

In the
Indiana Supreme Court



CAUSE NUMBER: 94S00-1301-MS-30

ORDER AMENDING INDIANA RULES OF EVIDENCE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court’s inherent authority to supervise the administration of all courts of this state, the Indiana Rules of Evidence are amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

<p><u>Rule 101. Scope</u> These rules govern proceedings in the courts of this State to the extent and with the exceptions stated in this rule.</p>	<p><u>Rule 101. Scope</u> <u>(a) Scope.</u> These rules apply to proceedings in the courts of this State to the extent and with the exceptions stated in this rule.</p>
	<p><u>(b) General Applicability.</u> 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.</p>
<p><u>(b) Rules of Privilege.</u> The rules and laws with respect to privileges apply at all stages of all actions, cases, and proceedings.</p>	<p><u>(c) Rules of Privilege.</u> The rules and laws with respect to privileges apply at all stages of all actions, cases, and proceedings.</p>

<p>(e) Rules Inapplicable. The rules, other than those with respect to privileges, do not apply in the following situations:</p> <p>(1) <i>Preliminary questions of fact.</i> 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).</p> <p>(2) <i>Miscellaneous proceedings.</i> 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.</p>	<p><u>(d) Rules Inapplicable. The rules, other than those with respect to privileges, do not apply in the following situations:</u></p> <p><u>(1) <i>Preliminary questions of fact.</i> The determination of a question of fact preliminary to the admission of evidence, where the court determines admissibility under Rule 104(a).</u></p> <p><u>(2) <i>Miscellaneous proceedings.</i> Proceedings relating to extradition, sentencing, probation, or parole, issuance of criminal summonses or warrants for arrest or search, preliminary juvenile matters, direct contempt, bail hearings, small claims, and grand jury proceedings.</u></p>
<p><u>Rule 102. Purpose and Construction</u></p> <p>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.</p>	<p><u>Rule 102. Purpose</u></p> <p>These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.</p>
<p><u>Rule 103. Rulings on Evidence</u></p> <p>(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</p> <p>(1) <i>Objection.</i> 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</p> <p>(2) <i>Offer of proof.</i> 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.</p>	<p><u>Rule 103. Rulings on Evidence</u></p> <p><u>(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:</u></p> <p><u>(1) if the ruling admits evidence, a party, on the record:</u></p> <p><u>(A) timely objects or moves to strike; and</u></p> <p><u>(B) states the specific ground, unless it was apparent from the context.</u></p> <p><u>(2) If the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.</u></p>
	<p><u>(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record at trial a party need not renew an objection or offer of proof to preserve a claim of error for appeal.</u></p>

<p>(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.</p>	<p><u>(c) Court’s Statement About the Ruling; Directing an Offer of Proof.</u> The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.</p>
<p>(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.</p>	<p><u>(d) Preventing the Jury from Hearing Inadmissible Evidence.</u> To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.</p>
<p>(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.</p>	<p><u>(e) Taking Notice of Fundamental Error.</u> A court may take notice of a fundamental error affecting a substantial right, even if the claim of error was not properly preserved.</p>
	<p><u>(f) Preponderance of Evidence.</u> When deciding whether to admit evidence, the court must decide any question of fact by a preponderance of the evidence.</p>
<p><u>Rule 104. Preliminary Questions</u> (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, the Court is not bound by the Rules of Evidence, except those with respect to privileges. Where a determination of admissibility under this paragraph requires resolution of a question of fact, the question shall be resolved by the preponderance of the evidence.</p>	<p><u>Rule 104. Preliminary Questions</u> <u>(a) In General.</u> The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.</p>
<p>(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.</p>	<p><u>(b) Relevance That Depends on a Fact.</u> When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.</p>

<p>(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.</p>	<p><u>(c) Conducting a Hearing So That the Jury Cannot Hear It. The court must conduct any hearing on a preliminary question so that the jury is not present and cannot hear if:</u></p> <ol style="list-style-type: none"> <u>(1) the hearing involves the admissibility of a confession;</u> <u>(2) a defendant in a criminal case is a witness and so requests; or</u> <u>(3) justice so requires.</u>
<p>(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.</p>	<p><u>(d) Cross-Examining a Defendant in a Criminal Case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.</u></p>
<p>(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.</p>	<p><u>(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.</u></p>
<p><u>Rule 105. Limited Admissibility</u></p> <p>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.</p>	<p><u>Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes</u></p> <p><u>If the court admits evidence that is admissible against a party or for a purpose-- but not against another party or for another purpose-- the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.</u></p>
<p><u>Rule 106. Remainder of or Related Writing or Recorded Statements</u></p> <p>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.</p>	<p><u>Rule 106. Remainder of or Related Writing or Recorded Statements</u></p> <p><u>If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part— or any other writing or recorded statement—that in fairness ought to be considered at the same time.</u></p>

<p><u>Rule 201. Judicial Notice</u></p> <p>(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.</p>	<p><u>Rule 201. Judicial Notice</u></p> <p><u>(a) Kinds of Facts That May Be Judicially Noticed.</u> The court may judicially notice:</p> <p><u>(1) a fact that:</u></p> <p><u>(A) is not subject to reasonable dispute because it is generally known within the trial court’s territorial jurisdiction, or</u></p> <p><u>(B) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.</u></p> <p><u>(2) the existence of:</u></p> <p><u>(A) published regulations of governmental agencies;</u></p> <p><u>(B) ordinances of municipalities; or</u></p> <p><u>(C) records of a court of this state.</u></p>
<p>(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, (5) records of a court of this state, and (6) laws of other governmental subdivisions of the United States or of any state, territory or other jurisdiction of the United States.</p>	<p><u>(b) Kinds of Laws That May Be Judicially Noticed.</u> A court may judicially notice a law, which includes:</p> <p><u>(1) the decisional, constitutional, and public statutory law;</u></p> <p><u>(2) rules of court;</u></p> <p><u>(3) published regulations of governmental agencies;</u></p> <p><u>(4) codified ordinances of municipalities;</u></p> <p><u>(5) records of a court of this state; and</u></p> <p><u>(6) laws of other governmental subdivisions of the United States or any state, territory or other jurisdiction of the United States.</u></p>
<p>(c) When Discretionary. A court may take judicial notice, whether requested or not.</p>	<p><u>(c) Taking Notice.</u> The court:</p> <p><u>(1) may take judicial notice on its own; or</u></p>
<p>(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.</p>	<p><u>(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.</u></p> <p><u>(d) Timing.</u> The court may take judicial notice at any stage of the proceeding.</p>
<p>(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.</p>	<p><u>(e) Opportunity to Be Heard.</u> On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.</p>
<p>(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.</p>	

<p>(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.</p>	<p><u>(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.</u></p>
<p>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.</p>	<p><u>Rule 301. Presumptions in Civil Cases Generally</u> <u>In a civil case, unless a constitution, statute, judicial decision, or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally. A presumption has continuing effect even though contrary evidence is received.</u></p>
<p>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.</p>	<p><u>Rule 401. Test For Relevant Evidence</u> <u>Evidence is relevant if:</u> <u>(a) it has any tendency to make a fact more or less probable than it would be without the evidence;</u> <u>and</u> <u>(b) the fact is of consequence in determining the action.</u></p>
<p>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.</p>	<p><u>Rule 402. General Admissibility of Relevant Evidence</u> <u>Relevant evidence is admissible unless any of the following provides otherwise:</u> <u>(a) the United States Constitution;</u> <u>(b) the Indiana constitution;</u> <u>(c) a statute not in conflict with these rules;</u> <u>(d) these rules; or</u> <u>(e) other rules applicable in the courts of this state.</u> <u>Irrelevant evidence is not admissible.</u></p>

<p><u>Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay</u></p> <p>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.</p>	<p><u>Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, or Other Reasons</u></p> <p>The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.</p>
<p><u>Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes</u></p> <p><u>(a) Character Evidence Generally.</u> 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:</p>	<p><u>Rule 404. Character Evidence; Crimes or Other Acts</u></p> <p><u>(a) Character Evidence.</u></p> <p><u>(1) Prohibited Uses.</u> Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.</p>
<p><u>(1) Character of accused.</u> Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;</p>	<p><u>(2) Exceptions for a Defendant or Victim in a Criminal Case.</u> The following exceptions apply in a criminal case:</p> <p><u>(A)</u> a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;</p>
<p><u>(2) Character of victim.</u> 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;</p>	<p><u>(B)</u> subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it; and</p> <p><u>(C)</u> in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.</p>
<p><u>(3) Character of witness.</u> Evidence of the character of a witness, as provided in Rules 607, 608 and 609.</p>	<p><u>(3) Exceptions for a Witness.</u> Evidence of a witness's character may be admitted under Rules 607, 608, and 609.</p>

<p>(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.</p>	<p><u>(b) Crimes, Wrongs, or Other Acts.</u> <u>(1) Prohibited Uses.</u> Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. <u>(2) Permitted Uses; Notice in a Criminal Case.</u> This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must: (A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and (B) do so before trial--or during trial if the court, for good cause, excuses lack of pretrial notice.</p>
<p><u>Rule 405. Methods of Proving Character</u> <u>(a) Reputation or Opinion.</u> 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.</p>	<p><u>Rule 405. Methods of Proving Character</u> <u>(a) By Reputation or Opinion.</u> When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct. If, in a criminal case, a defendant provides reasonable pretrial notice that the defendant intends to offer character evidence, the prosecution must provide the defendant with any relevant specific instances of conduct that the prosecution may use on cross-examination.</p>
<p><u>(b) Specific Instances of Conduct.</u> 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.</p>	<p><u>(b) By Specific Instances of Conduct.</u> When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.</p>

<p><u>Rule 406. Habit; Routine Practice</u> 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.</p>	<p><u>Rule 406. Habit; Routine Practice</u> Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.</p>
<p><u>Rule 407. Subsequent Remedial Measures</u> 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.</p>	<p><u>Rule 407. Subsequent Remedial Measures</u> When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:</p> <ul style="list-style-type: none"> • <u>negligence;</u> • <u>culpable conduct;</u> • <u>a defect in a product or its design; or</u> • <u>a need for a warning or instruction.</u> <p>But the court may admit this evidence for another purpose, such as impeachment or –if disputed – proving ownership, control, or the feasibility of precautionary measures.</p>
<p><u>Rule 408. Compromise and Offers to Compromise</u> 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.</p>	<p><u>Rule 408. Compromise Offers and Negotiations</u> <u>(a) Prohibited Uses.</u> Evidence of the following is not admissible on behalf of any party either to prove or disprove the validity or amount of a <u>disputed claim or to impeach by a prior inconsistent statement or a contradiction:</u></p> <ol style="list-style-type: none"> (1) <u>furnishing, promising, or offering, or accepting, promising to accept, or offering to accept a valuable consideration in order to compromise the claim; and</u> (2) <u>conduct or a statement made during compromise negotiations about the claim.</u> <u>Compromise negotiations include alternative dispute resolution.</u> <p><u>(b) Exceptions.</u> The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.</p>

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.

Rule 409. Payment or Offer to Pay Medical or Other Expenses

Evidence of paying, furnishing, promising to pay, or offering to pay:

- (a) medical, hospital, or similar expenses resulting from an injury; or
- (b) damage to property,

is not admissible to prove liability for the injury or damages.

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.

Rule 410. Withdrawn Pleas and Offers

(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea or admission of the charge that was later withdrawn;
- (2) a nolo contendere plea;
- (3) an offer to plead to the crime charged or to any other crime, made to one with authority to enter into or approve a binding plea agreement; or
- (4) a statement made in connection with any of the foregoing withdrawn pleas or offers to one with authority to enter into a binding plea agreement or who has a right to object to, approve, or reject the agreement.

(b) Exceptions. The court may admit such a plea, offer, or statement:

- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
- (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

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.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

<p><u>Rule 412. Evidence of Past Sexual Conduct</u> (a) In a prosecution for a sex crime, evidence of the past sexual conduct of a victim or witness may not be admitted, except:</p> <p>(1) evidence of the victim's or of a witness's past sexual conduct with the defendant;</p>	<p><u>Rule 412. Sex-Offense Cases: The Victim's or Witness's Sexual Behavior or Predisposition</u> (a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:</p> <p>(1) evidence offered to prove that a victim or witness engaged in other sexual behavior; or (2) evidence offered to prove a victim's or witness's sexual predisposition.</p>
<p>(2) evidence which shows that some person other than the defendant committed the act upon which the prosecution is founded;</p> <p>(3) evidence that the victim's pregnancy at the time of trial was not caused by the defendant; or</p> <p>(4) evidence of conviction for a crime to impeach under Rule 609.</p>	<p><u>(b) Exceptions.</u> (1) Criminal Cases. The court may admit the following evidence in a criminal case:</p> <p>(A) evidence of specific instances of a victim's or witness's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;</p> <p>(B) evidence of specific instances of a victim's or witness's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and</p> <p>(C) evidence whose exclusion would violate the defendant's constitutional rights.</p>
	<p>(2) Civil Cases. In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.</p>
<p>(b) If a party proposes to offer evidence under this rule, the following procedure must be followed:</p> <p>(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.</p>	<p><u>(c) Procedure to Determine Admissibility.</u> (1) Motion. If a party intends to offer evidence under Rule 412(b), the party must:</p> <p>(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;</p> <p>(B) do so at least ten (10) days before trial unless the court, for good cause, sets a different time;</p> <p>(C) serve the motion on all parties; and</p> <p>(D) notify the victim or, when appropriate, the victim's guardian or representative.</p>

<p>(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.</p>	<p><u>(2) <i>Hearing.</i> Before admitting evidence under this rule, the court must conduct an <i>in camera</i> hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing is confidential and excluded from public access in accordance with Administrative Rule 9.</u></p>
<p>(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.</p>	
	<p><u>(d) Definition of "Victim." In this rule, "victim" includes an alleged victim.</u></p>
<p><u>Rule 413. Medical Expenses</u> 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.</p>	<p><u>Rule 413. Medical Expenses</u> <u>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 are prima facie evidence that the charges are reasonable.</u></p>
<p><u>Rule 501. Privileges</u> (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:</p>	<p><u>Rule 501. Privileges</u> <u>(a) General Rule. Except as provided by constitution, statute, any rules promulgated by the Indiana Supreme Court, or common law, no person has a privilege to:</u></p>
<p>(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.</p>	<p><u>(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.</u></p>

<p>(b) Waiver of Privilege by Voluntary Disclosure. Subject to the provisions of Rule 502, a person with a privilege against disclosure waives the privilege if the person or person's predecessor while holder of the privilege voluntarily and intentionally discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.</p> <p>(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.</p>	<p><u>(b) Waiver of Privilege by Voluntary Disclosure.</u> Subject to the provisions of Rule 502, a person with a privilege against disclosure waives the privilege if the person or person's predecessor while holder of the privilege voluntarily and intentionally discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.</p> <p><u>(c) Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege.</u> A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.</p>
<p>(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:</p>	<p><u>(d) Comment Upon or Inference From Claim of Privilege; Instruction.</u> Except with respect to a claim of the privilege against self-incrimination in a civil case:</p>
<p>(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 therefrom.</p>	<p><u>(1) Neither the judge nor counsel may comment upon the claim of a privilege, whether in the present proceeding or on a prior occasion. No inference may be drawn from the claim of a privilege.</u></p>
<p>(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.</p>	<p><u>(2) In jury cases, the judge, to the extent practicable, must conduct proceedings so as to allow parties and witnesses to claim privilege without the jury's knowledge.</u></p>
<p>(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 therefrom.</p>	<p><u>(3) If requested by a party against whom the jury might draw an adverse inference from a claim of privilege, the court must instruct the jury that the jury must not draw an adverse inference from the claim of privilege.</u></p>

Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) Intentional disclosure; scope of a waiver.

When a disclosure is made in a court proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information only if:

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and,
- (3) they ought in fairness to be considered together.

(b) Inadvertent disclosure. When made in a court proceeding, a disclosure does not operate as a waiver if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and,
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Indiana Rule of Trial Procedure 26(B)(5)(b).

(c) Controlling effect of a party agreement. An agreement on the effect of disclosure in a proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(d) Controlling effect of a court order. If a court incorporates into a court order an agreement between or among parties on the effect of disclosure in a proceeding, a disclosure that, pursuant to the order, does not constitute a waiver in connection with the proceeding in which the order is entered is also not a waiver in any other court proceeding.

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.

Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) Intentional disclosure; scope of a waiver.

When a disclosure is made in a court proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information only if:

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and
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(b) Inadvertent disclosure. When made in a court proceeding, a disclosure does not operate as a waiver if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and,
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Indiana Rule of Trial Procedure 26(B)(5)(b).

(c) Controlling effect of a party agreement. An agreement on the effect of disclosure in a proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(d) Controlling effect of a court order. If a court incorporates into a court order an agreement between or among parties on the effect of disclosure in a proceeding, a disclosure that, pursuant to the order, does not constitute a waiver in connection with the proceeding in which the order is entered is also not a waiver in any other court proceeding.

Rule 601. General Rule of Competency

Every person is competent to be a witness except as otherwise provided in these rules or by statute.

<p><u>Rule 602. Lack of Personal Knowledge</u> 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.</p>	<p><u>Rule 602. Lack of Personal Knowledge</u> <u>A witness may testify to a matter only if 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 consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.</u></p>
<p><u>Rule 603. Oath or Affirmation</u> 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.</p>	<p><u>Rule 603. Oath or Affirmation to Testify Truthfully</u> <u>Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.</u></p>
<p><u>Rule 604. Interpreters</u> 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.</p>	<p><u>Rule 604. Interpreters</u> <u>An interpreter must be qualified and must give an oath or affirmation to make a true translation.</u></p>
<p><u>Rule 605. Competency of Judge as Witness</u> The judge presiding at the trial may not testify in that trial as a witness. No objection need be made to preserve the point.</p>	<p><u>Rule 605. Judge's Competency as a Witness</u> <u>The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.</u></p>
<p><u>Rule 606. Competency of Juror as Witness</u> <u>(a) At the Trial.</u> 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.</p>	<p><u>Rule 606. Juror's Competency as a Witness</u> <u>(a) At the Trial.</u> <u>A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.</u></p>

(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.

(b) During an Inquiry into the Validity of a Verdict or Indictment.

(1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) Exceptions. A juror may testify about whether:

- (A) any juror's drug or alcohol use;
- (B) extraneous prejudicial information was improperly brought to the jury's attention;
- (C) an outside influence was improperly brought to bear on any juror; or
- (D) a mistake was made in entering the verdict on the verdict form.

Rule 607. Who May Impeach

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

Rule 607. Who May Impeach a Witness

Any party, including the party that called the witness, may attack the witness's credibility.

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.~~

Rule 608. A Witness's Character for Truthfulness or Untruthfulness

(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

~~**(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.~~

(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of another witness whose character the witness being cross-examined has testified about.

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.

Rule 609. Impeachment by Evidence of a Criminal Conviction

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

~~**(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.~~

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than ten (10) years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

- (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
- (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

<p>(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.</p>	<p><u>(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.</u> Evidence of a conviction is not admissible if:</p> <ul style="list-style-type: none"> <u>(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one (1) year; or</u> <u>(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.</u>
<p>(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.</p>	<p><u>(d) Juvenile Adjudications.</u> Evidence of a juvenile adjudication is admissible under this rule only if:</p> <ul style="list-style-type: none"> <u>(1) it is offered in a criminal case;</u> <u>(2) the adjudication was of a witness other than the defendant;</u> <u>(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and</u> <u>(4) admitting the evidence is necessary to fairly determine guilt or innocence.</u>
<p>(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.</p>	<p><u>(e) Pendency of an Appeal.</u> A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.</p>
<p><u>Rule 610. Religious Beliefs or Opinions</u> 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.</p>	<p><u>Rule 610. Religious Beliefs or Opinions</u> <u>Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.</u></p>

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.~~

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.~~

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

(b) **Scope of Cross-Examination.** Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

(c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

Rule 612. Writing or Object Used to Refresh Memory

(a) **Right to Inspect**

(1) 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.

(2) 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.~~

(b) Terms and Conditions of Production and Use.

(1) 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.

(2) If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection.

(3) If it is claimed that the writing or object contains matters not related to the subject matter of the testimony, the court must 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 must be preserved and made available to the appellate court in the event of an appeal.

(c) Failure to Produce or Deliver the Writing or Object.

If a writing or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court must make any order justice requires, but in criminal cases if the prosecution elects not to comply, the order must be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

Rule 613. Prior Statements of Witnesses

~~**(a) Examining Witness Concerning Prior Statement.** In examining a witness concerning a prior statement made by 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.~~

Rule 613. Witness's Prior Statement

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its content to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

~~**(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).~~

(b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

<p><u>Rule 614. Calling and Interrogation of Witnesses by Court and Jury</u></p> <p>(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.</p>	<p><u>Rule 614. Calling or Questioning a Witness</u></p> <p><u>(a) Calling by Court.</u> The court may not call a witness except in extraordinary circumstances or as provided for court-appointed experts. All parties are entitled to cross-examine any witness called by the court.</p>
<p>(b) Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party.</p>	<p><u>(b) Questioning by Court.</u> The court may question a witness regardless of who calls the witness.</p>
<p>(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.</p>	<p><u>(c) Objections.</u> A party may object to the court's calling or questioning a witness either at that time or at the next opportunity when the jury is not present.</p>
<p>(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.</p>	<p><u>(d) Questioning by Juror.</u> A juror may be permitted to propound questions to a witness by submitting them in writing to the judge. The judge will decide whether to submit the questions to the witness for answer. The parties may object to the questions at the time proposed 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.</p>
<p><u>Rule 615. Separation of Witnesses</u></p> <p>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.</p>	<p><u>Rule 615. Excluding Witnesses</u></p> <p>At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:</p> <p><u>(a)</u> a party who is a natural person; <u>(b)</u> an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney; or <u>(c)</u> a person whose presence a party shows to be essential to presenting the party's claim or defense.</p>

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.~~

Rule 616. Witness's Bias

Evidence that a witness has a bias, prejudice, or interest for or against any party may be used to attack the credibility of the witness.

Rule 617. Unrecorded Statements During Custodial Interrogation

~~(a) In a felony criminal prosecution, evidence of a statement made by a person during a Custodial Interrogation in a Place of Detention shall not be admitted against the person unless an Electronic Recording of the statement was made, preserved, and is available at trial, except upon clear and convincing proof of any one of the following:~~

~~(1) The statement was part of a routine processing or "booking" of the person; or~~

~~(2) Before or during a Custodial Interrogation, the person agreed to respond to questions only if his or her Statements were not Electronically Recorded, provided that such agreement and its surrounding colloquy is Electronically Recorded or documented in writing; or~~

~~(3) The law enforcement officers conducting the Custodial Interrogation in good faith failed to make an Electronic Recording because the officers inadvertently failed to operate the recording equipment properly, or without the knowledge of any of said officers the recording equipment malfunctioned or stopped operating; or~~

~~(4) The statement was made during a custodial interrogation that both occurred in, and was conducted by officers of, a jurisdiction outside Indiana; or~~

~~(5) The law enforcement officers conducting or observing the Custodial Interrogation reasonably believed that the crime for which the person was being investigated was not a felony under Indiana law; or~~

~~(6) The statement was spontaneous and not made in response to a question; or~~

Rule 617. Unrecorded Statements During Custodial Interrogation

(a) In a felony criminal prosecution, evidence of a statement made by a person during a Custodial Interrogation in a Place of Detention shall not be admitted against the person unless an Electronic Recording of the statement was made, preserved, and is available at trial, except upon clear and convincing proof of any one of the following:

(1) The statement was part of a routine processing or "booking" of the person; or

(2) Before or during a Custodial Interrogation, the person agreed to respond to questions only if his or her Statements were not Electronically Recorded, provided that such agreement and its surrounding colloquy is Electronically Recorded or documented in writing; or

(3) The law enforcement officers conducting the Custodial Interrogation in good faith failed to make an Electronic Recording because the officers inadvertently failed to operate the recording equipment properly, or without the knowledge of any of said officers the recording equipment malfunctioned or stopped operating; or

(4) The statement was made during a Custodial Interrogation that both occurred in, and was conducted by officers of, a jurisdiction outside Indiana; or

(5) The law enforcement officers conducting or observing the Custodial Interrogation reasonably believed that the crime for which the person was being investigated was not a felony under Indiana law; or

(6) The statement was spontaneous and not made in response to a question; or

~~(7) Substantial exigent circumstances existed which prevented the making of, or rendered it not feasible to make, an Electronic Recording of the Custodial Interrogation, or prevent its preservation and availability at trial.~~

~~(b) For purposes of this rule, “Electronic Recording” means an audio-video recording that includes at least not only the visible images of the person being interviewed but also the voices of said person and the interrogating officers; “Custodial Interrogation” means an interview conducted by law enforcement during which a reasonable person would consider himself or herself to be in custody; “Place of Detention” means a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which persons are detained in connection with criminal investigations.~~

~~(c) The Electronic Recording must be a complete, authentic, accurate, unaltered, and continuous record of a Custodial Interrogation.~~

~~(d) This Rule is in addition to, and does not diminish, any other requirement of law regarding the admissibility of a person’s statements.~~

(7) Substantial exigent circumstances existed which prevented the making of, or rendered it not feasible to make, an Electronic Recording of the Custodial Interrogation, or prevent its preservation and availability at trial.

(b) For purposes of this rule, “Electronic Recording” means an audio-video recording that includes at least not only the visible images of the person being interviewed but also the voices of said person and the interrogating officers; “Custodial Interrogation” means an interview conducted by law enforcement during which a reasonable person would consider himself or herself to be in custody; and “Place of Detention” means a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which persons are detained in connection with criminal investigations.

(c) The Electronic Recording must be a complete, authentic, accurate, unaltered, and continuous record of a Custodial Interrogation.

(d) This rule is in addition to, and does not diminish, any other requirement of law regarding the admissibility of a person’s statements.

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.~~

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- and
- (b) helpful to a clear understanding of the witness's testimony or to a determination of a fact in issue.

<p><u>Rule 702. Testimony by Experts</u> (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.</p>	<p><u>Rule 702. Testimony by Expert Witnesses</u> <u>(a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.</u></p>
<p>(b) Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable.</p>	<p><u>(b) Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles.</u></p>
<p><u>Rule 703. Bases of Opinion Testimony by Experts</u> 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.</p>	<p><u>Rule 703. Bases of an Expert's Opinion Testimony</u> <u>An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. Experts may testify to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field.</u></p>
<p><u>Rule 704. Opinion on Ultimate Issue</u> (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.</p>	<p><u>Rule 704. Opinion on an Ultimate Issue</u> <u>(a) In General—Not Automatically Objectionable.</u> Testimony in the form of an opinion or inference otherwise admissible is not objectionable just because it embraces an ultimate issue.</p>
<p>(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.</p>	<p><u>(b) Exception.</u> 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.</p>
<p><u>Rule 705. Disclosure of Facts or Data Underlying Expert Opinion</u> The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.</p>	<p><u>Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion</u> <u>Unless the court orders otherwise, an expert may state an opinion and give the reasons for it without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross examination.</u></p>

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~~

Rule 801. Definitions

The following definitions apply under this Article:

(a) **Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct if the person intended it as an assertion.

(b) **Declarant.** “Declarant” means the person who made the statement.

(c) **Hearsay.** “Hearsay” means a statement that:
(1) is not made by the declarant while testifying at the trial or hearing; and
(2) is offered in evidence to prove the truth of the matter asserted.

(d) **Statements That Are Not Hearsay.** Notwithstanding Rule 801(c), a statement is not hearsay if:

- (1) *A Declarant-Witness’s Prior Statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
(A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
(B) is consistent with the declarant’s testimony, and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
(C) is an identification of a person shortly after perceiving the person.

<p>(2) <i>Statement by party opponent.</i> 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.</p>	<p><u>(2) <i>An Opposing Party's Statement.</i> The statement is offered against an opposing party and:</u></p> <p><u>(A) was made by the party in an individual or representative capacity;</u> <u>(B) is one the party manifested that it adopted or believed to be true;</u> <u>(C) was made by a person whom the party authorized to make a statement on the subject;</u> <u>(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or</u> <u>(E) was made by the party's coconspirator during and in furtherance of the conspiracy.</u></p> <p><u>The statement does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).</u></p>
<p><u>Rule 802. Hearsay Rule</u> Hearsay is not admissible except as provided by law or by these rules.</p>	<p><u>Rule 802. The Rule Against Hearsay</u> <u>Hearsay is not admissible unless these rules or other law provides otherwise.</u></p>
<p><u>Rule 803. Hearsay Exceptions: Availability of Declarant Immaterial</u> The following are not excluded by the hearsay rule, even though the declarant is available as a witness.</p>	<p><u>Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness</u> <u>The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:</u></p>
<p>(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.</p>	<p><u>(1) Present Sense Impression. A statement describing or explaining an event, condition or transaction, made while or immediately after the declarant perceived it.</u></p>
<p>(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.</p>	<p><u>(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.</u></p>

<p>(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.</p>	<p><u>(3) Then-Existing Mental, Emotional, or Physical Condition.</u> <u>A statement of the declarant’s then-existing state of mind (such as motive, design, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of the declarant’s will.</u></p>
<p>(4) Statements for Purposes of Medical Diagnosis or Treatment. Statements made by persons who are seeking 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.</p>	<p><u>(4) Statement Made for Medical Diagnosis or Treatment.</u> <u>A statement that:</u> <u>(A) is made by a person seeking medical diagnosis or treatment;</u> <u>(B) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and</u> <u>(C) describes medical history; past or present symptoms, pain or sensations; their inception; or their general cause.</u></p>
<p>(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.</p>	<p><u>(5) Recorded Recollection.</u> <u>A record that:</u> <u>(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;</u> <u>(B) was made or adopted by the witness when the matter was fresh in the witness’s memory; and</u> <u>(C) accurately reflects the witness’s knowledge.</u> <u>If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.</u></p>

(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.

(6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

- (A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;
- (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
- (C) making the record was a regular practice of that activity;
- (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(9) or (10) or with a statute permitting certification; and
- (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(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.

(7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:

- (A) the evidence is admitted to prove that the matter did not occur or exist;
- (B) a record was regularly kept for a matter of that kind; and
- (C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

<p>(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.</p>	<p><u>(8) Public Records.</u> <u>(A) A record or statement of a public office if:</u> <u>(i) it sets out:</u> <u>(a) the office's regularly conducted and regularly recorded activities;</u> <u>(b) a matter observed while under a legal duty to [observe and] report;</u> <u>or</u> <u>(c) factual findings from a legally authorized investigation; and</u> <u>(ii) neither the source of information nor other circumstances indicate a lack of trustworthiness.</u> <u>(B) Notwithstanding subparagraph (A), the following are not excepted from the hearsay rule:</u> <u>(i) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case;</u> <u>(ii) investigative reports prepared by or for a public office, when offered by it in a case in which it is a party;</u> <u>(iii) factual findings offered by the government in a criminal case; and</u> <u>(iv) factual findings resulting from a special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.</u></p>
<p>(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.</p>	<p><u>(9) Public Records of Vital Statistics.</u> <u>A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.</u></p>
<p>(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.</p>	<p><u>(10) Absence of a Public Record.</u> <u>Testimony or a certification under Rule 902 that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:</u> <u>(A) the record or statement does not exist; or</u> <u>(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.</u></p>

<p>(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.</p>	<p><u>(11) Records of Religious Organizations Concerning Personal or Family History.</u> A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.</p>
<p>(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.</p>	<p><u>(12) Certificates of Marriage, Baptism, and Similar Ceremonies.</u> A statement of fact contained in a certificate:</p> <ul style="list-style-type: none"> <u>(A) made by a person who is authorized by a religious organization or by law to perform the act certified;</u> <u>(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and</u> <u>(C) purporting to have been issued at the time of the act or within a reasonable time after it.</u>
<p>(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.</p>	<p><u>(13) Family Records.</u> A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn, crypt, or burial marker.</p>
<p>(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.</p>	<p><u>(14) Records of Documents That Affect an Interest in Property.</u> The record of a document that purports to establish or affect an interest in property if:</p> <ul style="list-style-type: none"> <u>(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;</u> <u>(B) the record is kept in a public office; and</u> <u>(C) a statute authorizes recording documents of that kind in that office.</u>
<p>(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.</p>	<p><u>(15) Statements in Documents That Affect an Interest in Property.</u> A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose- unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.</p>

<p>(16) Statements in Ancient Documents. Statements in a document in existence thirty years or more, the authenticity of which is established.</p>	<p><u>(16) Statements in Ancient Documents.</u> A statement in a document that is at least thirty (30) years old and whose authenticity is established.</p>
<p>(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.</p>	<p><u>(17) Market Reports and Similar Commercial Publications.</u> Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.</p>
<p>(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.</p>	<p><u>(18) Statements in Learned Treatises, Periodicals, or Pamphlets.</u> A statement contained in a treatise, periodical, or pamphlet if:</p> <p style="padding-left: 40px;">A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination;</p> <p style="padding-left: 40px;">(B) the statement contradicts the expert's testimony on a subject of history, medicine, or other science or art; and</p> <p style="padding-left: 40px;">(C) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.</p> <p>If admitted, the statement may be read into evidence but not received as an exhibit.</p>
<p>(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.</p>	<p><u>(19) Reputation Concerning Personal or Family History.</u> A reputation among a person's family by blood, adoption, or marriage—or among a person's associates or in the community—concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.</p>
<p>(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.</p>	<p><u>(20) Reputation Concerning Boundaries or General History.</u> A reputation in a community—arising before the controversy—concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.</p>
<p>(21) Reputation as to Character. Reputation of a person's character among associates or in the community.</p>	<p><u>(21) Reputation Concerning Character.</u> A reputation among a person's associates or in the community concerning the person's character.</p>

<p>(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.</p>	<p><u>(22) Judgment of a Previous Conviction.</u> <u>Evidence of a final judgment of conviction if:</u> <u>(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;</u> <u>(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;</u> <u>(C) the evidence is admitted to prove any fact essential to the judgment; and</u> <u>(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.</u> <u>The pendency of an appeal may be shown but does not affect admissibility.</u></p>
<p>(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.</p>	<p><u>(23) Judgments Involving Personal, Family, or General History or a Boundary.</u> A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter: <u>(A) was essential to the judgment; and</u> <u>(B) could be proved by evidence of reputation.</u></p>
<p><u>Rule 804. Hearsay Exceptions: Declarant Unavailable</u> <u>(a) Definition of Unavailability.</u> “Unavailability as a witness” includes situations in which the declarant</p>	<p><u>Rule 804. Exceptions to the Rule Against Hearsay - When the Declarant Is Unavailable as a Witness</u> <u>(a) Criteria for Being Unavailable.</u> A declarant is considered to be unavailable as a witness if the declarant:</p>
<p>(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</p>	<p><u>(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;</u></p>
<p>(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</p>	<p><u>(2) refuses to testify about the subject matter despite a court order to do so;</u></p>
<p>(3) testifies to a lack of memory of the subject matter of the declarant’s statement; or</p>	<p><u>(3) testifies to not remembering the subject matter;</u></p>
<p>(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</p>	<p><u>(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or</u></p>

<p>(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.</p>	<p><u>(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:</u> <u>(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (5); or</u> <u>(B) the declarant's attendance or testimony, in the case of a hearsay exception under rule 804(b)(2), (3), or (4).</u></p>
<p>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.</p>	<p><u>But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.</u></p>
<p>(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness.</p>	<p><u>(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness.</u></p>
<p>(1) <i>Former testimony.</i> 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.</p>	<p><u>(1) <i>Former Testimony.</i> Testimony that:</u> <u>(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and</u> <u>(B) is now offered against a party who had - or, in a civil case, whose predecessor in interest had - an opportunity and similar motive to develop it by direct, cross-, or redirect examination.</u></p>
<p>(2) <i>Statement under belief of impending death.</i> 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.</p>	<p><u>(2) <i>Statement Under the Belief of Imminent Death.</i> A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.</u></p>

<p>(3) <i>Statement against interest.</i> 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.</p>	<p><u>(3) <i>Statement Against Interest.</i> A statement that that a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability.</u> <u>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.</u></p>
<p>(4) <i>Statement of personal or family history.</i> (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.</p>	<p><u>(4) <i>Statement of Personal or Family History.</i> A statement about:</u> <u>(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or</u> <u>(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.</u></p>
<p>(5) <i>Forfeiture by wrongdoing.</i></p> <p>A statement offered against a party that has engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness for the purpose of preventing the declarant from attending or testifying.</p>	<p><u>(5) <i>Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.</i></u> <u>A statement offered against a party that has engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness for the purpose of preventing the declarant from attending or testifying.</u></p>

<p><u>Rule 805. Hearsay Within Hearsay</u> 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.</p>	<p><u>Rule 805. Hearsay Within Hearsay</u> <u>Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.</u></p>
<p><u>Rule 806. Attacking and Supporting Credibility of Declarant</u> 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.</p>	<p><u>Rule 806. Attacking and Supporting the Declarant's Credibility</u> <u>When a hearsay statement - or a statement described in Rule 801 (d)(2)(C), (D), or (E) - has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.</u></p>
<p><u>Rule 901. Requirement of Authentication or Identification</u> (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.</p>	<p><u>Rule 901. Authenticating or Identifying Evidence</u> <u>(a) In General.</u> <u>To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.</u></p>
<p>(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:</p>	<p><u>(b) Examples.</u> <u>The following are examples only, not a complete list, of evidence that satisfies the requirement:</u></p>
<p>(1) <i>Testimony of witness with knowledge.</i> Testimony of a witness with knowledge that a matter is what it is claimed to be.</p>	<p><u>(1) <i>Testimony of a Witness with Knowledge.</i> Testimony that an item is what it is claimed to be, by a witness with knowledge.</u></p>
<p>(2) <i>Nonexpert opinion on handwriting.</i> Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.</p>	<p><u>(2) <i>Nonexpert Opinion About Handwriting.</i> A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.</u></p>

<p>(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.</p>	<p><u>(3) Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.</u></p>
<p>(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.</p>	<p><u>(4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.</u></p>
<p>(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.</p>	<p><u>(5) Opinion About a Voice. An opinion identifying a person's voice whether heard firsthand or through mechanical or electronic transmission or recording based on hearing the voice at any time under circumstances that connect it with the alleged speaker.</u></p>
<p>(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.</p>	<p><u>(6) Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:</u> <u>(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or</u> <u>(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.</u></p>
<p>(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.</p>	<p><u>(7) Evidence About Public Records. Evidence that:</u> <u>(A) a document was recorded or filed in a public office as authorized by law; or</u> <u>(B) a purported public record or statement is from the office where items of this kind are kept.</u></p>
<p>(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.</p>	<p><u>(8) Evidence About Ancient Documents or Data Compilations. For a document or data compilation, evidence that it:</u> <u>(A) is in a condition that creates no suspicion about its authenticity;</u> <u>(B) was in a place where, if authentic, it would likely be; and</u> <u>(C) is at least thirty (30) years old when offered.</u></p>

<p>(9) <i>Process or system.</i> Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.</p>	<p><u>(9) <i>Evidence About a Process or System.</i> Evidence describing a process or system and showing that it produces an accurate result.</u></p>
<p>(10) <i>Methods provided by statute or rule.</i> 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.</p>	<p><u>(10) <i>Methods Provided by a Statute or Rule.</i> Any method of authentication or identification allowed by a statute, by the Supreme Court of this State, or by the Constitution of this State.</u></p>
<p><u>Rule 902. Self-Authentication</u> Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:</p>	<p><u>Rule 902. Evidence That Is Self-Authenticating</u> <u>The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:</u></p>
<p>(1) <i>Domestic public documents.</i> 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.</p>	<p><u>(1) Domestic Public Documents That Are Sealed and Signed.</u> A document that bears: <u>(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular area of the United States; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and</u> <u>(B) a signature purporting to be an execution or attestation.</u> <u>(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified.</u> A document that bears no seal if: <u>(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and</u> <u>(B) another public officer who has a seal and official duties within that same entity certifies under seal -or its equivalent- that the signer has the official capacity and that the signature is genuine.</u></p>

<p>(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:</p> <p style="padding-left: 40px;">(a) of the attesting person; or</p> <p style="padding-left: 40px;">(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.</p> <p>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:</p> <p style="padding-left: 40px;">(i) admit an attested copy without final certification; or</p> <p style="padding-left: 40px;">(ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.</p>	<p><u>(3) Foreign Public Documents.</u> A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester -or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:</p> <p style="padding-left: 40px;"><u>(A) order that it be treated as presumptively authentic without final certification; or</u></p> <p style="padding-left: 40px;"><u>(B) allow it to be evidenced by an attested summary with or without final certification.</u></p>
	<p><u>(4) Certified Copies of Public Records.</u> A copy of an official record -or a copy of a document that was recorded or filed in a public office as authorized by law -if the copy is certified as correct by:</p> <p style="padding-left: 40px;"><u>(A) the custodian or another person authorized to make the certification; or</u></p> <p style="padding-left: 40px;"><u>(B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.</u></p>
<p>(3) Official publications. Books, pamphlets, or other publications issued by public authority.</p>	<p><u>(5) Official Publications.</u> A book, pamphlet, or other publication purporting to be issued by a public authority.</p>

<p>(4) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.</p>	<p><u>(6) Newspapers and Periodicals.</u> Printed material purporting to be a newspaper or periodical.</p>
<p>(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.</p>	<p><u>(7) Trade Inscriptions and the Like.</u> An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.</p>
<p>(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.</p>	<p><u>(8) Acknowledged Documents.</u> A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.</p>
<p>(7) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.</p>	<p><u>(9) Commercial Paper and Related Documents.</u> Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.</p>
<p>(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.</p>	<p><u>(10) Presumptions by a Federal or Indiana Statute.</u> A signature, document, or anything else that a federal or Indiana statute declares to be presumptively or prima facie genuine or authentic.</p>
<p>(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.</p>	<p><u>(11) Certified Domestic Records of a Regularly Conducted Activity.</u> Unless the source of information or the circumstances of preparation indicate a lack of trustworthiness, the original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification under oath of the custodian or another qualified person. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record--and must make the record and certification available for inspection--so that the party has a fair opportunity to challenge them.</p>

<p>(10) <i>Certified foreign records of regularly conducted activity.</i> 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.</p>	<p><u>(12) Certified Foreign Records of a Regularly Conducted Activity.</u> <u>The original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows:</u></p> <p><u>(A) the certification must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed; and</u></p> <p><u>(B) the signature must be certified by a government official in the manner provided in Rule 902(2).</u></p> <p><u>The proponent must also meet the notice requirements of Rule 902(11).</u></p>
<p><u>Rule 903. Subscribing Witness' Testimony Unnecessary</u></p> <p>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.</p>	<p><u>Rule 903. Subscribing Witness' Testimony</u></p> <p><u>A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.</u></p>
<p><u>Rule 1001. Definitions</u></p> <p>For purposes of this Article the following definitions are applicable:</p> <p>(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.</p>	<p><u>Rule 1001. Definitions That Apply to This Article</u></p> <p><u>In this article:</u></p> <p><u>(a) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.</u></p> <p><u>(b) A "recording" consists of letters, words, numbers, sounds, or their equivalent recorded in any manner.</u></p>

<p>(2) Photographs. “Photographs” include still photographs, x ray films, videotapes, and motion pictures.</p>	<p><u>(c) A "photograph" means a photographic image or its equivalent stored in any form.</u></p>
<p>(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.”</p>	<p><u>(d) An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout or other output readable by sight if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.</u></p>
<p>(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.</p>	<p><u>(e) A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.</u></p>
<p><u>Rule 1002. Requirement of Original</u> 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.</p>	<p><u>Rule 1002. Requirement of the Original</u> <u>An original writing, recording, or photograph is required in order to prove its content unless these rules or a statute provides otherwise. 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.</u></p>
<p><u>Rule 1003. Admissibility of Duplicates</u> 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.</p>	<p><u>Rule 1003. Admissibility of Duplicates</u> <u>A duplicate is admissible to the same extent as an original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.</u></p>

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.

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.~~

Rule 1004. Admissibility of Other Evidence of Contents

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(a) all originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) an original cannot be obtained by any available judicial process;

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Copies of Public Records to Prove Content

The proponent may use a copy to prove the content of an official record or of a document that was recorded or filed in a public office as authorized by law if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

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.~~

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. The court may order the proponent to produce them in court.

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.~~

Rule 1007. Testimony or Statement of a Party to Prove Content

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

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.~~

Rule 1008. Functions of the Court and Jury

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines in accordance with Rule 104(b) any issue about whether:

- (a) an asserted writing, recording, or photograph ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

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.~~

Rule 1101. Evidence Rules Review Committee

(a) The Supreme Court Committee on Rules of Practice and Procedure, as constituted under Ind. Trial Rule 80, serves 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, 30 South Meridian Street, Suite 500, Indianapolis, Indiana 46204.~~

(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 amending the Rules of Evidence. The Indiana Supreme Court may suggest amendments or additions in current case law, as may the Indiana General Assembly in legislation. Members of the bench, bar, or public may propose amendments and may comment on published amendments; any such proposals or comments must be submitted in writing to the Committee's Executive Secretary, 30 South Meridian Street, Suite 500. Indianapolis, Indiana 46204.

These amendments shall take effect on January 1, 2014.

The Clerk of this Court is directed to send a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Indiana Supreme Court Administration Office; Court of Appeals of Indiana Administration Office; Indiana Tax Court Administration Office; Public Defender of Indiana; Indiana Prosecuting Attorney Council; Indiana Public Defender Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana State Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters. The Clerk is also directed to post this Order to the Court's website.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit and Superior Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, on September 13, 2013.

/s/Brent E. Dickson
Brent E. Dickson
Chief Justice of Indiana

All Justices concur.