RULE CrRLJ 3.5
CONFESSION PROCEDURE

(a) Requirement for Hearing. When an accused's statement which is subject to constitutional protection is to be offered in evidence the court shall hold, upon demand, a hearing for the purpose of determining whether the statement is admissible.

(b) Defendant's Rights at Hearing. At the hearing, the court shall ascertain whether the defendant has been informed that:

(1) He or she may, but need not, testify at the hearing on the circumstances surrounding the statement;

(2) If the defendant does testify at the hearing, he or she will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his or her credibility;

(3) If the defendant does testify at the hearing, he or she does not by so testifying waive the right to remain silent during the trial; and

(4) If the defendant does testify at the hearing, neither this fact nor his or her testimony at the hearing shall be mentioned to the jury unless he or she testifies concerning the statement at trial.

(c) Duty of Court To Make a Record. After the hearing, the court shall state its findings of fact and conclusions of law as to the admissibility or inadmissibility of the statement.

(d) Rights of Defendant When Statement Is Ruled Admissible. If the court finds that the statement is admissible, and it is offered in evidence:

(1) The defense may offer evidence or cross-examine the witnesses with respect to the statement without waiving an objection to the admissibility of the statement;

(2) Unless the defendant testifies at the trial concerning the statement, no reference shall be made to the fact, if it be so, that the defendant testified at the preliminary hearing on the admissibility of the statement;

(3) If the defendant becomes a witness on this issue, he or she shall be subject to cross examination to the same extent as would any other witness; and

(4) If the defense raises the issue of voluntariness under subsection (d)(1), the jury shall be instructed that it may give such weight and credibility to the statement, in view of the surrounding circumstances, as it sees fit.

[Adopted effective September 1, 1987.]