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NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

28TH CONSTITUTIONAL REGULAR SESSION, 2007

BILL NO: 136N.D.1

P.L. 2007-87

AN ACT

to amend rules 404, 408, 606(b) and 609 of the Evidence Act, 1989 in order to make technical corrections to the Rules, and for matters related thereto.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS:

Section 1. **Short Title**

This Act may be cited as the Evidence (Amendment) Act, 2007.

Section 2. **Amendments**

(1) Rule 404 of the Evidence Act, 1989 are hereby amended to read as follows:

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 the person's character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

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

(2) *Character of victim.* In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait of character of the victim of the crime offered by an

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1 accused, or by the prosecution to rebut the same, or evidence of a character trait of
2 peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence
3 that the victim was the first aggressor; and

4 (3) *Character of witness.* Evidence of the character of a witness for the purposes of
5 impeachment, as provided in Rules 607, 608, and 609.

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8 (2) Rule 408 of the Evidence Act, 1989 is hereby amended to read as follows:

9 **Rule 408. Compromise and offers to compromise.**

10 (a) *Prohibited uses.* Evidence of the following is not admissible on behalf of any party, when offered
11 to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount of
12 a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent
13 statement or contradiction:

14 (1) furnishing or offering or promising to furnish, accepting or offering or promising to
15 accept, a valuable consideration in compromising or attempting to compromise the claim; and

16 (2) conduct or statements made in compromise negotiations regarding the claim, except when
17 offered in a criminal case and the negotiations related to a claim by a public office or agency
18 in the exercise of regulatory, investigative, or enforcement authority.

19 (b) *Permitted uses.* This Rule does not require exclusion if the evidence is offered for purposes not
20 prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or
21 prejudice; negating a contention of undue delay, and proving an effort to obstruct a criminal
22 investigation or prosecution.

1 (3) Rule 606(b) of the Evidence Act, 1989 is hereby amended to read as follows:

2 **Rule 606. Competency of juror as witness.**

3 (b) *Inquiry into validity of verdict.* Upon an inquiry into the validity of a verdict, a juror may not
 4 testify as to any matter or statement occurring during the course of the jury's deliberations or to the
 5 effect of anything upon that or any other juror's mind or emotions as influencing ~~that~~ the juror to
 6 assent to or dissent from the verdict or concerning the juror's mental processes in connection
 7 therewith. But a juror may testify about:

8 (1) whether extraneous prejudicial information was improperly brought to the jury's
 9 attention, (2) whether any outside influence was improperly brought to bear upon any juror or (3)
 10 whether there was a mistake in entering the verdict onto the verdict form. A juror's affidavit or
 11 evidence of any statement the juror may not be received on a matter about which that juror would be
 12 precluded from testifying.

14 (4) Rule 609 of the Evidence Act, 1989 is hereby amended to read as follows:

15 **Rule 609. Impeachment by evidence of conviction of crime.**

16 (a) *General rule.* For the purpose of attacking the character for truthfulness of a witness:

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

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(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime require proof or admission of an act of dishonesty or false statement by the witness.

(b) *Time limit.* Evidence of a conviction under this Rule is not admissible if a period of more than ten (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 ten (10) years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence

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

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

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

(d) *Juvenile adjudications.* Evidence of juvenile adjudications is generally not admissible under this Rule. The court may, however, in a criminal case allow evidence of juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the

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