

Indiana Rules of Court

Rules of Evidence

Adopted Effective January 1, 1994
Including Amendments Received Through January 1, 2005

Article I.	General Provisions
Article II.	Judicial Notice
Article III.	Presumptions in Civil Actions and Proceedings
Article IV.	Relevancy and Its Limits
Article V.	Privileges
Article VI.	Witnesses
Article VII.	Opinions and Expert Testimony
Article VIII.	Hearsay
Article IX.	Authentication and Identification
Article X.	Contents of Writings, Recordings, and Photographs
Article XI.	Miscellaneous Rules

ARTICLE I. GENERAL PROVISIONS

Rule

- Rule 101. Scope
- Rule 102. Purpose and Construction
- Rule 103. Rulings on Evidence
- Rule 104. Preliminary Questions
- Rule 105. Limited Admissibility
- Rule 106. Remainder of or Related Writing or Recorded Statements

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 this rule.

(a) General Applicability. These rules apply in all proceedings in the courts of the State of Indiana except as otherwise required by the Constitution of the United States or Indiana, by the provisions of this rule, or by other rules promulgated by the Indiana Supreme Court. If these rules do not cover a specific evidence issue, common or statutory law shall apply. The word "judge" in these rules includes referees, commissioners and magistrates.

(b) Rules of Privilege. The rules and laws with respect to privileges apply at all stages of all actions, cases, and proceedings.

(c) 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) *Miscellaneous proceedings.* Proceedings relating to extradition, sentencing, probation, or parole; issuance of criminal summonses, or of warrants for arrest or search, preliminary juvenile matters, direct contempt, bail hearings, small claims, and grand jury proceedings.

Adopted effective Jan. 1, 1994.

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.

Adopted effective Jan. 1, 1994.

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 a proper offer of proof, or was apparent from the context within which questions were asked.

(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) Fundamental Error. Nothing in this rule precludes taking notice of fundamental errors affecting substantial rights although they were not brought to the attention of the court.

Adopted effective Jan. 1, 1994.

Rule 104. Preliminary Questions

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

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

(c) Hearing of Jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the presence and 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 and so requests.

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

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

Adopted effective Jan. 1, 1994.

Rule 105. Limited Admissibility

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

Adopted effective Jan. 1, 1994.

Rule 106. Remainder of or Related Writing or Recorded Statements

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

Adopted effective Jan. 1, 1994.

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice

(a) **Kinds of Facts.** A court may take judicial notice of a fact. 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.

(b) **Kinds of Laws.** A court may take judicial notice of law. Law includes (1) the decisional, constitutional, and public statutory law, (2) rules of court, (3) published regulations of governmental agencies, (4) codified ordinances of municipalities, and (5) laws of other governmental subdivisions of the United States or of any state, territory or other jurisdiction of the United States.

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

Adopted effective Jan. 1, 1994.

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule

301 Presumptions in Civil Actions and Proceedings

Rule 301. Presumptions in Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by constitution, statute, judicial decision or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. A presumption shall have continuing effect even though contrary evidence is received.

Adopted effective Jan. 1, 1994.

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule

- 401 Definition of "Relevant Evident"
- 402 Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible
- 403 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay
- 404 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes
- 405 Methods of Proving Character
- 406 Habit; Routine Practice
- 407 Subsequent Remedial Measures
- 408 Compromise and Offers to Compromise
- 409 Payment of Medical and Similar Expenses
- 410 Withdrawn Pleas and Offers
- 411 Liability Insurance
- 412 Evidence of Past Sexual Conduct
- 413 Medical Expenses

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.

Adopted effective Jan. 1, 1994.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

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

Adopted effective Jan. 1, 1994.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay

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, or needless presentation of cumulative evidence.

Adopted effective Jan. 1, 1994.

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 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;
- (2) *Character of victim.* Evidence of a pertinent trait of character of the 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 victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
- (3) *Character of witness.* Evidence of the character of a witness, as provided in Rules 607, 608 and 609.

(b) **Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible

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

Adopted effective Jan. 1, 1994.

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. Upon reasonable pre-trial notice by the accused of the intention to offer character evidence, the prosecution in a criminal case shall provide the accused with any relevant specific instances of conduct to be used in cross-examination.

(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.

Adopted effective Jan. 1, 1994.

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.

Adopted effective Jan. 1, 1994.

Rule 407. Subsequent Remedial Measures

When after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. 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.

Adopted effective Jan. 1, 1994.

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 exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass alternative dispute resolution.

Adopted effective Jan. 1, 1994.

Rule 409. Payment of Medical and Similar Expenses

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

Adopted effective Jan. 1, 1994.

Rule 410. Withdrawn Pleas and Offers

Evidence of a plea of guilty or admission of the charge which was later withdrawn, or a plea of *nolo contendere*, or of an offer so to plead to the crime charged or any other crime, or of statements made in connection with any of the foregoing withdrawn pleas or offers, is not admissible in any civil or criminal action, case or proceeding against the person who made the plea or offer.

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

Adopted effective Jan. 1, 1994; amended effective Jan. 1, 1994.

Rule 411. Liability Insurance

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

Adopted effective Jan. 1, 1994.

Rule 412. Evidence of Past Sexual Conduct

(a) In a prosecution for a sex crime, evidence of the past sexual conduct of a victim or witness may not be admitted, except:

- (1) evidence of the victim's or of a witness's past sexual conduct with the defendant;
- (2) evidence which shows that some person other than the defendant committed the act upon which the prosecution is founded;
- (3) evidence that the victim's pregnancy at the time of trial was not caused by the defendant; or
- (4) evidence of conviction for a crime to impeach under Rule 609.

(b) If a party proposes to offer evidence under this rule, the following procedure must be followed:

- (1) A written motion must be filed at least ten days before trial describing the evidence. For good cause, a party may file such motion less than ten days before trial.
- (2) The court shall conduct a hearing and issue an order stating what evidence may be introduced and the nature of the questions to be permitted.

(c) If the state acknowledges that the victim's pregnancy is not due to the conduct of the defendant, the court may instruct the jury accordingly, in which case other evidence concerning the pregnancy may not be admitted.

Adopted effective Jan. 1, 1994.

Rule 413. Medical Expenses

Statements of charges for medical, hospital or other health care expenses for diagnosis or treatment occasioned by an injury are admissible into evidence. Such statements shall constitute prima facie evidence that the charges are reasonable.

Adopted effective Jan. 1, 1994.

ARTICLE V. PRIVILEGES

Rule

501 Privileges

Rule 501. Privileges

(a) **General Rule.** Except as provided by constitution or statute as enacted or interpreted by the courts of this State or by these or other rules promulgated by the Indiana Supreme Court or by principles of common law in light of reason and experience, 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.

(b) **Waiver of Privilege by Voluntary Disclosure.** A person with a privilege against disclosure waives the privilege if the person or person's 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.

(c) **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.

(d) **Comment Upon or Inference From Claim of Privilege; Instruction.** Except with respect to a claim of the privilege against self-incrimination in a civil case:

(1) *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 there from.

(2) *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.

(3) *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 there from.

Adopted effective Jan. 1, 1994.

ARTICLE VI. WITNESSES

Rule

- 601 General Rule of Competency
- 602 Lack of Personal Knowledge
- 603 Oath or Affirmation
- 604 Interpreters
- 605 Competency of Judge as Witness
- 606 Competency of Juror as Witness
- 607 Who May Impeach
- 608 Evidence of Character and Conduct of Witness
- 609 Impeachment of Evidence of Conviction of Crime
- 610 Religious Beliefs or Opinions
- 611 Mode and Order of interrogations and Presentations
- 612 Writing or Object Used to Refresh Memory

- 613 Prior Statements of Witnesses
- 614 Calling and Interrogation of Witnesses by Court and Jury
- 615 Separation of Witnesses
- 616 Bias of Witness

Rule 601. General Rule of Competency

Every person is competent to be a witness except as otherwise provided in these rules or by act of the Indiana General Assembly.

Adopted effective Jan. 1, 1994.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. A witness does not have personal knowledge as to a matter recalled or remembered, if the recall or remembrance occurs only during or after hypnosis. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Adopted effective Jan. 1, 1994.

Rule 603. Oath or Affirmation

Before testifying, every witness shall swear or affirm to testify to the truth, the whole truth, and nothing but the truth. The mode of administering an oath or affirmation shall be such as is most consistent with, and binding upon the conscience of the person to whom the oath is administered.

Adopted effective Jan. 1, 1994.

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.

Adopted effective Jan. 1, 1994.

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 to preserve the point.

Adopted effective Jan. 1, 1994.

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 the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify (1) to drug or alcohol use by any juror, (2) on the question of whether extraneous prejudicial information was improperly brought to the jury's attention or (3) whether any outside influence was improperly brought to bear upon any juror. A juror's affidavit or

evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received for these purposes.

Adopted effective Jan. 1, 1994.

Rule 607. Who May Impeach

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

Adopted effective Jan. 1, 1994.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific Instances of the Conduct of a Witness. For the purpose of attacking or supporting the witness's credibility, other than conviction of a crime as provided in Rule 609, specific instances may not be inquired into or proven 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 concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Adopted effective Jan. 1, 1994.

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 or an attempt of a crime shall be admitted but only if the crime committed or attempted is (1) murder, treason, rape, robbery, kidnapping, burglary, arson, criminal confinement or perjury; or (2) a crime involving dishonesty or false statement.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or, if the conviction resulted in confinement of the witness then the date of the release of the witness from the confinement 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 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 which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

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

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

Adopted effective Jan. 1, 1994.

Rule 610. Religious Beliefs or Opinions

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

Adopted effective Jan. 1, 1994.

Rule 611. Mode and Order of Interrogations and Presentations

(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 the witness's testimony. Ordinarily, leading questions should be permitted on cross-examination. Whenever a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Adopted effective Jan. 1, 1994.

Rule 612. Writing or Object Used to Refresh Memory

(a) While Testifying. If, while testifying, a witness uses a writing or object to refresh the witness's 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 the witness's 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.

Adopted effective Jan. 1, 1994.

Rule 613. Prior Statements of Witnesses

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

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

Adopted effective Jan. 1, 1994.

Rule 614. Calling and Interrogation of Witnesses by Court and Jury

(a) Calling by Court. The court may not call witnesses except in extraordinary circumstances or except as provided for court-appointed experts, 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.

(d) Interrogation by Juror. A juror may be permitted to propound questions to a witness by submitting them in writing to the judge, who will decide whether to submit the questions to the witness for answer, subject to the objections of the parties, which may be made at the time or at the next available opportunity when the jury is not present. Once the court has ruled upon the appropriateness of the written questions, it must then rule upon the objections, if any, of the parties prior to submission of the questions to the witness.

Adopted effective Jan. 1, 1994.

Rule 615. Separation of Witnesses

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

Adopted effective Jan. 1, 1994.

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.

Adopted effective Jan. 1, 1994.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule

- 701 Opinion Testimony by Lay Witnesses
- 702 Testimony by Experts
- 703 Bases of Opinion Testimony by Experts
- 704 Opinion on Ultimate Issue
- 705 Disclosure of Facts of Data Underlying Expert Opinion

Rule 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness's testimony in the form of opinions 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's testimony or the determination of a fact in issue.

Adopted effective Jan. 1, 1994.

Rule 702. Testimony by Experts

- (a) 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.
- (b) Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable.

Adopted effective Jan. 1, 1994.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. Experts may testify to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field.

Adopted effective Jan. 1, 1994.

Rule 704. Opinion on Ultimate Issue

- (a) 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.
- (b) Witnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions.

Adopted effective Jan. 1, 1994.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

Adopted effective Jan. 1, 1994.

ARTICLE VIII. HEARSAY

- 801 Definitions
- 802 Hearsay Rule
- 803 Hearsay Exceptions: Availability of Declarant Immaterial
- 804 Hearsay Exceptions: Declarant Unavailable
- 805 Hearsay Within Hearsay
- 806 Attacking and Supporting Credibility of Declarant

Rule 801. Definitions

The following definitions apply under this Article:

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

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

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

(d) Statements Which are Not Hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition; or (B) consistent with the declarant's testimony, offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, and made before the motive to fabricate arose; or (C) one of identification of a person made shortly after perceiving the person; or

(2) Statement by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or representative capacity; or (B) a statement of which the party has manifested an adoption or belief in its truth; or (C) a statement by a person authorized by the party to make a statement concerning the subject; or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Adopted effective Jan. 1, 1994; amended effective Jan. 1, 1994.

Rule 802. Hearsay Rule

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

Adopted effective Jan. 1, 1994.

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 a material event, condition or transaction, made while the declarant was perceiving the event, condition or transaction, 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 related to the execution, revocation, identification, or terms of declarant's will.

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

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

(6) Records of Regularly Conducted Business 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 or affidavit of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. The term "business" as used in this Rule includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of Entry in Records Kept in Accordance With the Provisions of Paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the 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. Unless the sources of information or other circumstances indicate lack of trustworthiness, 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, except when offered by an accused in a criminal case; (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; and (d) factual findings resulting from special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.

(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 a 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 a public office and an applicable statute authorized 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 purposes 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 thirty years or more, the authenticity of which is established.

(17) Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises,

periodicals, or pamphlets that contradict the expert's testimony 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 a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of a person's personal or family history.

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

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

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

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

Adopted effective Jan. 1, 1994.

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 a 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 exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

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

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

(2) Statement under belief of impending death. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable

person in the declarant's position would not have made the statement unless believing it to be true. A statement or confession offered against the accused in a criminal case, made by a codefendant or other person implicating both the declarant and the accused, is not within this exception.

(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.

Adopted effective Jan. 1, 1994.

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.

Adopted effective Jan. 1, 1994.

Rule 806. Attacking and Supporting Credibility of Declarant

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

Adopted effective Jan. 1, 1994.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule

- 901 Requirement of Authentication of Identification
- 902 Self-Authentication
- 903 Subscribing Witness' Testimony Unnecessary

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 of a witness with knowledge 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 (i) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (ii) 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, (i) is in such condition as to create no suspicion concerning its authenticity, (ii) was in a place where it, if authentic, would likely be, and (iii) has been in existence 30 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 or authentication or identification provided by the Supreme Court of this State or by a statute or as provided by the Constitution of this State.

Adopted effective Jan. 1, 1994.

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.* The original or a duplicate of a domestic official record proved in the following manner: An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy. Such publication or copy need not be accompanied by proof that such officer has the custody. Proof that such officer does or does not have custody of the record may be made by the certificate of a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) *Foreign public documents.* The original or a duplicate of a foreign official record proved in the following manner: A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

(a) of the attesting person; or

(b) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the 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 the documents, the court may, for good cause shown:

(i) admit an attested copy without final certification; or

- (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.
- (3) *Official publications.* Books, pamphlets, or other publications issued by public authority.
- (4) *Newspapers and periodicals.* Printed materials purporting to be newspapers or periodicals.
- (5) *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.
- (6) *Acknowledged documents.* Original 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.
- (7) *Commercial paper and related documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.
- (8) *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.
- (9) *Certified domestic records of regularly conducted activity.* Unless the source of information or the circumstances of preparation indicate lack of trustworthiness, the original or a duplicate of a domestic record of regularly conducted activity within the scope of Rule 803(6), which the custodian thereof or another qualified person certifies under oath (i) 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; (ii) is kept in the course of the regularly conducted activity, and (iii) was made by the regularly conducted activity as a regular practice. A record so certified is not self-authenticating under this subsection unless the proponent makes an intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it.
- (10) *Certified foreign records of regularly conducted activity.* Unless the source of information or the circumstances of preparation indicate lack of trustworthiness, the original or a duplicate of a foreign record of regularly conducted activity within the scope of Rule 803(6), which is accompanied by a written declaration by the custodian thereof or another qualified person that the record (i) 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; (ii) is kept in the course of the regularly conducted activity; and (iii) was made by the regularly conducted activity as a regular practice. The record must be signed in a foreign country in a manner which, if falsely made, would subject the maker to criminal penalty under the laws of that country, and the signature certified by a government official in the manner provided in subsection (2) above. The record is not self-authenticating under this subsection unless the proponent makes his or her intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it.

Adopted effective Jan. 1, 1994; amended July 1, 2003, effective January 1, 2004; amended Sep. 30, 2004, effective Jan. 1, 2005.

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.

Adopted effective Jan. 1, 1994.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule

- 1001 Definitions
- 1002 Requirement of Original
- 1003 Admissibility of Duplicates
- 1004 Admissibility of Other Evidence of Contents
- 1005 Public Records
- 1006 Summaries
- 1007 Testimony or Written Admissions of Party
- 1008 Functions of Court and Jury

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, videotapes, and motion pictures.
- (3) **Original.** An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately is an "original."
- (4) **Duplicate.** A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by facsimile transmission, or video tape or by other equivalent techniques which accurately reproduces the original.

Adopted effective Jan. 1, 1994.

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. An electronic record of the Indiana Bureau of Motor Vehicles obtained from the Bureau that bears an electronic or digital signature, as defined by statute, is admissible in a court proceeding as if the signature were an original.

Adopted effective Jan. 1, 1994.

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.

Adopted effective Jan. 1, 1994.

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

- (3) **Original in possession of opponent.** At a time when an original was under the control of the party against whom offered, such party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing; and such party does not produce the original at the hearing; or
- (4) **Collateral matters.** The writing, recording, or photograph is not closely related to a controlling issue.

Adopted effective Jan. 1, 1994.

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 complying with the foregoing cannot be obtained by the exercise of reasonable diligence, other evidence of the contents may be admitted.

Adopted effective Jan. 1, 1994.

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 a reasonable time and place. The court may order that they be produced in court.

Adopted effective Jan. 1, 1994.

Rule 1007. Testimony or Written Admissions of Party

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

Adopted effective Jan. 1, 1994.

Rule 1008. Functions of Court and Jury

Whenever 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 whether (1) the asserted writing ever existed, or (2) another writing, recording, or photograph produced at the trial is the original, or (3) 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.

Adopted effective Jan. 1, 1994.

ARTICLE XI. MISCELLANEOUS RULES

Rule

1101 Evidence Rules Review Committee

Rule 1101. Evidence Rules Review Committee

A. The Supreme Court Committee on Rules of Practice and Procedure, as constituted under Ind. Trial Rule 80, shall serve as the Evidence Rules Review Committee.

B. The Evidence Rules Review Committee shall conduct a continuous study of the Indiana Rules of Evidence and shall submit to the Supreme Court from time to time recommendations and proposed amendment to such rules. The Committee shall follow the procedure set forth in Ind. Trial Rule 80(D) in the amendment of the Rules of Evidence. Amendments or additions may be suggested by the Supreme

Court of Indiana in current case law or the Indiana General Assembly through enactment of legislation. Proposed amendments or comment on published amendments offered by the Bench, Bar, and Public, shall be delivered in writing to the Committee's Executive Secretary, 115 West Washington, Suite 1080, Indianapolis, Indiana 46204-3417.

Adopted effective Jan. 1, 1994; amended Dec. 15, 1995, effective Feb. 1, 1996.

INDEX TO INDIANA RULES OF EVIDENCE

ACCIDENTS

Character evidence, as, **Rule 404**

ACCUSED

See also Witnesses, generally, this index

Character, **Rule 404**

Co-Conspirators, statements against interest, **Rule 801**

Confessions, determination of admissibility, presence of jury, **Rule 104**

Cross-examination,

Character, specific conduct, **Rule 405**

Preliminary questions, testimony, **Rule 104**

Preliminary questions, testimony, cross-examination, **Rule 104**

ACKNOWLEDGMENTS

Documents, self authentication, **Rule 902**

ACTIONS AND PROCEEDINGS

Application of rules, **Rule 101**

Criminal Actions and Proceedings, generally, this index

Presumptions, **Rule 301**

Scope of rules, **Rule 101**

Unavailability of originals, evidence of contents, **Rule 1004**

ADMISSIBILITY OF EVIDENCE

Generally, **Rule 104**

Compromise and settlement offers, **Rule 408**

Confessions, determination, presence of jury, **Rule 104**

Determinations, **Rule 101, Rule 104**

Expenses and expenditures, payment, **Rule 409**

Expert witness, opinion testimony, basis in admissibility evidence, **Rule 703**

Guilty or non contendere pleas, withdrawal, admissibility, **Rule 410**

Hearsay, generally, this index

Impeachment of witnesses, **Rule 607 et seq.**

Liability insurance, **Rule 411**

Opinions, **Rule 701 et seq.**

Religious beliefs or opinions, **Rule 610**

Past sexual conduct, **Rule 412**

Prior statements, **Rule 613**

Relevancy, generally, this index

Religious beliefs or opinions, **Rule 610**

Subsequent remedial actions, **Rule 407**

ADMISSIONS

Generally, **Rule 801(d)**

Statements against interest, declarant unavailable, hearsay exceptions, **Rule 804**

Written, **Rule 1007**

ADOPTION

Declarants, hearsay exception, **Rule 804(b)(4)**

ADVERSE OR PECUNIARY INTEREST

Witnesses, credibility, **Rule 616**

AFFIDAVITS

Jurors, validity of verdict or indictment, inquiry, **Rule 606**

AFFIRMATIONS

Oaths and Affirmations, generally, this index

ALCOHOL OR DRUG ABUSE

Jurors, validity of verdict or indictment, inquiry, **Rule 606**

ANCIENT DOCUMENTS

Authentication, **Rule 901**

Hearsay exception, **Rule 803(16)**

ANNULMENTS

Convictions, **Rule 609**

APPEAL AND REVIEW

Erroneous rulings, **Rule 103**

Impeachment of witnesses, prior convictions, effect, **Rule 609**

APPEALS IN CRIMINAL PROSECUTIONS

Pendency of appeal,

Evident, as, **Rule 609**

Hearsay exceptions, **Rule 803(22)**

APPLICATION OF RULES

Generally, **Rule 101**

ARREST

Warrants, issuance, applicability of rules, **Rule 101**

ASSOCIATIONS AND SOCIETIES

Records and recordation, hearsay exception, **Rule 803**

Routine practice, relevancy, **Rule 406**

AUTHENTICATION

Generally, **Rule 901 et seq.**

Acknowledged documents, **Rule 902**

Ancient documents, **Rule 901**

Commercial paper, **Rule 902**

Comparison of authenticated specimens, **Rule 901**

Congressional acts, presumptions under, **Rule 902**

Domestic public documents, **Rule 902**

Expert witness comparing authenticated specimens, **Rule 901**

Foreign public documents, **Rule 902**

Handwriting, nonexpert opinion, **Rule 901**

Illustrations, **Rule 901**

Methods provided by statute or rule, **Rule 901**

Newspapers, **Rules 902**
Official publications, **Rule 902**
Periodicals, **Rule 902**
Public records, **Rule 901, Rule 902**
Records of regularly conduct activity, certified domestic or foreign, **Rule 902**
Requirement, **Rule 901**
Self-authentication, **Rule 902**
Subscribing witness' testimony, **Rule 903**
Telephone conversations, **Rule 901**
Trade inscriptions, **Rule 902**
Voice identification, **Rule 901**

BAIL

Evidence rules, applicability, **Rule 101**

BAPTISMAL CERTIFICATES

Hearsay exceptions, **Rule 803(12)**

BEST EVIDENCE RULE

Generally, **Rule 1002**

BIAS OR PREJUDICE

Evidence excluded on grounds of, **Rule 403**

Impeachment by, **Rule 616**

Jurors testifying as to, **Rule 606**

Witnesses,

 Credibility, **Rule 616**

 Evidence of compromise to prove, **Rule 408**

BIBLES

Hearsay exceptions, family history, **Rule 803(13)**

BIRTH

Declarant, hearsay exceptions, **Rule 804(b)(4)**

Records and recordation,

 Hearsay exceptions, **Rule 803(9)**

BOUNDARIES

Hearsay exceptions, **Rule 803(20)**

BRANDS, MARKS AND LABELS

Self authentication, **Rule 902**

BURDEN OF GOING FORWARD WITH EVIDENCE

Presumptions, effect, **Rule 301**

BURDEN OF PROOF

Defined, **Rule 301**

Presumptions, effect, **Rule 301**

BUSINESS RECORDS

Hearsay exceptions, **Rule 803(6)**

CEMETERIES AND DEAD BODIES

Monuments and memorials,

Inscriptions, hearsay exceptions, **Rule 803(13)**

CERTIFICATES AND CERTIFICATION

Hearsay exception, ceremonial acts, **Rule 803**

Impeachment of witnesses, prior convictions, certificates of rehabilitation, **Rule 609**

Official records, certified copies, **Rule 1005**

CHARACTER AND REPUTATION EVIDENCE

Generally, **Rule 404 et seq.**

Defendants, **Rule 404**

Family history, hearsay exceptions, **Rule 803(13)**

Habits and customs, **Rule 406**

Hearsay, **Rule 803(21)**

Hearsay exceptions, **Rule 803(19) et seq.**

Methods of proving, **Rule 405**

Opinion, **Rule 405**

Past sexual conduct, **Rule 412**

Proof, method, **Rule 608**

Reputation, **Rule 405**

Routine Practices, **Rule 406**

Victims of crime, **Rule 404**

Witnesses, **Rule 404**

Impeachment purposes, for, **Rule 608**

CHILDREN AND MINORS

Juvenile Proceedings, generally, this index

CIRCUIT COURT JUDGES

Competency as witness, **Rule 605**

CIVIL ACTIONS

Actions and Proceedings, generally, this index

COMMERCIAL PAPER

Authenticity, **Rule 902**

COMMITTEES

Evidence rules review committee, **Rule 1101**

COMPETENCY

Generally, **Rule 601 et seq.**

Judges, **Rule 605**

COMPROMISE AND SETTLEMENT

Admissibility of compromise offers, **Rule 408**

COMPUTERS

Evidence generated by, **Rule 1001**

CONDUCT

Character, **Rule 404**

Specific instances of conduct, proof of character, essential element of claim, **Rule 405**

Habit or routine practice, relevancy, **Rule 406**

Past sexual conduct, admissibility, **Rule 412**

Subsequent remedial measures, proof of negligence or capable conduct, **Rule 407**

Witnesses, credibility, specific instances, **Rule 608**

CONFESSIONS

Hearings on admissibility, **Rule 104**

CONFIDENTIAL OR PRIVILEGED INFORMATION

Witnesses, claim of privilege, **Rule 501, Rule 804(a)(1)**

CONFLICT OF INTEREST

Witnesses, credibility, **Rule 616**

CONFRONTATION CLAUSE

Generally, **Rule 801**

CONFUSION

Execution on grounds, **Rule 403**

CONSPIRACY

Co-conspirator hearsay exception, **Rule 801**

CONSTRUCTION OF LAW

Generally, **Rule 102**

CONTEMPT

Application of rules, **Rule 101**

CONVICTION

Hearsay exception, **Rule 803(22)**

Impeachment evident, **Rule 609**

Judgment hearsay exception, **Rule 803(22)**

COPIES

Best evidence rule, **Rule 1003**

COURTS

Calling and interrogating witnesses, **Rule 614**

Discretion of Court, Generally, this index

Interrogation of witnesses, **Rule 614**

Control, **Rule 611**

Judges, generally, this index

Judicial notice, **Rule 201**

CREDIBILITY

Bias, prejudice or interest, **Rule 618**

Character and conduct, **Rule 608**

Declarant, hearsay, attack or support, **Rule 806**

Hearsay, attack or support, **Rule 806**

Impeachment, **Rule 607 et seq.**

Preliminary questions, **Rule 104**

Religious beliefs or opinions, admissibility, **Rule 610**

CRIMINAL ACTIONS AND PROCEEDINGS

Accused, generally, this index

Applicability of rules, **Rule 101**

Character, admissibility, **Rule 404**

Co-conspirators, statements against interest, **Rule 801**

Confessions, determination of admissibility, presence of jury, **Rule 104**

Conviction of crime,

Hearsay exception, **Rule 803(22)**
Impeachment evidence, **Rule 609**
Judgment, hearsay exception, **Rule 803(22)**
Cross-examination,
 Character, specific conduct, **Rule 405**
 Preliminary questions, accused, testimony, **Rule 104**
Guilty or no contendere pleas, withdrawal, admissibility, **Rule 410**
Jury instructions, judicial notice, **Rule 201**
Obstruction, evidence of compromise to prove, **Rule 408**
Opinion testimony, ultimate issues, **Rule 704**
Other crimes and offenses, introduction by prosecution, notice, **Rule 404**
Perjury, guilty or no contendere pleas, withdrawal. Admissibility, **Rule 410**
Refreshment of memory, production of writing or object, noncompliance, **Rule 612**
Sentencing, application of rules, **Rule 101**
Statements against interest, codefendant, declarant unavailable, **Rule 804**
Ultimate issues, opinion evidence, **Rule 704**
Victims of crime,
 Character evidence, admissibility, **Rule 404**
 Past sexual conduct, admissibility, **Rule 412**
Witnesses, character, admissibility, **Rule 404**

CROSS-EXAMINATION

Character, specific conduct, **Rule 405**
Declarant, hearsay, **Rule 806**
Expert witnesses, **Rule 705**
Leading questions, **Rule 611**
Preliminary questions, accused, testimony, **Rule 104**
Refreshment of memory, writings, or objects, **Rule 612**
Scope, **Rule 611**

CRYPTS

Inscriptions, hearsay exceptions, **Rule 803(13)**

DEATH

Dying declaration, hearsay exception, **Rule 804(b)(2)**
Records and recordation, hearsay exception, **Rule 803(9)**

DECLARANTS

Availability immaterial, **Rule 803**
Credibility, **Rule 806**
Defined, **Rule 801**
Hearsay, generally, this index
Unavailable, **Rule 804**

DECLARATIONS AGAINST INTEREST

Generally, **Rule 804(b)(3)**

DELAY

Construction of rules, **Rule 102**
Exclusion on grounds of, **Rule 403**

DELINQUENTS

Juvenile Proceedings, generally, this index

DEPOSITIONS

Witnesses, memory, refreshment, **Rule 612**

DISCLOSURE

Privilege against, **Rule 501**

Witnesses' statements, to opposing counsel, **Rule 613**

DISCRETION OF COURT

Interrogation of witnesses, control, **Rule 611**

Judicial notice, **Rule 201**

Mistrial, objects or writings used to refresh memory, availability, noncompliance, **Rule 612**

DISSOLUTION OF MARRIAGE

Declarants, hearsay exception, **Rule 804(b)(4)**

DOCUMENTARY EVIDENCE

Records and Recordation, generally, this index

Writings, generally, this index

DUPLICATE PHOTOGRAPHS, WRITINGS, OR RECORDINGS

Generally, **Rule 1003**

Defined, **Rule 1001**

DYING DECLARATIONS

Generally, **Rule 804(b)(2)**

ERRORS

Appeal and review, basis, **Rule 103**

EVIDENCE RULES REVIEW COMMITTEE

Generally, **Rule 1101**

EXCITED UTTERANCES

Generally, **Rule 803(2)**

EXCLUSION

See also Admissibility of Evidence, generally, this index Impeachment of witnesses, prior conviction, time limit, **Rule 609**

Relevant evidence, grounds, **Rule 403**

EXCUSE

Notice, criminal cases, introduction of other crimes and offenses, **Rule 404**

EXISTING MENTAL OR PHYSICAL CONDITION

Hearsay exception, **Rule 803(3)**

EXPENSES AND EXPENDITURES

Medical care and treatment, reasonableness, **Rule 413**

Payment, admissibility, **Rule 409**

Undue expenses, elimination, construction of rules, **Rule 102**

EXPERT WITNESSES

Basis of testimony, **Rule 703**

Disclosure, **Rule 705**

Cross-examination, disclosing facts behind opinion, **Rule 705**

Facts, disclosure, **Rule 705**

Interpreters as, **Rule 604**

Objections to testimony, **Rule 704**

Opinions, **Rule 702**
Basis, **Rule 703**
Disclosure, **Rule 705**
Personal knowledge, **Rule 602**
Qualifications, **Rule 702**
Reliability, **Rule 702**
Translators as, **Rule 604**

EXTRADITION

Actions and proceedings, application of rules, **Rule 101**

EXTRINSIC EVIDENCE

Prior inconsistent statements, admissibility, **Rule 613**

FACTS

Admissibility, condition of fact, writings, recordings or photographs, **Rule 1008**
Expert witnesses, opinion testimony, basis, **Rule 703**
Judicial notice, **Rule 201**
Relevancy, condition of fact, fulfillment, **Rule 104**

FAMILY HISTORY

Hearsay exceptions,
Records, **Rule 803(13)**
Statements, **Rule 804(b)(4)**
Judicial notice, **Rule 201**

FIRSTHAND KNOWLEDGE RULE

Generally, **Rule 602**

FUNDAMENTAL ERRORS

Generally, **Rule 103**

GOOD CAUSE

Criminal actions and proceedings, introduction of other crimes and offenses, excuse of notice, **Rule 404**

GRAND JURY

Applicability of rules, **Rule 101**

GUILTY PLEA

Perjury proceedings, admissibility, **Rule 410**
Withdrawal, admissibility, **Rule 410**

HABITS

Evidence of, **Rule 406**

HEARSAY

Generally, **Rule 801 et seq.**
Absence of business record entry, proving, **Rule 803(7)**
Absence of public record or entry, proving, **Rule 803(10)**
Admissibility, **Rule 802**
Ancient documents, exception, **Rule 803(16)**
Baptismal certificates, exception, **Rule 803(12)**
Birth records, exception, **Rule 803(9)**
Boundaries, reputation of; exception, **Rule 803(20)**
Business records, exception, **Rule 803(6)**
Cemetery inscriptions, exception, **Rule 803(13)**

Certificates, exception, **Rule 803(12)**
Character evidence, **Rule 803(21)**
Columbarium inscriptions, exception, **Rule 803(13)**
Commercial publications, exception, **Rule 803(17)**
Convictions, final judgments; exception, **Rule 803(22)**
Crypts, inscriptions; exceptions, **Rule 803(13)**
Death records, exception, **Rule 803(9)**
Declarant,
 Availability immaterial, **Rule 803**
 Unavailable, **Rule 804**
Declaration against interest, exception, **Rule 804(b)(3)**
Defined, **Rule 801**
Dying declarations, **Rule 804(b)(2)**
Emotional condition, exception, **Rule 803(3)**
Exceptions, **Rule 803, Rule 804**
Excited utterance exception, **Rule 803(2)**
Family history records statements, exceptions, **Rule 803(13), Rule 804(b)(4)**
Genealogies, exceptions, **Rule 803(13)**
Grave markers, exceptions, **Rule 803(13)**
Hearsay within hearsay, **Rule 805**
Judgments, exception, **Rule 803(22), Rule 803(23)**
Learned treatises, exception, **Rule 803(18)**
Market reports, exceptions, **Rule 803(17)**
Marriage certificates, exception, **Rule 803(9), Rule 803(12)**
Mausoleum inscriptions, exception, **Rule 803(13)**
Medical statements for diagnosis or treatment, exceptions, **Rule 803(4)**
Memorandum, exception, **Rule 803(5) et seq.**
 Mental condition, exception, **Rule 803(3)**
Motives, exceptions, **Rule 803(3)**
Nonhearsay statements, **Rule 801**
Pain, statements about; exception, **Rule 803(3), Rule 803(4)**
Pendency of appeal, exception, **Rule 803(22)**
Periodicals, exception, **Rule 803(17)**
Personal history statement, exception, **Rule 804(b)(4)**
Physical condition, exception, **Rule 803(3)**
Present sense impression, exception, **Rule 803(1)**
Property ownership,
 Records affecting, exception, **Rule 803(14)**
 Statements affecting, exception, **Rule 803(15)**
Public records, exceptions, **Rule 803(8), Rule 803(10)**
Records, exceptions, **Rule 803(5) et seq.**
Religious organization records, **Rule 803(11)**
Reputation, exception, **Rule 803(9) et seq.**
Rule, **Rule 802**
Secondhand hearsay, **Rule 805**
State of mind, **Rule 803(3)**
Statements against interest, exception, **Rule 804(b)(3)**
Statements not hearsay, **Rule 801**
Tombstone inscriptions, exceptions, **Rule 803(13)**
Treatises, exception, **Rule 803(18)**
Vital statistics, exception, **Rule 803(9)**

HISTORY

Family History, generally, this index

HOMICIDE

Dying declaration, hearsay exception, **Rule 804(b)(2)**

HOSPITALS

Bills,

Offer to pay as proof of liability, **Rule 409**

Statement of charges, evidence of reasonableness, **Rule 413**

Records and recordation,

Hearsay exceptions, **Rule 803(4)**

HYPNOSIS

Witnesses, personal knowledge, competency, **Rule 602**

IDENTITY AND IDENTIFICATION

Perception, made shortly after, **Rule 801(d)**

Telephone conversations, **Rule 901**

Voice, **Rule 901**

IMPEACHMENT

Generally, **Rule 607 et seq.**

Bias, by, **Rule 616**

Interest, by, **Rule 616**

Perjury, **Rule 609**

Prejudice, by, **Rule 616**

Prior convictions, by, **Rule 609**

IMPLIED ASSERTIONS

Generally, **Rule 801**

IMPRESSIONS, PRESENT SENSE

Generally, **Rule 803(1)**

INDICTMENT OR INFORMATION

Validity, inquiry, testimony of jurors, **Rule 606**

INFERENCES

Privileges and immunities, self-incrimination, **Rule 501**

INFLUENCE

Jurors, validity of verdict or indictment, inquiry, **Rule 606**

INSPECTION

Refreshment of memory, writings or objects, **Rule 612**

INSTRUCTIONS

Jury, this index

INSURANCE POLICIES

Liability insurance, admissibility, **Rule 411**

INTEREST

Statements against interest, declarant unavailable, hearsay exceptions, **Rule 804**

Writings, recordings or photographs, contents, testimony, deposition or written admission against interest, **Rule 1007**

INTERPRETERS AND TRANSLATORS

Generally, **Rule 604**

INTERROGATION

Generally, **Rule 611**

Court, **Rule 614**

Jury, **Rule 614**

Prior inconsistent statements, **Rule 613**

IRRELEVANT EVIDENCE

Admissibility, **Rule 402**

JUDGES

Competency as witnesses, **Rule 605**

Defined, **Rule 101**

JUDGMENTS AND DECREES

Convictions, prior; hearsay exception, **Rule 803(22)**

Hearsay exception, **Rule 803(22), Rule 803(23)**

JUDICIAL NOTICE

Generally, **Rule 201**

JURY

Competency of juror, objections, **Rule 606**

Deliberations, inquiry, **Rule 606**

Duty of jurors, **Rule 1008**

Function of jury, **Rule 1007**

Inadmissible evidence, presence of jury, **Rule 103**

Instructions,

Judicial notice, **Rule 201**

Privileges and immunities, inference, **Rule 501**

Interrogating witnesses, **Rule 614**

Presence of jury,

Preliminary questions, confessions, **Rule 104**

Privileges and immunities, claims, **Rule 501**

Rulings on evidence, objections or offers of proof, **Rule 103**

Relevant evidence, exclusion, misleading jury, **Rule 403**

Verdict or indictment, validity, inquiry, **Rule 606**

JUVENILE PROCEEDINGS

Adjudicatory hearings, admissibility, **Rule 609**

Impeachment of witnesses, prior adjudications, **Rule 609**

KNOWLEDGE

Common knowledge, judicial notice, **Rule 201**

Personal knowledge, competency, **Rule 602**

Witness, authentication, **Rule 901**

LABELS, BRANDS AND MARKS

Self-authentication, **Rule 902**

LAWS

Judicial notice, **Rule 201**

LEADING QUESTIONS

Generally, **Rule 611**

LIABILITY

Proving, **Rule 408, Rule 409**

Liability insurance

Admissibility, **Rule 411**

LIMITED ADMISSIBILITY OF EVIDENCE

Generally, **Rule 105**

LOST OR DESTROYED DOCUMENTS

Evidence, **Rule 1004**

MAGAZINES

Authentication, **Rule 902**

Hearsay exceptions, **Rule 803(17), Rule 803(18)**

MAGISTRATES

Evidence rules, applicability, **Rule 101**

MARKS, LABELS AND BRANDS

Self-authentication, **Rule 902**

MARRIAGE

Certificates and certification,

Hearsay exceptions, **Rule 803(9), Rule 803(12)**

Declarants, hearsay exceptions, **Rule 804(b)(4)**

MAUSOLEUMS

Inscriptions, hearsay exception, **Rule 803(13)**

MEDICAL CARE AND TREATMENT

Expenses,

Offer to pay as proof of liability, **Rule 409**

Statement of charges, **Rule 413**

Records and recordation,

Hearsay exceptions, **Rule 803(4)**

MEMORY

Witnesses, refreshment, writings or objects, **Rule 612**

MINORS

Juvenile Proceedings, generally, this index

MISTRIAL

Refreshment of memory, access to writings or objects, noncompliance, **Rule 612**

MOTIONS

Past sexual conduct, introduction, **Rule 412**

MOTIVES

Evidence of other crimes proving, **Rule 404**

Hearsay exceptions, **Rule 803(3)**

Proof, **Rule 404**

NEGLIGENCE

Proving, **Rule 411**

Subsequent remedial measures, admissibility, **Rule 407**

NEGOTIABLE INSTRUMENTS

Authenticity, **Rule 902**

NEWSPAPERS

Authentication, **Rule 902**

NO CONTEST PLEA

Perjury proceedings, admissibility as evidence, **Rule 410**

Withdrawal, admissibility, **Rule 410**

NOTICE

Judicial notice, opportunity to be heard, **Rule 201**

Other crimes and offenses, introduction by prosecution, **Rule 404**

OATHS AND AFFIRMATIONS

Generally, **Rule 603**

Interpreters and translators, **Rule 604**

OBJECTIONS AND EXCEPTIONS

Appeal and review, **Rule 103**

Court calling and interrogating witnesses, **Rule 614**

Expert witnesses' testimony, **Rule 704**

Judge as witness, **Rule 605**

Juror as witness, **Rule 606**

Jury's presence, **Rule 103**

Records, appearing on, **Rule 103**

Refreshing memory, **Rule 612**

Rulings on, errors, **Rule 103**

OFFER OF PROOF

Generally, **Rule 103**

OPINIONS

Generally, **Rule 701 et seq.**

Character of reputation, **Rule 405**

Expert witnesses, **Rule 702**

Basis, **Rule 703**

Disclosure, **Rule 705**

Personal knowledge, **Rule 602**

Handwriting, authentication, **Rule 901**

Lay testimony, **Rule 701**

Legal conclusion prohibition, **Rule 704**

Religious beliefs, credibility, admissibility, **Rule 610**

Ultimate issue, **Rule 704**

OPPORTUNITY TO BE HEARD

Judicial notice, notification, **Rule 201**

ORGANIZATIONS

Records and recordation, hearsay exception, **Rule 803**

Routine practices, relevancy, **Rule 406**

ORIGINALS

Best evidence rule, **Rule 1002**

Defined, **Rule 1001**

Existence, determination, trier of fact, **Rule 1008**

Summaries, availability of originals, **Rule 1006**

Unavailability of original, evidence of contents, admissibility, **Rule 1004**

PARDONS

Impeachment of witnesses, prior convictions, effect, **Rule 609**

PAROLE AND PROBATION

Actions and proceedings, application of rules, **Rule 101**

PARTIAL STATEMENTS OR WRITINGS

Generally, **Rule 106**

PARTIES

Adverse parties, leading questions, **Rule 611**

Character evidence, admissibility, **Rule 404**

Hearsay, **Rule 801**

Juvenile adjudications, admissibility, **Rule 609**

Party-Opponent, generally, this index

Presence, other testimony, **Rule 615**

Records and recordation, contents, testimony, deposition or written admission against interest, **Rule 1007**

Statements by, **Rule 801**

Witness, as,

 Preliminary matter, cross-examination limitations, **Rule 104**

PARTY-OPPONENT

Originals, possession, nonproduction, **Rule 1004**

Prior inconsistent statements, admissibility, **Rule 613**

Records and recordation, contents, testimony, deposition or written admission against interest, **Rule 1007**

Statements not hearsay, **Rule 801**

PECUNIARY OR ADVERSE INTEREST

Witnesses, credibility, **Rule 616**

PENDENCY OF APPEAL

As evidence, **Rule 609**

PERIODICALS

Expert witnesses, hearsay exception, **Rule 803**

Self-authentication, **Rule 902**

PERJURY

Impeachment of witness for prior, **Rule 609**

Pleas admissible as evidence, **Rule 410**

PERSONAL KNOWLEDGE

Competency, **Rule 602**

PERSONAL PROPERTY

Property, generally, this index

PHOTOGRAPHY AND PICTURES

Admissibility, **Rule 1001 et seq.**

Best evidence rule, **Rule 1001 et seq.**

Defined, **Rule 1001**

Duplicates, admissibility, **Rule 1003**

Original, **Rule 1002**

Existence, determination, trier of fact, **Rule 1008**

Lost or destroyed, **Rule 1004**

PLEAS

Admissibility, **Rule 410**

Inadmissibility, **Rule 410**

PREJUDICE

Bias or Prejudice, generally, this index

PRELIMINARY QUESTIONS

Generally, **Rule 104**

Application of rules, **Rule 101**

PRESENCE

Parties, **Rule 615**

Presence of jury, generally, Jury this index

Witnesses, other testimony, **Rule 615**

PRESENT SENSE IMPRESSIONS

Generally, **Rule 803(1)**

PRESUMPTIONS

Civil actions and proceedings, **Rule 301**

Self-authenticating evidence, law, creation, **Rule 902**

PRIOR CONVICTIONS

Generally, **Rule 609**

Hearsay exceptions, **Rule 803(22)**

PRIOR STATEMENTS

Nonhearsay, **Rule 801(d)**

Examination of witnesses, **Rule 613, Rule 801(d)**

PRIOR TESTIMONY

Generally, **Rule 804(b)(1)**

PRIVILEGES AND IMMUNITIES

Generally, **Rule 501, Rule 804(a)(1)**

Application of rules, **Rule 101**

Preliminary questions, **Rule 104**

PROBATION AND PAROLE

Actions and proceedings, application of rules, **Rule 101**

PRODUCTION OF DOCUMENTS AND THINGS

Duplicates, **Rule 1003**

Originals, **Rule 1002**

Unavailability of originals, evidence of contents, **Rule 1004**

Privileges and immunities, **Rule 501**
Witnesses, writings or objects used to refresh memory, **Rule 612**

PROPERTY

Damage, expenses and expenditures, payment, admissibility, **Rule 409**
Ownership of property,
 Proving, **Rule 407**
Statements or records affecting, hearsay exceptions, **Rule 803(14), Rule 803(15)**
Records and recordation, hearsay exception, **Rule 803**

PUBLIC POLICY

Construction of rules, **Rule 102**

PUBLIC RECORDS

Records and recordation, generally, this index

RAPE

Past Sexual conduct, admissibility, **Rule 412**

REAL ESTATE

Property, generally, this index

RECOLLECTION

Recorded, **Rule 803(5)**
Refreshing, **Rule 612**

RECORDINGS

Evidence, **Rule 106**

RECORDS AND RECORDATION

 Generally, **Rule 1001 et seq.**
Absent business record entry, proving; hearsay exception, **Rule 803(7)**
Absent public record or entry, proving; hearsay exception, **Rule 803(10)**
Ancient documents, hearsay exception, **Rule 803(16)**
Authentication and identification, **Rule 901**
 Self-authentication, **Rule 902**
Best evidence rule, **Rule 1002**
Certified copies, official records, **Rule 1005**
Definitions, **Rule 1001**
Disclosure, **Rule 106**
Foreign records, self-authentication, **Rule 902**
Hearsay exceptions, types of records, **Rule 803**
Identification and authentication, **Rule 901**
Insurance policies, **Rule 411**
Introduction, **Rule 106**
Lost, **Rule 1004**
Objections, **Rule 103**
Offers of proof, inclusion, **Rule 103**
Official record, certified copies, **Rule 1005**
Originals, **Rule 1002**
 Existence, determination trier of fact, **Rule 1008**
 Lost or destroyed, **Rule 1004**
Partial statements, introduction, consideration of complete writings, **Rule 106**
Public,
 Admissibility of copies, **Rule 1005**
 Hearsay exceptions, **Rule 803(8), Rule 803(10)**

Public records, **Rule 1005**

Self-authentication, **Rule 902**

Statements of records affecting, hearsay exceptions, **Rule 803(14), Rule 803(15)**

Summaries, **Rule 1006**

REHABILITATION

Certificate of, admissibility as evidence, **Rule 609**

Evidence, impeachment, **Rule 609**

RELATED STATEMENTS OR WRITINGS

Generally, **Rule 106**

RELEVANCY

Generally, **Rule 401 et seq.**

Admissibility, **Rule 402**

Character evidence, **Rule 404 et seq.**

Compromise offers, **Rule 408**

Conditioned on fact, preliminary questions, **Rule 104**

Defined, **Rule 401**

Exclusion, grounds, **Rule 403**

Irrelevant, inadmissibility, **Rule 402**

Medical expenses,

Offer to pay, **Rule 409**

Statement of charges, **Rule 413**

Past sexual conduct, **Rule 412**

Please, **Rule 410**

Subsequent remedial measures, **Rule 407**

RELIGION

Beliefs and opinions, credibility, admissibility, **Rule 610**

Records, hearsay exceptions, **Rule 803(11)**

REMEDIAL MEASURES

Subsequent, **Rule 407**

REPAIR RULE

Generally, **Rule 407**

RES GESTAE

Generally, **Rule 803(1)**

REVIEW AND APPEAL

Erroneous rulings, **Rule 103**

Impeachment of witnesses, prior convictions, effect **Rule 609**

ROUTINE PRACTICE

Generally, **Rule 406**

RULES OF EVIDENCE, Rule 101 et seq.

Construction, **Rule 102**

Exceptions, **Rule 101**

Rules review committee, **Rule 1101**

RULES ON EVIDENCE

Generally, **Rule 103**

SEARCHES AND SEIZURES

Warrants, issuance, applicability of rules, **Rule 101**

SELF-INCRIMINATION

Privileges and immunities, **Rule 501**

SENTENCE AND PUNISHMENT

Application of rules, **Rule 101**

SEXUAL CONDUCT

Past sexual conduct, **Rule 412**

SMALL CLAIMS COURTS

Evidence rules, exemption, **Rule 101**

SPONTANEOUS EXCLAMATIONS

Generally, **Rule 803(2)**

STATE

Prosecution. Criminal Actions and Proceedings, generally, this index

STATE AGENCIES

Records and recordation,

Hearsay exceptions, **Rule 803(8), Rule 803(10)**

STATE OF MIND

Generally, **Rule 803(3)**

STATEMENTS

Defined, **Rule 801**

Nonhearsay statements, **Rule 801**

Statements against interest, **Rule 801**

STATUTES

Judicial notice, **Rule 201**

SUMMARIES

Records and recordation, **Rule 1006**

SUMMONS

Criminal summons, issuance application of rules, **Rule 101**

TAPE AND SOUND RECORDINGS

Evidence, **Rule 106**

TELECOMMUNICATIONS

Telephone conversations, authentication and identification, **Rule 901**

TESTIMONY

Witnesses, generally, this index

TIME

Witnesses, impeachment, prior convictions, time limit, **Rule 609**

TREATISES

Expert witnesses, hearsay exception, **Rule 803(18)**

TRIAL

Instructions to jury,

Judicial notice, **Rule 201**

Limited admissibility, **Rule 105**

Privilege claim, inferences, **Rule 501**

Preliminary questions, **Rule 104**

Verdicts,

Impeachment testimony by jurors, **Rule 606**

Witnesses, generally, this index

ULTIMATE ISSUE PRECLUSION

Generally, **Rule 704**

UNAVAILABILITY OF WITNESS

Defined, **Rule 804**

USAGE OF TRADE

Customs, evidence of, **Rule 406**

UTTERANCES, EXCITED

Generally, **Rule 803(2)**

VERDICTS

Validity, inquiry, testimony of jurors, **Rule 606**

VICTIMS OF CRIME

Character, admissibility, **Rule 404**

Past sexual conduct, admissibility, **Rule 412**

VITAL STATISTICS

Hearsay exceptions, **Rule 803(9)**

VOICES

Identification, **Rule 901**

WAIVER

Privileges and immunities, Voluntary disclosure, **Rule 501**

WARRANTS

Arrest, issuance, application of rules, **Rule 101**

Searches and seizures, issuance, application of rules, **Rule 101**

WEIGHT OF EVIDENCE

Preliminary questions, **Rule 104**

WITNESSES

Generally, **Rule 702 et seq.**

Accused, preliminary questions, cross-examinations, **Rule 104**

Admissions, written, **Rule 1007**

Authentication, **Rule 901**

Calling by court and jury, **Rule 614**

Character and reputation, **Rule 404**

Impeachment, **Rule 608**

Competency, **Rule 601 et seq.**

Judge as witness, **Rule 605**

Conduct of witness, **Rule 608**
Convictions, **Rule 609**
Court, calling and interrogation, **Rule 614**
Credibility, **Rule 607 et seq.**
 Bias, prejudice or interest, **Rule 616**
 Character and conduct, **Rule 608**
 Conviction of crime, **Rule 609**
 Hearsay declarant, **Rule 806**
Cross-examination,
 Expert witnesses, **Rule 705**
 Leading questions, **Rule 611**
 Scope, **Rule 611**
Death, unavailability to testify, **Rule 804(a)(4)**
Declarants, hearsay, generally, this index
Declarations against interest, concerning, **Rule 804(b)(3)**
Defendant as witness,
 Preliminary matters, cross-examination limitations, **Rule 611**
Examination, **Rule 611 et seq.**
 Court and jury, by, **Rule 614**
Exclusion, **Rule 615**
Expert Witnesses, generally, this index
Eyewitnesses, habit or routine practice, corroboration, **Rule 406**
Failure to appear, **Rule 804(a)(5)**
Former testimony, hearsay exception, **Rule 804(b)(1)**
Hearsay, generally, this index
Hostile witnesses, interrogation, **Rule 611**
Hypnosis, remembrance during, **Rule 602**
Illness, unavailability to testify, **Rule 804(a)(4)**
Impeachment, **Rule 607 et seq.**
 Convicted of crime, **Rule 609**
Inconsistent statements, **Rule 613**
Interrogation, **Rule 611**
Judge as witness, competency, **Rule 605**
Juror as witness, competency, **Rule 606**
Jury interrogation, **Rule 614**
Lay opinion testimony, **Rule 701**
 Legal conclusion prohibition, **Rule 704**
Ultimate issue, **Rule 704**
Memory,
 Lack of, **Rule 804(a)(3)**
 Refreshing, **Rule 612**
Oaths and affirmations, **Rule 603**
Opinion and expert testimony, **Rule 701 et seq.**
 Lay witness, **Rule 701**
 Legal conclusion prohibition, **Rule 704**
 Ultimate issue, **Rule 704**
Personal knowledge of subject matter, **Rule 602**
Preliminary hearings, **Rule 804(b)(1)**
Preliminary questions, **Rule 104**
Presence, testimony of other witnesses, **Rule 615**
Prior statements, **Rule 613, Rule 801**
Prior testimony, hearsay exception, **Rule 804(b)(1)**
Privileged communications, **Rule 501**
Qualifications, **Rule 104**
Refreshing recollection, **Rule 612**
Refusal to testify, **Rule 804(a)(2)**

Reputation evidence, impeachment purpose, **Rule 608**
Sequestration, **Rule 615**
Sexual conduct, past, admissibility, **Rule 412**
Statements against interest, **Rule 801**
Subscribing witnesses, authentication, testimony, **Rule 903**
Unavailable witnesses, **Rule 804(a)**
Writing or object used to refresh memory, **Rule 612**
Written admissions, **Rule 1007**

WORDS AND PHRASES

Burden of proof, **Rule 301**
Declarant, **Rule 801**
Duplicate writings or recordings, **Rule 1001**
Hearsay evidence, **Rule 801**
Judge, **Rule 101**
Original writings or recordings, **Rule 1001**
Photographs, evidence, **Rule 1001**
Recordings, evidence, **Rule 1001**
Relevant evidence, **Rule 401**
Statement, **Rule 801**
Unavailability as witness, **Rule 804**
Writings, **Rule 1001**

WRITINGS

Generally, **Rule 1001 et seq.**
Authentication, **Rule 901**
Self-authentication, **Rule 902**
Defined, **Rule 1001**
Disclosure, **Rule 106**
Duplicates, admissibility, **Rule 1003**
Introduction, consideration of contemporaneous writings, **Rule 106**
Original, **Rule 1002**
Existence, determination, trier of fact, **Rule 1008**
Lost or destroyed, **Rule 1004**
Partial statements, introduction, consideration of complete writings, **Rule 106**
Recorded recollection, hearsay exception, **Rule 803(5)**
Witnesses using to refresh memory, **Rule 612**

