by the witness, subject to the provisions of Rule 403, or

(7) the character and conduct of the witness for truthfulness or untruthfulness, subject to the provisions of Rules 609 and 610.

(c) Impeachment and self-incrimination

A witness does not waive his or her privilege against self-incrimination when examined with respect to matters that relate only to credibility.

Rule 609. Impeachment for Specific Character and Conduct

(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's character for truthfulness may not be proved by extrinsic evidence.

The court, in its discretion, may allow inquiry on cross-examination into specific instances of truthfulness or untruthfulness:

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

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

This Rule does not affect the provisions of Rule 610 on evidence of convictions of crime.

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

Rule 610. Conviction of a Crime

[(a)] For the purpose of attacking the credibility of a person, whether a witness or the accused, and subject to the provisions of Rule 403, evidence that he [or she] has been convicted of a crime involving a false statement shall be admitted regardless of its classification. This may be established by means of any admissible evidence under these Rules, which includes the corresponding public record and the admissi[on] of the witness whose credibility is attacked.

[(b)] For the purpose of attacking the credibility of the accused, evidence that the accused has been convicted of a felony shall be admitted if the court determines, out of the hearing of the jury, that the probative value of admitting this evidence for the purposes of impeachment substantially outweighs its unfair prejudicial effect. Evidence that the accused has been convicted of a crime involving an act of dishonesty or falsehood shall be admitted for the

purpose of attacking the credibility of the accused. Evidence of conviction may be established by means of any evidence admissible under these Rules, including public record and the admission of the witness whose credibility is attacked.

[(c)] Evidence of a conviction of crime is not admissible to attack the credibility of a witness if, at the time such evidence is presented, a period of more than ten years has elapsed since the date of the commission of the crime for which the witness was convicted.

[(d)] Evidence of conviction under this Rule is not admissible if the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence or rehabilitation of the person convicted.

[(e]) For the purposes of this Rule, juvenile adjudications will not be considered evidence of a conviction of a crime. In a criminal case, however, the court, in its discretion, may allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of guilt or innocence.

[(f)] Evidence of a conviction is admissible under subdivision (a) of this Rule even if said conviction is pending appeal. Evidence of the pendency of an appeal is admissible.

Rule 611. Impeachment and Extrinsic Evidence

(a) In examining a witness for the purpose of attacking his or her credibility through a prior statement made by the witness in writing, the statement need not be shown or read to him or her, but on request the court may ask the witness be shown the date and place of the writing and the person to whom it was addressed. Upon request, the court shall order that the writing be shown to opposing counsel.

(b) Extrinsic evidence of a witness's prior inconsistent statement at a trial or hearing, or of prejudice, interest, or bias, shall not be admissible for the purpose of impeaching the credibility of the witness, unless the witness has been afforded the opportunity to admit, deny, or explain the statement. This shall not apply when special circumstances or the interest of justice require otherwise. This subsection shall not apply to admissions under Rule 803.

Rule 612. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions, or the lack thereof, is not admissible to attack or support the credibility of a witness.

Rule 613. Writings Used to Refresh Memory

(a) Subject to subdivision (c) of this Rule, if a witness, either while testifying or prior thereto, uses a writing to refresh his or her memory of any matter related to the testimony, such writing must be produced at the hearing at the request of an adverse party. If a writing is not produced, the court shall order that the witness's testimony concerning such matter be stricken.

(b) If said writing is produced at the hearing, an adverse party is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the witness's testimony.

(c) Production of the writing is excused at the trial and the testimony of the witness shall not be stricken if the writing:

(1) Is not in possession or control of the witness or the party who offered the testimony concerning the matter.

(2) Said writing was not reasonably procurable by such party through the use of orders for the presentation of documentary evidence or through any other available means.

(3) Is only used to refresh the memory before testifying at the trial, and the court, in its discretion, determines that production of such writing is unnecessary.

Rule 614. Interpreters[*]

When a witness's disability or lack of knowledge of the Spanish language requires the use of an interpreter, the latter will be qualified as such if the court determines that he or she can understand or interpret the witness's statements. An interpreter must give an oath or affirmation to make a true and accurate translation of the witness's testimony.

CHAPTER VII
OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses

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

(a) rationally based on the perception of the witness,

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

[*] Translator's note: Rule 614 was amended by Law No. 174 of August 5, 2018. The official translation of this statute was not available at the time these Rules were compiled. This rule reflects the language prior to this amendment. Please consult the Spanish version.

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

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—pursuant to Rule 703—may testify thereto in the form of an opinion or otherwise.

The probative value of the testimony shall depend, among other factors, on:

(a) whether the testimony is based upon sufficient facts or data,

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

(c) whether the witness has reliably applied the principles and methods to the facts of the case,

(d) whether the principle underlying the testimony is generally accepted by the scientific community,

(e) the witness's qualifications or credentials, and

(f) bias by the witness.

The court shall rule on the admissibility of expert testimony in accordance with the factors listed in Rule 403.

Rule 703. Qualification as an Expert Witness

(a) A person is qualified to testify as an expert if he or she has special knowledge, skill, experience, training, or education sufficient to qualify him or her as an expert on the subject on which his or her testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.

(b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his or her own testimony.

(c) A stipulation of the expert witness's qualifications does not preclude evidence a party may offer on the probative value of the expert testimony.

Rule 704. Bases of Opinion Testimony by Experts

The facts or data upon which an expert witness bases an opinion or inference may be those perceived or personally known by, or made known to the expert at or before the trial or 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.

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.

Rule 705. Opinion on Ultimate Issue

Testimony in the form of an opinion or inference made by an expert is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Rule 706. Disclosure of Basis of Opinion

An expert may testify in terms of opinion or inference and give reasons therefor it 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.

Rule 707. Cross-examination of Expert Witness

In addition to the provisions of Rule 607, a witness testifying as an expert may always be cross-examined as to his or her qualifications as an expert, the subject to which his or her expert testimony relates, and the basis of his or her opinion.

Rule 708. Experiments

(a) The admissibility of evidence resulting from an experiment shall be determined by the court pursuant to the provisions of Rule 403.

(b) If the experiment is intended to show that certain facts occurred in a specific manner, the proponent shall persuade the court that the experiment was conducted under substantially similar circumstances as those existing at the time of the occurrence.

Rule 709. Court Appointed Experts

(a) Appointment

The court may, on its own motion or on the motion of a party, enter an order in writing to appoint one or more court experts after affording the parties an opportunity to be heard as to the need for such appointment, submit nominations, and accept the appointee. The court may appoint any expert that the parties agree on and any of its own choosing. The order appointing an expert witness shall specify the expert's duties and compensation. The expert witness so appointed must notify the parties of any findings the expert makes, if any, may be deposed by any party, may be called by the court or any party,

and may be cross-examined by any party, including the party that called the expert.

(b) Compensation

Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. In all criminal actions or juvenile court proceedings, the compensation shall be payable from State funds. 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 like other costs.

(c) Disclosure of appointment

In the exercise of its discretion and after affording the parties an opportunity to be heard, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' experts of own selection

This Rule does not limit a party in calling its own expert.

CHAPTER VIII
HEARSAY

Rule 801. Definitions

The following definitions regarding hearsay evidence apply under these Rules:

(a) *Statement*: (a) an oral or written assertion; or (b) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant*: a person who makes a statement.

(c) *Hearsay*: 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.

Rule 802. Prior Statement

Notwithstanding Rule 801, a prior statement made by a witness is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the prior statement, the statement would have been admissible if made by the him or her at the trial or hearing, and the statement is:

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

(b) consistent with the declarant's testimony at the trial or hearing and is offered to rebut an express or implied charge against the declarant about recent fabrication or improper influence or motive, or

(c) an identification of a party or another as a person who participated in a crime or other occurrence, was made at a time when the crime or other occurrence was fresh in the witness's memory, and is offered after the witness testifies that he or she made the identification and that it was a true reflection of the witness's opinion at that time.

Rule 803. Admissions

Notwithstanding Rule 801, an admission is not hearsay if the statement is offered against a party and is:

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

(b) a statement of which the party, with knowledge or the contents thereof, has by words or other conduct manifested an adoption or belief in its truth,

(c) a statement by a person authorized by the party to make a statement for him or her concerning the subject matter of the statement,

(d) a statement by the party's agent or employee on a matter within the scope of the agency or employment, made during the existence of the relationship, or

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

The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (c), the agency or employment relationship or scope thereof of under subdivision (d), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is made under subdivision (e).

Rule 804. General Rule of Exclusion

Except as otherwise provided by law, hearsay is inadmissible only pursuant to the provisions of this chapter. This rule shall be known as the Hearsay Rule.

Rule 805. Exceptions to the Hearsay Rule Even Though the Declarant is Available as a Witness

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

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

(b) *Spontaneous excited utterance*: A statement made while the declarant was under the stress of excitement caused by the perception of an act, event, or condition, if the statement refers to said act, event, or condition.

(c) *Mental, physical or emotional condition*: A statement of the declarant's then existing state of mind, emotion, sensation or physical condition (such as a statement on the intent, plan, motive, design, mental or emotional feeling, pain or 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 the declarant's will.

(d) *Statements made 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 insofar as reasonably pertinent to diagnosis or treatment.

(e) *Recorded recollection*: A writing or record concerning a matter about which a witness once had full knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, if it is shown that it was made or adopted by the witness when the matter was fresh in the witness's memory, and it accurately reflected the witness's knowledge on the matter. If admitted, the writing or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(f) *Records of regularly conducted activities*: A writing, report, record, memorandum, 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 writing, report, record, memorandum or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(k), or with a statute permitting certification, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness. As used in this paragraph, the term "business" includes businesses, government activity, and every kind of institution, association, profession, occupation, and calling, whether or not conducted for profit.

(g) *Absence of entry in records kept in accordance with paragraph (f)*: Evidence that a matter is not included in the writings, reports, records, memoranda, or data compilations, in any form, kept in accordance with paragraph (f), to prove that the matter did not occur or exist, if the matter was of a kind of which such writing, report, record, memorandum, or data

compilation was regularly kept and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(h) *Public records and reports:* Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency, or 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 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.

(i) *Records of vital statistics*: A writing made as a record of a birth, fetal death, death, or marriage, if the maker was required by law to file the writing in a designated public office, and the writing was made and filed as required by law.

(j) *Absence of public record*: A writing made by the official custodian of the records in a public office certifying that a diligent search failed to disclose a specific record when offered to prove the absence of said record in that office.

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

(*l*) *Marriage, baptism, and similar certificates:* Statements of fact concerning births, marriages, deaths, race, ancestry, relationship by blood or marriage, or other similar facts of personal or family history when contained in a certificate that the maker performed the marriage or administered a sacrament made by a person authorized by law or by the rules of a religious organization to perform the act certified, and purporting to have been issued by the maker at the time and place of the ceremony or sacrament, or within a reasonable time thereafter.

(m) *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.

(n) *Official records affecting an interest in property:* The official record of a document affecting a right or interest in personal or real property, as proof of the content of the original document and its execution and delivery by each person by whom it purports to have been executed, if the record is an official record kept in a public office and the recording document of that kind in said office is authorized by law.

(nn)[**] *Statements in documents affecting an interest in property*: A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, provided that dealings with the property since the statement was made have not been inconsistent with the truth of the statement or the purport of the document.

(o) *Statements in ancient documents*: Statements contained in a document that is at least twenty years old and whose authenticity is established.

(p) *Market lists and similar publications*: A statement, other than an opinion, contained in a tabulation, list, directory, registry, or other published compilation, if generally used and relied on as accurate in the course of regularly conducted activities, as defined in paragraph (f) of this Rule.

(q) *Learned treatises*: Statements contained in a treatise, periodical, pamphlet, or other similar publication on the subject of history, medicine, science, or other science or art, if it is established as a reliable authority through judicial notice or by expert testimony. To the extent these statements are called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, if admitted, these statements may be read into evidence but may not be received as exhibits.

(r) *Reputation concerning family or personal history*: Evidence of 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, filiation, or relationship by blood, adoption, marriage, ancestry, or other similar fact of personal or family history.

(s) *Reputation concerning boundaries or general history:* Evidence of a reputation in a community, arising before the controversy, as to boundaries or of customs affecting lands in the community, and reputation as to events of general history important to that community, state, or nation in which located.

(t) *Reputation as to character:* Evidence of a person's reputation in the community in which he or she resides, or in a group with which he or she associates, regarding the character or a specific character trait of such person.

(u) *Judgment of previous conviction:* Evidence of a final judgment, entered after a trial or guilty plea, adjudging a person guilty of a crime punishable by imprisonment in excess of six months, if the evidence is offered to prove any fact essential to sustain the judgment. The pendency of an appeal does not affect admissibility under this Rule, although the fact that the judgment is not yet final may be brought to the consideration of the court. This

[**] Translator's note: The letter "ñ" used in the Spanish version of these Rules has been replaced here with "nn."

Rule does not permit the Government in a criminal prosecution to offer as evidence the judgment of conviction of a person other than the accused, except for the purposes of impeaching a witness.

Rule 806. Unavailability of Witness

[(a)] Definition: "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 recognized under these Rules concerning the subject matter of the declarant's statement,

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

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

(4) is dead or unable to attend or testify at the trial or hearing because of a then existing physical or mental illness or infirmity, or

(5) is absent from the hearing and the proponent of a statement has exercised reasonable diligence to procure the declarant's attendance by the court's process.

A declarant is not unavailable as a witness if the unavailability is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the declarant from attending or testifying.

[(b)] When a declarant is not available as a witness, the following shall be admissible as an exception to the [hearsay rule]:

(1) *Former testimony*

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

(2) *Statement under belief of impending death*

A statement made by a declarant while believing that the declarant's death was imminent concerning the cause or circumstances of what the declarant believed to be impending death.

(3) *Statements against interest*

A statement that, when made, was so contrary to the declarant's pecuniary or proprietary interest, or had so great a tendency to expose the declarant to civil or criminal liability or to invalidate the declarant's claim against someone else, or to make the declarant the object of hatred, ridicule, or

disgrace, that a reasonable person in the declarant's position would have made only if the person believed it to be true.

(4) *Statements of personal or family history*

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

(ii) A statement concerning the matters set forth in subparagraph (i) above, and death also, of another person, if the declarant was related to the person 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.

Rule 807. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule.

Rule 808. Credibility of Declarant

When a hearsay statement has been admitted in evidence under Rules 805 through 809, the declarant's credibility may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant had testified as a witness. The requirements for impeaching credibility based on a witness's prior statements and on evidence of prejudice, interest or bias provided in Rules 608(b)(4) and 611 shall not apply to attacks on the witness's credibility made under this Rule. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Rule 809. Residual Exception

A statement not specifically covered by Rule 805 through 806 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that:

(a) 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

(b) the proponent gave the adverse party sufficient notice in advance of the trial or hearing of the intent to offer the statement and its particulars, including the declarant's name and address.

CHAPTER IX
AUTHENTICATION AND IDENTIFICATION

Rule 901. Requirement of Authentication and Identification

(a) 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) The following are examples only, not to be construed as a complete list, of evidence that satisfies the requirement of authentication or identification conforming to the requirements of subdivision (a) of this Rule:

(1) *Testimony of witness with knowledge*

Testimony that a matter is what it is claimed to be.

(2) *Authenticity by handwriting evidence*

A writing may be authenticated by evidence of genuineness of its author's handwriting of the maker. A nonexpert witness may state his or her opinion as to the genuineness of the alleged author's handwriting, based upon familiarity not acquired for the purposes of the litigation. Authenticity may also be shown by comparison in question with an authenticated specimen by the trier of facts or by expert witness.

(3) *Voice identification*

A person's voice, whether heard firsthand or through mechanical, electronic, or digital transmission or recording, may be identified by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(4) *Telephone conversations*

Telephone conversations may be authenticated or identified 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 that the person answering to be the one called.

(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.

(5) *Ancient documents or data compilation*

When it is found that a writing or data compilation has been in existence for twenty years or more at the time it is offered, that it is generally respected and acted upon as authentic by persons interested in knowing whether it is genuine, and that, at the time of discovery, was in a place where, if authentic, it would likely be, the writing or data compilation will be

sufficiently authenticated unless its condition is such as to cast serious doubts over its authenticity.

(6) *Writings in reply*

A writing may be authenticated by evidence that it was received in reply to a communication sent to the person who is claimed by the proponent of the evidence to be the author of the writing.

(7) *Content of writings*

A writing may be authenticated by evidence that it refers to or states matters that are unlikely to be known to anyone other than the person who is claimed by the proponent of the evidence to be the author of the writing.

(8) *Authentication by admission*

A writing or any other material may be authenticated by evidence that the party against whom it is offered has at any time admitted its authenticity, or by evidence that has been accepted as authentic by the party against whom it is offered.

(9) *Wills*

A will executed in Puerto Rico shall be authenticated in accordance with the applicable laws.

(10) *Distinctive characteristics*

Appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken in conjunction with all the circumstances.

(11) *Chain of custody*

Real or demonstrative evidence may be authenticated by its chain of custody.

(12) *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.

(13) *Electronic record*

An electronic record may be authenticated by evidence of the integrity of the system in or by which the data was recorded or stored. The integrity of the electronics records system system's integrity is shown by evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic record.

(14) *Email*

An email may be authenticated by evidence of the integrity of the system in or by which it was created, sent, or received.

(15) *Methods provided by statute or rule*

Any method of authentication or identification allowed by applicable special legislation or regulation.

Rule 902. Prima Facie Authentication

Extrinsic evidence [of] authenticity as a condition precedent to admissibility shall not be required [with respect to the following]:

[(a)] *Acknowledged documents*

Documents accompanied by a certificate of acknowledgment or proof, if the certificate complies with the pertinent statutory requirements concerning certifications, particularly the provisions of notarial law.

[(b)] *Public documents under official seal*

Documents bearing a seal purporting to be the official seal of:

(1) the Commonwealth of Puerto Rico,

(2) the United States of America,

(3) a state, territory, or possession of the United States of America, or

(4) a department, public agency, public corporation, or public officer of any entity listed in paragraphs (1), (2) and (3) above.

Said documents must bear the signature of the person who purports to attest to or execute them.

[(c)] *Public documents bearing official signatures*

Documents which, although having no seal, purport to bear the signature in the official capacity of an officer or employee of any entity included in paragraphs (1), (2) and (3) of subdivision (b) of this Rule, if a competent officer certifies under seal that the signature is genuine and the signer has official capacity to sign the documents.

[(d)] *Foreign public documents*

Documents purporting to be executed or attested in the official capacity of an individual authorized by the laws of a foreign country to make the execution or attestation. It must be accompanied by a final certification as to the genuineness of the signature and official position (1) of the executing or attesting person, or (2) 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 by a competent authority in compliance with the provisions of The Hague Convention [Abolishing the Requirement for Legalization for Foreign Public Documents] of October 5, 1961.

If all parties have been given a reasonable opportunity to investigate the authenticity and accuracy of an official document, the court may, for good cause

shown, order that it be treated as presumptively authentic without final certification or allow it to be evidenced by an attested summary with or without final certification.

[(e)] *Certified copies of public records*

A copy of an official record or a part thereof, or of a document authorized by public law or regulation to be 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, if the certificate complies with the requirements set forth in paragraph (b), (c), or (d) of this Rule or with any applicable public law or regulation.

[(f)] *Official publications*

Books, pamphlets, or other publications purporting to be issued by public authority.

[(g)] *Newspapers and periodicals*

Printed material purporting to be newspapers or periodicals.

[(h)] *Trade inscriptions*

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

[(i)] *Commercial paper and related documents*

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

[(j)] *Presumptions under Acts of Congress of the United States of America or of the Legislative Assembly of the Commonwealth of Puerto Rico*

Any signature, document, or other matter declared by any law of the United States or of the Commonwealth of Puerto Rico to be presumptively or prima facie genuine or authentic.

[(k)] *Certified records of regularly conducted activity.*

The original or a duplicate of a record of regularly conducted activity within the jurisdiction of the Commonwealth of Puerto Rico and the United States of America that would be admissible under Rule 805[(f)], if accompanied by a sworn statement of its custodian or other qualified person certifying that the record:

(1) 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,

(2) was kept in the course of the regularly conducted activity, and

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

A party intending to offer a record into evidence under this subdivision must give notice of that intention to all adverse parties in writing, and must

make the record and sworn statement available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

(*l*) *Electronic record*

The integrity of the electronic record is presumed if:

(1) it is established by affidavit that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it; or

(2) it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce the record.

Rule 903. Subscribing Witnesses

(a) Except as provided by statute, the testimony of a subscribing witness is not required to authenticate a writing.

(b) If the testimony of a subscribing witness is required by statute to authenticate a writing and the subscribing witness denies or does not recollect the execution of the writing, the writing may be authenticated by other evidence.

CHAPTER X
CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions

For the purposes of this chapter, the following terms shall have the following meanings:

(a) *Writings and recordings*: These consist of letters, words, numbers, sounds, or their equivalent, set down by handwriting, typewriting, by computer, mechanical or electronic recording, micrography, microfilm, printing, photostating, photographing, or magnetic impulse, or other form of data compilation.

(b) *Photographs*: These include still photographs, X-ray films, motion pictures, video tapes, digital media, or other forms of image reproduction.

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

(d) *Duplicate*: A duplicate is counterpart in the form of a record produced by the same impression as the original, from the same matrix, by means of photography, including enlargements and miniatures, by mechanical, electronic, or digital re-recording, by chemical reproduction, digitalized reproductions, or by another equivalent technique that accurately reproduces the original.

Rule 1002. Content of a Writing, Recording, or Photograph

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

Rule 1003. Duplicates

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

Rule 1004. Secondary Evidence Rule

Evidence of the contents of a writing, recording, or photograph other than the original is admissible if:

(a) The original and the duplicate, if any, are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith.

(b) No original or duplicate, if any, can be obtained by any available judicial process or otherwise.

(c) The original is under the control of the party against whom it is offered, and the party does not produce the original at the hearing despite having been put on notice of the necessity thereof.

(d) The original is not closely related to the controlling issues and it would be inexpedient to require its production.

Rule 1005. Public Records and Documents

The contents of an official public record, or of a document kept in the custody of a public entity or office, or a document included in a notary's protocol, may be proved by a certified copy of the original issued by the authorized official, or by a copy testified to be true and correct by a witness who has compared it with the original. If no such copy can be obtained by the exercise of reasonable diligence, then other secondary evidence of the content of the original may be admitted.

Rule 1006. Voluminous Writings

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, calculation, or other similar evidence. The original, or a duplicate, as well as the summaries or similar evidence, shall be made available for examination or copying by other parties at a reasonable time and place.

The court may order that the originals or duplicates be produced in court.

Rule 1007. Testimony or Admission of Party

The contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom it is offered or by that party's written admission without the need to produce the original.

Rule 1008. Functions of Court and Jury

When the admissibility of secondary 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 for the court to determine under of Rule 109(a). However, the trier of fact shall determine any issue is raised as to:

(a) whether the asserted writing, recording, or photograph 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.

CHAPTER XI
DEMONSTRATIVE EVIDENCE

Rule 1101. Objects Cognizable by the Senses

Whenever an object, cognizable by the senses, is relevant under Rule 401, such object, after previous identification or authentication, is admissible in evidence, subject to the discretion of the court pursuant to the factors or criteria set forth in Rule 403.

Rule 1102. Personal Inspection

Personal inspection is a method of proof that may be admitted by the court where permitted by law or pursuant to its inherent power to receive evidence and impart justice. In every personal inspection, the court will keep a detailed record of the proceedings and facts observed, which will be made part of the case record and will be given its proper weight after all evidence is presented. The court may deny a personal inspection on the grounds set forth in Rule 403.

CHAPTER XII
EFFECTIVENESS AND REPEAL

Rule 1201. Effectiveness

These Rules shall take effect on January 1, 2010. These Rules shall apply to all trials, proceedings or actions initiated on or after said date. To such purposes, it shall be understood that trial has begun when the oath of the first witness is given or when the first exhibit is admitted as evidence. If a new trial is decreed and it is initiated on or after the effective date of these Rules, the same shall apply in said trial, regardless of when the original proceedings were initiated.

Rule 1202. Repeal and Provisional Effectiveness

(a) Repeal

The Rules of Evidence of Puerto Rico in effect since October 1, 1979, and Section 527 of the 1933 Code of Civil Procedure are hereby repealed.

(b) Provisional effectiveness

Sections 392, 394, 409, 421, 426, 429, 528, 529, 530 and 531 of the 1933 Code of Civil Procedure and subdivisions (c) and (d) of Rule 82 of the 1979 Rules of Evidence shall be provisionally effective until modified, repealed, or reclassified through special laws.