DELAWARE UNIFORM RULES OF EVIDENCE

Article I. General Provisions

Rule 101. Scope.

These Rules govern proceedings in the courts of this State, to the extent and with the exceptions stated in Rule 1101.

Rule 102. Purpose and construction.

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

Rule 103. Rulings on evidence.

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

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

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

Once the court makes a definitive ruling on the record 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.

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

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

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

(Amended, effective Dec. 10, 2001.)

Rule 104. Preliminary questions.

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

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

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

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

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

Rule 105. Limited admissibility.

When evidence which is admissible as to 1 party or for 1 purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or related writings or recorded statements.

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

Article II. Judicial Notice

Rule 201. Judicial notice of adjudicative facts.

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

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

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

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

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

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

(g) Instructing jury. Upon request, the court shall instruct the jury to accept as conclusive any fact judicially noticed.

Rule 202. Judicial notice of law.
(a) Judicial notice of laws. (1) Every court in this State shall take judicial notice of the Constitution of the United States, and case law relating thereto, and the Constitution, common law, case law and statutes of this State. (2) Judicial notice may also be taken of the common law, case law and statutes of the United States, and every state, territory and jurisdiction of the United States. (3) In the case of a request for judicial notice, reasonable notice of the request shall be given to the adverse parties.

(b) Information of the court. The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

(c) Ruling reviewable. The determination of such laws shall be made by the court and not by the jury, and shall be reviewable.

(d) Private acts, regulations, ordinances, court records. (1) Judicial notice may be taken, without request by a party, of (A) the private acts and resolutions of the Congress of the United States and of the General Assembly of this State, and of every other state, territory and jurisdiction of the United States, and duly enacted ordinances and duly published regulations and determinations of governmental subdivisions or agencies of the United States, of this State and of every other state, territory and jurisdiction of the United States; (B) records of the court in which the action is pending and of any other court of this State or federal court sitting in or for this State. (2) Judicial notice shall be taken of each matter specified in this rule if a party requests it, and (A) furnishes the judge sufficient information to enable him properly to comply with the request, and (B) has given each adverse party notice thereof in the pleadings or at least 20 days before the

trial. The judge, however, may permit such notice to be given at any time in the interest of justice.

(e) Notice, information, ruling on laws of foreign country. A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under these rules. The court's determination shall be treated as a ruling on a question of law.

Article III. Presumptions in Civil Actions and Proceedings
Rule 301. Presumptions in general in civil actions and proceedings.
(a) Effect. In all civil actions and proceedings not otherwise provided for by statute or by these Rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

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

Rule 302. Applicability of state law in civil actions and proceedings.
Omitted.

Rule 303. Effect of presumptions in criminal cases.
Presumptions in criminal cases shall be as set forth in 11 Del.C. § 306.

Rule 304. Res ipsa loquitur.
(a) Definitions.

(1) The doctrine of res ipsa loquitur is a rule of circumstantial evidence, not affecting the burden of proof, which permits, but does not require, the trier of the facts to draw an inference of negligence from the happening of an accident under circumstances set forth in paragraph (b) of this rule.

(2) As used in this rule, "plaintiff" includes any party who invokes the doctrine, and "defendant" includes any party against whom the doctrine operates.

(b) Applicability. Before the doctrine will be applied the following must appear:

(1) The accident must be such as, in the ordinary course of events, does not happen if those who have management and control use proper care; and

(2) The facts are such as to warrant an inference of negligence of such force as to call for an explanation or rebuttal from the defendant; and

(3) The thing or instrumentality which caused the injury must have been under the management or control (not necessarily exclusive) of the defendant or his servants at the time the negligence likely occurred; and

(4) Where the injured person participated in the events leading up to the accident, the evidence must exclude his own conduct as a responsible cause.

(c) When applicability determined; effect.

(1) Whether or not the doctrine is applicable should be determined at the close of the plaintiff's case.

(2) When the doctrine is applicable, the defendant shall not be entitled to a directed verdict unless evidence has been produced which will destroy the inference of negligence on his part, or so completely contradict it that the jury could not reasonably accept it. The defendant shall not be entitled to a directed verdict merely because he has introduced evidence in explanation and such evidence has not been rebutted.

Article IV. Relevancy and Its Limits

Rule 401. Definition of "relevant evidence."

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

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by statute or by these rules or by other rules applicable in the courts of this State. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time.

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

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

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

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

(3) Character of witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other crimes, wrongs or acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

(Amended, effective Dec. 10, 2001.)
Rule 405. Methods of proving character.
(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

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

(Amended, effective Dec. 10, 2001.)
Rule 406. Habit; routine practice.
Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407. Subsequent remedial measures.
When, after an injury or harm allegedly caused by an event, measures are taken which, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment. An event includes the sale of a product to a user or consumer.

(Amended, effective Dec. 10, 2001.)
Rule 408. Compromise and offers to compromise.

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

Rule 409. Payment of medical and similar expenses.
Evidence of furnishing or offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410. Inadmissibility of pleas, offers of pleas and related statements.
Except as otherwise provided in this rule, evidence of a plea of guilty later withdrawn with court permission, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411. Liability insurance.
Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership or control, or bias or prejudice of a witness.

Rule 412. Rape cases; relevance of victim's past behavior.
Omitted.

Rule 413. Evidence of Similar Crimes in Sexual Assault Cases.
Omitted.

Rule 414. Evidence of Similar Crimes in Child Molestation Cases.
Omitted.

Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation.
Omitted.

Article V. Privileges

Rule 501. Privileges recognized only as provided.

Except as otherwise provided by Constitution or statute, or by court decision, or by these or other rules of court, no person has a privilege to:

(1) Refuse to be a witness;

(2) Refuse to disclose any matter;

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

Rule 502. Lawyer-client privilege.

(a) Definitions. As used in this rule:

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

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

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

(4) Omitted.

(5) A "representative of the lawyer" is one employed, or reasonably believed by the client to be employed, by the lawyer to assist the lawyer in the rendition of professional legal services.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, (2) between the lawyer and the lawyer's representative, (3) by the client or the client's representative or the client's lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another in a matter of common interest, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

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

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

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

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

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

(4) Accusations against a lawyer. As to a communication necessary for a lawyer to defend in a legal proceeding an accusation that the lawyer assisted the client in criminal or fraudulent conduct;

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

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

(7) Public officer or agency. [Omitted].

(Amended, effective Dec. 10, 2001.)

Rule 503. Mental health provider, physician, and psychotherapist-patient privilege.

(a) Definitions. As used in this rule:

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

(2) A "mental health provider" is (A) a licensed professional counselor of mental health or licensed associate counselor as authorized under 29 Del.C. §§ 3001-19, or (B) a licensed clinical social worker as authorized under 29 Del.C. §§ 3901-13.

(3) A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist for treatment or diagnosis.

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

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

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

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

(d) Exceptions.

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

(2) Examination by order of court. There is no privilege under this rule for a communication made in the course of a court-ordered investigation or examination of the physical, mental or emotional condition of the patient, whether a party or a witness, with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) Condition an element of claim or defense. There is no privilege under this rule for a communication relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of

the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(4) Commission of crime or fraud. There is no privilege under this rule for a communication if the services of the mental health provider, physician or psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew, or reasonably should have known, was a crime or fraud or mental or physical injury to the patient or another individual.

(5) Danger to self or others. There is no privilege under this rule for a communication in which the patient has expressed an intent to engage in conduct likely to result in imminent death or serious physical injury to the patient or another individual.

(6) Breach of duty. There is no privilege under this rule for a communication relevant to a breach of duty by the mental health provider, physician or psychotherapist.

(7) Appointment of guardian; child abuse cases. There is no privilege under this rule for a communication relevant to a proceeding brought pursuant to 12 Del.C. § 3901 or 16 Del.C., Chapter 9.

(Amended, effective Mar. 31, 1994; Dec. 10, 2001.)

Rule 504. Husband-wife privilege.

(a) Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.

(b) General rule of privilege. Any party or witness in any proceeding has a privilege to prevent his spouse from testifying as to any confidential communication between himself and his spouse.

(c) Who may claim the privilege. The privilege may be claimed by the party or witness or by the spouse on behalf of the party or witness. The authority of the spouse to do so is presumed.

(d) Exceptions. There is no privilege under this rule in a proceeding in which 1 spouse is charged with a wrong against the person or property of (1) the other, (2) a child of either, (3) a person residing in the household of either, or (4) a third person committed in the course of committing a crime against any of them. There is no privilege under this rule in any proceeding brought pursuant to Title 13 of the Delaware Code, or Chapter 9 of Title 10 of the Delaware Code or when the interest of the spouses is adverse.

(e) Testimony of wife or husband. A wife or husband may testify for or against each other in any court of this State.

Rule 505. Religious privilege.

(a) Definitions. As used in this rule:

(1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

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

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as a spiritual adviser.

(c) Who may claim the privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The clergyman may claim the privilege on behalf of the person. His authority so to do is presumed in the absence of evidence to the contrary.

Rule 506. Political vote.
(a) General rule of privilege. Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot.

(b) Exceptions. This privilege does not apply if the court finds that the vote was cast illegally or determines that the disclosure should be compelled pursuant to the election laws of this State.

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

Rule 508. Secrets of State and other official information; governmental privileges.
(a) Claim of privilege. If the law of the United States creates a governmental privilege that the courts of this State must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States.

(b) Recognition of privilege. A governmental privilege existing at common law, or created by the Constitution, statute or court rule of this State, shall be recognized.

(c) Effect of sustaining claim. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further orders the interests of justice require, including striking the testimony of a

witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant or dismissing the action.

Rule 509. Identity of informer.
(a) Rule of privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law-enforcement officer or member of a legislative committee or its staff conducting an investigation.

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

(c) Exceptions.

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

(2) Testimony on relevant issue. If it appears in a criminal case that an informer may be able to give testimony which would materially aid the defense, or in a civil case which would be relevant to a fair determination of a material issue on the merits of a case in which a public entity is a party, and the informed public entity invokes the privilege, the court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose his identity, in criminal cases the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include 1 or more of the following: Requiring the prosecuting attorney to comply, granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of him, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing charges. In civil cases, the court may make any order the interests of justice require. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except a showing in camera at which no counsel or party shall have the right to be present.

Rule 510. Waiver of privilege by voluntary disclosure.
A person upon whom these rules confer a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or

consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

Rule 511. Privileged matter disclosed under compulsion or without opportunity to claim privilege.
A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.

Rule 512. Comment upon or inference from claim of privilege; instruction.
(a) Comment or inference not permitted. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

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

(c) Jury instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

Rule 513. Reporter's privilege.
A reporter may not decline to testify except as provided by statute.

Article VI. Witnesses
Rule 601. General rule of competency.
Every person is competent to be a witness except as otherwise provided in these rules.

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

Rule 603. Oath or affirmation.
Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Rule 604. Interpreters.
An interpreter is subject to the provisions of these Rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

(Amended, effective Dec. 10, 2001.)
Rule 605. Competency of judge as witness.

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

Rule 606. Competency of juror as witness.
(a) At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

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

Rule 607. Who may impeach.
The credibility of a witness may be attacked by any party, including the party calling him.

Rule 608. Evidence of character and conduct of witness.
(a) Opinion and reputation evidence of character. Except as provided in 11 Del.C. §§ 3508 and 3509, 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.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

(Amended, effective Dec. 10, 2001.)
Rule 609. Impeachment by evidence of conviction of crime.

(a) General rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted but only if the crime (1) constituted a felony under the law under which the witness was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect or (2) involved dishonesty or false statement, regardless of the punishment.

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

(c) Effect of pardon, annulment or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent felony, or (2) the conviction has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.

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

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

(Amended, effective May 5, 1993; Dec. 10, 2001.)

Rule 610. Religious beliefs or opinions.

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

Rule 611. Mode and order of interrogation and presentation.

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

(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party or a witness identified with an adverse party, interrogation may be by leading questions.

Rule 612. Writing or object used to refresh memory.
(a) While testifying. If, while testifying, a witness uses a writing or object to refresh his memory, an adverse party is entitled to have the writing or object produced at the trial, hearing or deposition in which the witness is testifying.

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

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

Rule 613. Prior statements of witnesses.
(a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an

opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

(c) Exception. If a witness does not clearly admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.

Rule 614. Calling and interrogation of witnesses by court.
(a) Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

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

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

Rule 615. Exclusion of witnesses.
At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

Rule 616. Bias of witness.
For the purpose of attacking the credibility of a witness, evidence of bias, prejudice or interest of the witness for or against any party to the case is admissible.

(Added, effective Dec. 10, 2001.)
Article VII. Opinions and Expert Testimony
Rule 701. Opinion testimony by lay witnesses.
If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue and (c) not based on scientific, technical or other specialized knowledge within the scope of Rule 702.

(Amended, effective Dec. 10, 2001.)
Rule 702. Testimony by experts.
If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

(Amended, effective Dec. 10, 2001.)
Rule 703. Bases of opinion testimony by experts.
The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Upon objection, 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.

(Amended, effective Dec. 10, 2001.)
Rule 704. Opinion on ultimate issue.
Testimony in the form of an opinion or inference otherwise admissible is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact.

Rule 705. Disclosure of facts or data underlying expert opinion.
(a) Disclosure of facts or data underlying expert opinion. The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(b) Objection. An adverse party may object to the testimony of an expert on the ground that the expert does not have a sufficient basis for expressing an opinion. The adverse party may, before the witness gives an opinion, be allowed to conduct a voir dire examination directed to the underlying facts or data on which the opinion is based.

(Amended, effective Dec. 10, 2001.)
Rule 706. Court-appointed experts.
(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

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

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

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

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

(Added effective Nov. 10, 1999.)
Article VIII. Hearsay
Rule 801. Definitions.
The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

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

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with his testimony, or (B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (C) one of identification of a person. Section 3507 of Title 11 of the Delaware Code governs admissibility of prior consistent and inconsistent statements of a witness in a criminal prosecution.

(2) Admission by party-opponent. The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity, or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy; provided that the conspiracy has first been established by the preponderance of the evidence to the satisfaction of the court.

(Amended, effective Dec. 10, 2001.)
Rule 802. Hearsay rule.

Hearsay is not admissible except as provided by law or by these Rules.

Rule 803. Hearsay exceptions; availability of declarant immaterial.
The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

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

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

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence or may be received as an exhibit in the court's discretion.

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

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

rule, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. To the extent not otherwise provided in this paragraph, records, reports, statements or data compilations, in any form, of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (A) Investigative reports by police and other law-enforcement personnel; (B) investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party; (C) factual findings offered by the government in criminal cases; (D) factual findings resulting from special investigation of a particular complaint, case or incident; (E) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the report thereof was made to a public office pursuant to requirements of law.

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

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

(12) Marriage, baptismal and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

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

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

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

(16) Statements in ancient documents. Statements in a document in existence 20 years or more, the authenticity of which is established.

(17) Market reports; commercial publications. Market quotations, tabulations, lists, directories or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination, or relied upon by him in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

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

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

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

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), constituting a felony under the law pursuant to which the person was convicted, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

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

(24) [Transferred to D.R.E. 807.]

(25) Business records in justice of the peace court civil cases. In a civil case before a Justice of the Peace, a bill, estimate, receipt or statement of account which appears to have been made in the regular course of business may be admitted into evidence by the Court, if the Justice of the Peace is satisfied that the document is reliable.

(Amended, effective Oct. 1, 1981; Sept. 19, 1994; Dec. 10, 2001.)

Rule 804. Hearsay exceptions; declarant unavailable.

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

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

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

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

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

(5) Is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

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

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

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

(2) Statement under belief of impending death. 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 the declarant's impending death.

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

(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption or marriage, ancestry or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other exceptions. [Omitted].

(6) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

(Amended, effective Dec. 10, 2001.)

Rule 805. Hearsay within hearsay.

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

Rule 806. Attacking and supporting credibility of declarant.

When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D) or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

Rule 807. Residual Exception.

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

(Added, effective Dec. 10, 2001.)
Article IX. Authentication and Identification
Rule 901. Requirement of authentication or identification.
(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

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

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

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

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

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

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

(10) Methods provided by statute or rule. Any method of authentication or identification provided by a statute or provided by in the Constitution of this State.

Rule 902. Self-authentication.
Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

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

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

(3) Foreign public documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

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

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

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

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

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

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

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

(11) Certified domestic records of regularly conduced activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any law of the United States or of this State, certifying that the record

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

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

(C) was made by the regularly conducted activity as a regular practice. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

(12) Certified foreign records of regularly conducted activity. In a civil case, the original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any law of the United States or of this State, certifying that the record

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

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

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

(Amended, effective Dec. 10, 2001.)
Rule 903. Subscribing witness' testimony unnecessary.
The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

Article X. Contents of Writings, Recordings, and Photographs
Rule 1001. Definitions.
For purposes of this article the following definitions are applicable:

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

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

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

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

Rule 1002. Requirement of original.
To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in these Rules or by statute.

Rule 1003. Admissibility of duplicates.
A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004. Admissibility of other evidence of contents.
The original is not required, and other evidence of the contents of a writing, recording or photograph is admissible if:

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

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

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

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

Rule 1005. Public records.
The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1006. Summaries.
The contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Rule 1007. Testimony or written admission of party.

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

Rule 1008. Functions of court and jury.
When the admissibility of other evidence of contents of writings, recordings or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised (1) whether the asserted writing ever existed, or (2) whether another writing, recording or photograph produced at the trial is the original, or (3) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Article XI. Miscellaneous Rules
Rule 1101. Applicability of rules and definitions.
(a) Rules applicable. Except as otherwise provided in paragraphs (b) and (c) of this rule, these Rules apply to all actions and proceedings in all the courts of this State.

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

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

(2) Grand jury. Proceedings before grand juries.

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

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

(c) Preliminary hearings. In preliminary hearings in criminal cases the court is not bound by these Rules of Evidence except with respect to privileges.

(d) Definition. As used throughout these Rules, the term "writing" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(Amended, effective Dec. 10, 2001.)
Rule 1102. Title.
These Rules shall be known as the Delaware Uniform Rules of Evidence and may be cited: D.R.E.

Rule 1103. Effective date.
These Rules shall take effect on July 1, 1980. These Rules apply to actions, cases and proceedings brought after the rules take effect. These Rules also apply to further procedure in actions, cases and proceedings then pending, except to the extent that application of these Rules would not be feasible, or would work injustice, in which event former evidentiary principles apply.

Appendix
Table of changes from federal rules of evidence.
The following changes from the Federal Rules were adopted:

Article I

Rule 101 substitutes "this state" for "United States, etc."

Rule 104(b) tracks U.R.E. 104(b) instead of F.R.E. 104(b) but adds the words "or in the Court's discretion".

Article II

Rule 201(g). The words "upon request" were added at the beginning of 201(g). The last sentence of F.R.E. 201(g) was deleted. This rule tracks U.R.E. 201(g) except that U.R.E. 201(g) does not contain the words "upon request".

Rule 202. This is an entirely new rule.

Article III

Rule 301(a) follows U.R.E. 301(a) instead of F.R.E. 301. The word "civil" was added to U.R.E. 301(a) in the first line of 301(a).

Rule 301(b) tracks U.R.E. 301(b).

Rule 302. Omitted.

Rule 303. This rule is new.

Rule 304. This rule is new.

Article IV

Rule 402 tracks U.R.E. 402.

Rule 404(a)(2) adds the words "Except as otherwise provided by statute".

Rule 405. References to opinion evidence were omitted.

Rule 410. The words "with court permission" were added to the first sentence.

Rule 412. Omitted.

Article V

This entire Article tracks (except as noted) U.R.E. Article V instead of F.R.E. Article V since F.R.E. contains only Rule 501.

Rule 501 is a substantially revised version of U.R.E. 501.

Rule 502(a)(4) omits the words "by the lawyer" as contained in U.R.E. 502(a)(4).

Rule 502(a)(2) is omitted.

Rule 502(b) deletes from U.R.E. 502(b) the words "party in the pending action and concerning".

Rule 502(d)(6). Omitted.

Rule 503(a)(1) added the words "for treatment or diagnosis" to U.R.E. 503(a)(1).

Rule 503(d)(1). The word "physician" was added to U.R.E. 503(d)(1).

Rule 503(d)(4) is new.

Rules 504(b) and (c) were rewritten to make these Rules applicable to civil as well as criminal cases and to witnesses as well as parties.

Rule 504(d) was rewritten to comply with Rule 504(b) and (c) and to exclude the husband-wife privilege being asserted in certain cases involving children.

Rule 504(e) is new and does not appear in U.R.E. and F.R.E.

Rule 505(c). The last sentence is based on draft of F.R.E. 506(c) instead of U.R.E. 505(c).

Rule 508(b) is new and does not appear in U.R.E. and F.R.E.

Rule 509(c)(2). The words "have the right" were substituted for "be permitted" in the last line and the first sentence was substantially rewritten.

Rule 513 is new.

Article VI

Rule 601 tracks U.R.E. 601 rather than F.R.E.

Rule 608(a). The words "Except as provided in 11 Del.C. §§ 3508 and 3509" were added at the beginning of Rule 608(a) and references to opinion evidence were omitted.

Rule 609(a) tracks U.R.E. 609(a) except the words "2 years" were substituted for "1 year" and the words "to a party or a witness" were deleted in 609(a)(1).

Rule 609(c). The words "2 years" were substituted for "1 year" in 609(c)(1).

Rule 612 tracks U.R.E. 612 rather than F.R.E.

Rule 613(c) is new.

Rule 615. The word "may" was substituted for "shall" in the first line.

Article VII

Rule 701 is a substantially revised version of F.R.E. 701.

Rule 704. The word "merely" was added.

Rule 705(a) is a substantially revised version of F.R.E. 705(a).

Rule 705(b) is new.

Rule 706 is omitted.

Article VIII

Rule 801(d)(1)(A). The words "and was given under oath subject to the perjury at a trial, hearing or other proceeding, or in a deposition" were deleted.

Rule 801(d)(1)(C). The words "made after perceiving him" at the end of C were deleted.

Rule 801(d)(2)(E). The last sentence was added.

Rule 802 tracks U.R.E. 802 rather than F.R.E.

Rule 803(5). Last sentence rewritten.

Rule 803(8) tracks U.R.E. 803(8) rather than F.R.E.

Rule 803(22) tracks F.R.E. 803(22); but changes "1 year" to "2 years".

Rule 804(a)(5) tracks earlier draft of F.R.E. 804(a)(5).

Rule 804(b)(2) tracks earlier draft of F.R.E. 804(b)(2).

Rule 804(b)(5) is omitted.

Article IX

Rule 901(b)(10) tracks U.R.E. 901(b)(10) rather than F.R.E.

Rule 902(4) tracks U.R.E. 902(4) and adds the words "of this rule".

Rule 902(10) tracks U.R.E. 902(10).

Article X

Rule 1001(1). The word "sounds" added.

Rule 1002 tracks U.R.E. 1002 rather than F.R.E.

Article XI

Rule 1101(a) and (b) tracks U.R.E. 1101(a) and (b) rather than F.R.E.

Rule 1101(c). This rule is new.

Rule 1102 tracks U.R.E. 1102 (and F.R.E. 1103).

Rule 1103. This rule is new.