

1 **Working Draft of Restyled Iowa Rules of Evidence (with comments)**

2  
3 **CHAPTER 5**  
4 **RULES OF EVIDENCE**

5  
6  
7 **ARTICLE I**  
8 **GENERAL PROVISIONS**

9	Rule 5.101	Scope; <u>definitions</u>
10	Rule 5.102	Purpose <del>and construction</del>
11	Rule 5.103	Rulings on evidence
12	Rule 5.104	Preliminary questions
13	Rule 5.105	<del>Limited admissibility</del> <u>Limiting evidence that is not admissible against other</u>
14		<u>parties or for other purposes</u>
15	Rule 5.106	Remainder of related acts, declarations, conversations, writings, or
16		recorded statements
17	Rules 5.107 to 5.200	Reserved

18  
19 **ARTICLE II**  
20 **JUDICIAL NOTICE**

21	Rule 5.201	Judicial notice of adjudicative facts
22	Rules 5.202 to 5.300	Reserved

23  
24 **ARTICLE III**  
25 **PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS CASES**

26	Rule 5.301	Presumptions in <del>general in civil actions and proceedings</del> <u>cases generally</u>
27	Rules 5.302 to 5.400	Reserved

28  
29 **ARTICLE IV**  
30 **RELEVANCY RELEVANCE AND ITS LIMITS**

31	Rule 5.401	<del>Definition of “relevant evidence”</del> <u>Test for relevant evidence</u>
32	Rule 5.402	<del>Relevant evidence generally admissible; irrelevant evidence inadmissible</del>
33		<u>General admissibility of relevant evidence</u>
34	Rule 5.403	<del>Exclusion of</del> <u>Excluding</u> relevant evidence <del>on grounds of</del> <u>for</u> prejudice,
35		confusion, <del>or</del> <u>waste of time, or other reasons</u>
36	Rule 5.404	Character evidence; <del>not admissible to prove conduct; exceptions; other</del>
37		crimes <u>or other acts</u>
38	Rule 5.405	Methods of proving character
39	Rule 5.406	Habit; routine practice
40	Rule 5.407	Subsequent remedial measures
41	Rule 5.408	Compromise <del>and offers to compromise</del> <u>and negotiations</u>
42	Rule 5.409	Payment of expenses
43	Rule 5.410	<del>Inadmissibility of pleas;</del> <u>Pleas,</u> plea discussions, and related statements
44	Rule 5.411	Liability insurance

1	Rule 5.412	Sexual abuse cases; <del>relevance of a</del> victim's past <u>sexual</u> behavior
2	Rules 5.413 to 5.500	Reserved
3		<b>ARTICLE V</b>
4		<b>PRIVILEGES</b>
5	Rule 5.501	<del>General rule</del> <u>Privilege in general</u>
6	Rule 5.502	Attorney-client privilege and work product; limitations on waiver
7	Rules 5.503 to 5.600	Reserved
8		
9		<b>ARTICLE VI</b>
10		<b>WITNESSES</b>
11	Rule 5.601	<del>General rule of competency</del> <u>Competency to testify in general</u>
12	Rule 5.602	<del>Lack of</del> <u>Need for</u> personal knowledge
13	Rule 5.603	Oath or affirmation <u>to testify truthfully</u>
14	Rule 5.604	<del>Interpreters</del> <u>Interpreter</u>
15	Rule 5.605	<del>Competency of judge</del> <u>Judge's competency as a witness</u>
16	Rule 5.606	<del>Competency of juror</del> <u>Juror's competency as a witness</u>
17	Rule 5.607	Who may impeach <u>a witness</u>
18	Rule 5.608	<del>Evidence of A witness's character and conduct of witness</del> <u>for truthfulness</u>
19		<u>and untruthfulness</u>
20	Rule 5.609	Impeachment by evidence of <u>a criminal</u> conviction
21	Rule 5.610	Religious beliefs or opinions
22	Rule 5.611	Mode and order of <del>interrogation and presentation</del> <u>examining witnesses and</u>
23		<u>presenting evidence</u>
24	Rule 5.612	Writing used to refresh <u>a witness's</u> memory
25	Rule 5.613	<del>Prior statements of witnesses</del> <u>Witness's prior statement</u>
26	Rule 5.614	<del>Calling and interrogation of witnesses by court</del> <u>Court's calling or examining</u>
27		<u>a witness</u>
28	Rule 5.615	<del>Exclusion of</del> <u>Excluding</u> witnesses
29	Rules 5.616 to 5.700	Reserved
30		
31		<b>ARTICLE VII</b>
32		<b>OPINIONS AND EXPERT TESTIMONY</b>
33	Rule 5.701	Opinion testimony by lay witnesses
34	Rule 5.702	Testimony by <del>experts</del> <u>expert witnesses</u>
35	Rule 5.703	Bases of <u>an expert's</u> opinion testimony <del>by experts</del>
36	Rule 5.704	Opinion on <u>an</u> ultimate issue
37	Rule 5.705	<del>Disclosure of</del> <u>Disclosing the</u> facts or data underlying <del>expert</del> <u>an expert's</u>
38		opinion
39	Rule 5.706	Court-appointed <del>experts</del> <u>expert witnesses</u>
40	Rules 5.707 to 5.800	Reserved

41

1		<b>ARTICLE VIII</b>
2		<b>HEARSAY</b>
3	Rule 5.801	Definitions <u>that apply to this Article; exclusions from hearsay</u>
4	Rule 5.802	<del>Hearsay</del> <u>The rule against hearsay</u>
5	Rule 5.803	<del>Hearsay exceptions; availability of declarant immaterial</del> <u>Exceptions to the rule against hearsay—regardless of whether the declarant is available as a witness</u>
6		
7		
8	Rule 5.804	<del>Hearsay exceptions;</del> <u>Exceptions to the rule against hearsay—when the declarant is unavailable as a witness</u>
9		
10	Rule 5.805	Hearsay within hearsay
11	Rule 5.806	Attacking and supporting <u>the declarant’s credibility of declarant</u>
12	Rule 5.807	Residual exception
13	Rules 5.808 to 5.900	Reserved

14		
15		<b>ARTICLE IX</b>
16		<b>AUTHENTICATION AND IDENTIFICATION</b>
17	Rule 5.901	<del>Requirement of authentication or identification</del> <u>Authenticating or identifying evidence</u>
18		
19	Rule 5.902	<del>Self authentication</del> <u>Evidence that is self-authenticating</u>
20	Rule 5.903	Subscribing witness’s testimony <del>unnecessary</del>
21	Rules 5.904 to 5.1000	Reserved

22		
23		<b>ARTICLE X</b>
24		<b>CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS</b>
25	Rule 5.1001	Definitions <u>that apply to this article</u>
26	Rule 5.1002	Requirement of <u>the original</u>
27	Rule 5.1003	Admissibility of duplicates
28	Rule 5.1004	Admissibility of other evidence of <del>contents</del> <u>content</u>
29	Rule 5.1005	<del>Public</del> <u>Copies of public records to prove content</u>
30	Rule 5.1006	Summaries <u>to prove content</u>
31	Rule 5.1007	Testimony or <del>written admission</del> <u>statement of a party to prove content</u>
32	Rule 5.1008	Functions of <u>the court and jury</u>
33	Rules 5.1009 to 5.1100	Reserved

34		
35		<b>ARTICLE XI</b>
36		<b>MISCELLANEOUS RULES</b>
37	Rule 5.1101	Applicability of <u>the rules</u>
38	Rule 5.1102	Reserved
39	Rule 5.1103	Title

**CHAPTER 5**  
**RULES OF EVIDENCE**

**ARTICLE I**  
**GENERAL PROVISIONS**

**Rule 5.101 Scope; definitions.**

*a. Scope.* These rules ~~govern~~ apply to proceedings in the courts of this state to the extent and with the exceptions stated in rule 5.1101.

*b. Definitions.* In these rules:

(1) “Civil case” means a civil action or proceeding.

(2) “Criminal case” includes a criminal proceeding.

(3) “Public office” includes a public agency.

(4) “Record” includes a memorandum, report, or data compilation.

(5) “Other Iowa Supreme Court rule” means a rule the Iowa Supreme Court has adopted ~~under~~ statutory authority.

(6) A reference to any kind of written material or any other medium includes electronically stored information.

(7) “Victim” includes an alleged victim.

**Rule 5.102 Purpose ~~and construction.~~** These rules ~~shall~~ should be construed ~~so as to secure fairness in administration~~ administer every proceeding fairly, elimination eliminate ~~of unjustifiable expense and delay, and promotion~~ promote ~~of growth and development~~ the development of evidence the law, of evidence to the end that of ascertaining the truth may be ascertained and proceedings justly determined securing a just determination.

**Rule 5.103 Rulings on evidence.**

*a. Effect of erroneous ruling.* ~~Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and either of the following exists:~~

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

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

*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:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(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.

*b. Not needing to renew an objection or offer of proof.* Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

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**Federal rule 103(b) restyled (2011):**

*b. Not needing to renew an objection or offer of proof.* Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

**Comment on substantive distinction:**

This rule was contained in FRE 103(a)(2) prior to the 2011 revision. The Iowa rules do not contain a counterpart to pre- or post-2011 FRE 103(b). The Iowa Supreme Court, however, has embraced a concept similar to that contained in the revised FRE 103(b). *See State v. Miller*, 229 N.W.2d 762, 768 (Iowa 1975) (holding that once the district court makes a definitive ruling as to the admissibility of evidence, the party need not renew that objection to preserve error for appeal).

2

~~*b.c. Record of offer and ruling* Court's statement about the ruling; directing an offer of proof. The court may add make any other or further statement which shows about the character or form of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It The court may direct that the making of an offer of proof be made in question and answer question and answer form.~~

3

~~*e. 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.~~

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~~*d. Preventing the jury from hearing inadmissible evidence.* To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.~~

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**Federal rule 103(e) restyled (2011):**

*e. Taking notice of plain error.* A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

**Comment on substantive distinction:**

The Iowa rules do not contain a counterpart to pre- or post- 2011 FRE 103(e) (previously FRE 103(d)), allowing a court to judicially notice “plain error.” About 20 states apply some version of the plain error rule in civil cases. *See* Tory A. Weigand, Esq., *Raise or Lose: Appellate Discretion and Principled Decision-Making*, 17 Suffolk J. Trial & App. Advoc. 179, 228–29 (2012).

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**Rule 5.104 Preliminary questions.**

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~~*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 rule 5.104(b). In making its determination it is not bound by the rules of evidence except those with respect to privileges. In general. Subject to rule 5.104(b), 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.~~

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~~*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. Relevance that depends on a fact. 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~~

1 proof be introduced later.

2 ~~c. *Hearing of jury.* Hearings on the admissibility of confessions shall in all cases be conducted out of~~  
 3 ~~the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests~~  
 4 ~~of justice require or, when an accused is a witness and so requests. Conducting a hearing so that the~~  
 5 ~~jury cannot hear it. The court must conduct any hearing on a preliminary question so that the jury~~  
 6 ~~cannot hear it if:~~

7 (1) The hearing involves the admissibility of a confession;

8 (2) A defendant in a criminal case is a witness and so requests; or

9 (3) Justice so requires.

10 ~~d. *Testimony by accused—Cross-examining a defendant in a criminal case.* The accused does not, by~~  
 11 ~~By testifying upon on a preliminary ~~matter~~ question, a defendant in a criminal case does not become~~  
 12 ~~subject to cross-examination as ~~to on~~ other issues in the case. Testimony given by ~~the accused a~~~~  
 13 ~~defendant in a criminal case upon a preliminary question is not admissible against the ~~accused defendant~~~~  
 14 ~~on the issue of guilt but may be used for impeachment if inconsistent with defendant's testimony given~~  
 15 ~~by the accused at the trial.~~

**Federal rule 104(d) restyled (2011)**

(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.

**Comment on substantive distinction:**

The first sentence of Iowa Rule 5.104(d) is substantively identical to its 2011 restyled federal counterpart. The second sentence, however, is a substantive departure from pre- and post-2011 FRE 104(d). The Iowa rule expressly allows use of testimony of an accused on a preliminary question for impeachment purposes; the parallel federal rule does not have this provision. In federal court a defendant would presumably be subject to the use of statements made during a preliminary hearing for impeachment purposes if the defendant testifies inconsistently at trial. *See* FRE 801(d)(1)(a) (providing that prior inconsistent statements by a witness "given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition" are not hearsay and are therefore admissible); *cf.*, *Oregon v. Hass*, 420 U.S. 714, 721 (1975) (allowing statements which would be inadmissible under Miranda to be used for impeachment).

17  
 18 ~~e. *Evidence relevant to Weight-weight and credibility.* This rule does not limit ~~the right of a party~~~~  
 19 ~~party's right to introduce before the jury evidence that is relevant to the weight or credibility of other~~  
 20 ~~evidence.~~

21  
 22 **Rule 5.105 ~~Limited admissibility~~ Limiting evidence that is not admissible against other parties or**  
 23 **for other purposes.** ~~When evidence which is admissible as to one party or for one purpose but not~~  
 24 ~~admissible as to another party or for another purpose is admitted, If the court admits evidence that is~~  
 25 ~~admissible against a party or for a purpose—but not against another party or for another purpose—the~~  
 26 ~~court, upon request on timely request, shall must restrict the evidence to its proper scope and instruct the~~  
 27 ~~jury accordingly.~~

28  
 29 **Rule 5.106 Remainder of related acts, declarations, conversations, writings, or recorded**

1 **statements.**

2 *a.* ~~When~~ If a party introduces all or part of an act, declaration, conversation, writing, or recorded  
 3 statement, or part thereof, is introduced by a party, an adverse party may require the introduction, at that  
 4 time, of any other part or any other act, declaration, conversation, writing, or recorded statement is  
 5 admissible when necessary in the interest of fairness, a clear understanding, or an adequate explanation  
 6 that in fairness ought to be considered at the same time.

7 *b.* ~~Upon request by an adverse party party's request, the court may, in its discretion, require the~~  
 8 ~~offering party to introduce contemporaneously at the same time with all or part of the act, declaration,~~  
 9 ~~conversation, writing, or recorded statement, or part thereof, any other part or any other act, declaration,~~  
 10 ~~conversation, writing, or recorded statement which that is admissible under rule 5.106(a). This rule Rule~~  
 11 5.106(b), however, does not limit the right of any party to develop further on cross-examination or in the  
 12 party's case in chief matters admissible under rule 5.106(a).  
 13

**Federal rule 106 restyled (2011)**

**Rule 106. Remainder of or Related Writings or Recorded Statements.**

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.

**Comment on substantive distinction:**

2011 restyled FRE 106 does not, by its terms apply to acts, declarations, and conversations as does Iowa rule 5.106. The Advisory Committee note to FRE 106 explains that, for practical reasons, "the rule is limited to writings and recorded statements and does not apply to conversations." The changes to rule 106 in the 2011 restyled FRE were minor and nonsubstantive. The Iowa rule diverged from its federal counterpart prior to the 2011 revision.

Iowa rule 5.106(b) is another substantive departure from pre- and post-2011 FRE 106, which does not contain subsections. The substantive difference between subsection (b) and FRE 106 is the additional sentence of subsection (b) of the Iowa rule: "This rule, however, does not limit the right of any party to develop further on cross-examination or in the party's case in chief matters admissible under rule 5.106(a)." The principle of the second sentence of subsection (b) of 5.106, however, is also present in the interpretation of FRE 106. *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 172, 109 S.Ct. 439, 102 L.Ed.2d 445 (1988) ("[T]he Advisory Committee stressed that it 'does not in any way circumscribe the right of the adversary to develop the matter on cross-examination or as part of his own case.' " (quoting Fed. R. Evid. 106 Advisory Committee's note)).

14  
 15 **Rules 5.107 to 5.200** Reserved.

16  
 17 **ARTICLE II**  
 18 **JUDICIAL NOTICE**

19  
 20 **Rule 5.201 Judicial notice of adjudicative facts.**

21 *a. Scope of rule.* This rule governs ~~only~~ judicial notice of an adjudicative facts fact only, not a  
 22 legislative fact.

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**Federal rule 201(a) restyled (2011):**

(a) *Scope.* This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

**Comment on distinction:**

The Iowa rule does not specify that it does not govern legislative facts, but it is implied.

2

3 *b. Kinds of facts that may be judicially noticed.* ~~A The court may judicially noticed~~ notice a fact  
4 ~~must be one that is not subject to reasonable dispute in that because it is either~~

5 (1) Is generally known within the trial court's territorial jurisdiction; of the trial court or

6 (2) ~~capable of accurate and ready determination by resort to~~ Can be accurately and readily determined  
7 from sources whose accuracy cannot reasonably be questioned.

8 *c. When discretionary* ~~Taking notice. A The court; may take judicial notice, whether requested or not.~~

9 (1) May take judicial notice on its own; or

10 (2) Must take judicial notice if a party requests it and the court is supplied with the necessary  
11 information.

12 *d. When mandatory* ~~Timing. A The court shall may take judicial notice if requested by a party and~~  
13 ~~supplied with the necessary information at any stage of the proceeding.~~

14 *e. Opportunity to be heard.* On timely request, A a party is entitled upon timely request to an  
15 opportunity to be heard as to on the propriety of taking judicial notice and the tenor of the matter  
16 noticed nature of the fact to be noticed. In the absence of prior notification, the request may be made after  
17 judicial notice has been taken. If the court takes judicial notice before notifying a party, the party, on  
18 request, is still entitled to be heard.

19 *f. Time of taking notice* ~~Instructing the jury. Judicial notice may be taken at any stage of the~~  
20 ~~proceeding. In a civil action or proceeding case, the court shall must instruct the jury to accept as~~  
21 ~~conclusive any fact judicially the noticed fact as conclusive. In a criminal case, the court shall must~~  
22 ~~instruct the jury that it may, but is not required to, or may not accept as conclusive any the noticed fact~~  
23 ~~judicially noticed as conclusive.~~

24

25 **Rules 5.202 to 5.300** Reserved.

26

1 **ARTICLE III**

2 **PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS CASES**

3

4 **Rule 5.301 Presumptions in ~~general in civil actions and proceedings cases generally.~~ Nothing in**  
 5 **~~these~~ These rules shall be deemed to do not modify or supersede existing law relating to presumptions in**  
 6 **~~civil actions and proceedings cases.~~**

7

**Federal rule 301 restyled (2011):**

**Rule 301. Presumptions in Civil Cases Generally.**

In a civil case, unless a federal statute 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.

**Comment on substantive distinction:**

The FRE Advisory Committee noted that the 2011 amendments to this rule are "stylistic only" and not intended to be substantive. The federal rule states that unless otherwise provided by statute or the rules, "a party against whom a presumption is directed has the burden of producing evidence to rebut the presumption." The parallel Iowa rule does not contain this language and does not define who has the burden to rebut a presumption, and thus the effect of a rebuttable presumption under the Iowa rule is somewhat unclear. *See* Joel S. Hjelmaas, *Stepping Back from the Thicket: A Proposal for the Treatment of Rebuttable Presumptions and Inferences*, 42 Drake L. Rev. 427, 445 (1993).

8

9 **Rules 5.302 to 5.400 Reserved.**

10

**Federal rule 302 restyled (2011):**

**Rule 302. Applying State Law to Presumptions in Civil Cases.**

In a civil case, state law governs the effect of a presumption regarding a claim or defense for which state law supplies the rule of decision.

**Comment on substantive distinction:**

The Iowa rules naturally do not contain a counterpart to pre- or post-2011 FRE 302. FRE 302 relates to state evidence rules being applied to trial of state law claims in federal court. This concept is generally inapplicable to Iowa courts, although a parallel provision could be crafted relating to federal claims tried in state court. *See* Joel S. Hjelmaas, *Stepping Back from the Thicket: A Proposal for the Treatment of Rebuttable Presumptions and Inferences*, 42 Drake L. Rev. 427, 452 n. 172 (1993) (citing 1 Allan D. Vestal & Phillip Willson, *Iowa Practice* § 37:23 (Supp. 1992)).

11 **ARTICLE IV**

12 **~~RELEVANCY~~ RELEVANCE AND ITS LIMITS**

13

14

15 **Rule 5.401 ~~Definition of "relevant evidence."~~ Test for relevant evidence. *"Relevant evidence"* means**  
 16 **~~evidence having any tendency to make the existence of any fact that is of consequence to the~~**  
 17 **~~determination of the action more probable or less probable than it would be without the~~**  
 18 **~~evidence.~~ Evidence is relevant if:**

19 **a. It has any tendency to make a fact more or less probable than it would be without the evidence; and**

1 b. The fact is of consequence in determining the action.

2  
3 **Rule 5.402 ~~Relevant evidence generally admissible; irrelevant evidence inadmissible~~General**  
4 **admissibility of relevant evidence.** All ~~relevant~~ Relevant evidence is admissible, ~~except as unless any~~  
5 ~~of the following provide otherwise; provided by the United States Constitutions~~ Constitution of the  
6 ~~United States or the state of Iowa Constitution, by statute, by these rules, or by other rules of the Iowa~~  
7 ~~Supreme Court rule. Evidence which Irrelevant evidence is not relevant is not admissible.~~

8  
9 **Rule 5.403 ~~Exclusion of Excluding relevant evidence on grounds of for prejudice, confusion, or~~**  
10 **waste of time, or other reasons.** ~~Although~~ The court may exclude relevant; evidence may be excluded  
11 if its probative value is substantially outweighed by the a danger of one or more of the following: unfair  
12 prejudice, ~~confusion~~ ~~confusing~~ of the issues, or misleading the jury, or by considerations of undue delay,  
13 waste ~~wasting~~ of time, or ~~needless presentation of needlessly presenting~~ cumulative evidence.

14  
15 **Rule 5.404 ~~Character evidence; not admissible to prove conduct; exceptions; other crimes or other~~**  
16 **acts.**

17 *a. Character evidence. ~~generally.~~*

18 (1) ~~Character of accused~~ Prohibited uses. Evidence of a person's character or ~~a character~~ trait of the  
19 person's character is not admissible for the purpose of proving to prove that the person acted in  
20 conformity therewith on a particular occasion the person acted in accordance with the character or trait,  
21 except:

22 (2) ~~Character of victim~~ Exceptions for a defendant or victim. Evidence of a pertinent trait of the  
23 person's character offered by an accused, or by the prosecution to rebut the same it.

24 (A) *In criminal cases.*

25 (i) A defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the  
26 prosecutor may offer evidence to rebut it.

27 (ii) Subject to the limitations in rule 5.412, a defendant may offer evidence of the victim's pertinent  
28 trait of character of the victim of the crime offered by an accused, and if the evidence is admitted, or by  
29 the prosecution to the prosecutor may offer evidence to rebut the same it.

30 (iii) When the alleged victim is unavailable to testify due to death or physical or mental incapacity, the  
31 prosecutor may offer or evidence of a the victim's character trait of peacefulness of the victim offered by  
32 the prosecution in any case where in which the victim is unavailable to testify due to death or physical or  
33 mental incapacity to rebut evidence that the victim was the first aggressor.

34 (B) *In civil cases.*

35 (i) Evidence of an alleged victim's character for violence of the victim of assaultive conduct may be  
36 offered on the issue of self defense by a party accused of the assaultive conduct against the victim, or.

37 (ii) If evidence of peaceable a victim's character for violence is admitted, any party may offer  
38 evidence of the victim's peaceful character to rebut the same it.

39 (3) ~~Character of~~ Exceptions for a witness. Evidence ~~of the character of a witness~~ witness's character;  
40 as provided in may be admitted under rules 5.607, 5.608, and 5.609.

41

**Federal rule 404(a)(2)-(3) restyled (2011):**

(2) *Exceptions for a Defendant or Victim in a Criminal Case.* The following exceptions apply in a criminal case:

(A) 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;

(B) 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:

(i) offer evidence to rebut it; and

(ii) offer evidence of the defendant's same trait; and

(C) 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.

**Comment on substantive distinction:**

Iowa rule 5.404(a)(2) contains several notable structural distinctions from the 2011 restyled FRE. The restyled FRE allows admission of evidence related to a defendant's pertinent trait and allows the prosecution in a homicide case to offer evidence of the victim's trait. Conversely, Iowa rule 404(a)(2) allows the prosecution to offer evidence of an alleged victim's trait at any time when there is death or incapacitation of the victim.

Another major distinction is that subsection (a)(2)(B) of the Iowa rule provides for evidence of the victim's violent or peaceful character in civil cases. The pre- and post-2011 federal counterpart is limited to criminal cases.

In 404(a)(2)(A)(ii), adding the phrase "and offer evidence of the defendant's same trait" to the end of the restyled sentence would be a substantive change, but it would conform Iowa's rule with FRE 404(a)(2)(B)(ii).

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*b. ~~Other crimes, Crimes, wrongs, or other acts.~~*

(1) *Prohibited use.* Evidence of ~~other crimes, wrongs, or acts~~ a crime, wrong, or other act is not admissible to prove ~~the a person's~~ character of a person in order to show that on a particular occasion the person acted in ~~conformity therewith~~ accordance with the character. ~~It~~

(2) *Permitted uses.* This evidence may, ~~however,~~ be admissible for ~~other purposes, for another purpose~~ such as ~~proof of proving~~ motive, opportunity, intent, preparation, plan, knowledge, identity, ~~or~~ absence of mistake, or lack of accident.

**Federal rule 404(b) restyled (2011):**

(b) *Crimes, Wrongs, or Other Acts.*

(1) *Prohibited Uses.* 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.

(2) *Permitted Uses; Notice in a Criminal Case.* 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.

**Comment on substantive distinction:**

Under federal rule 404(b)(2), the prosecution must provide a defendant reasonable notice of the general nature of "other acts" evidence. The Iowa rule does not have this requirement.

1

**2 Rule 5.405 Methods of proving character.**

3 a. ~~By Reputation~~ reputation or opinion. ~~In all cases in which~~ ~~When~~ evidence of a person's character  
4 or a character trait of character of a person is admissible, ~~proof may be made~~ it may be proved by  
5 testimony about the person's as to reputation or by testimony in the form of an opinion. On cross-  
6 examination of the character witness, inquiry is allowable ~~the court may allow an inquiry~~ into relevant  
7 specific instances of the person's conduct.

8 b. ~~By Specific~~ specific instances of conduct. ~~In cases in which~~ ~~When~~ a person's character or a  
9 character trait of character of a person is an essential element of a charge, claim, or defense, the  
10 character or trait ~~proof may also be made~~ proved by relevant of ~~specific instances of the person's~~  
11 conduct.

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13 **Rule 5.406 Habit; routine practice.** Evidence ~~of the habit of a person~~ person's habit or of the routine  
14 practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses,  
15 is relevant to prove that the conduct of the person or organization on a particular occasion was in  
16 conformity with the habit or routine practice an organization's routine practice may be admitted to prove  
17 that on a particular occasion the person or organization acted in accordance with the habit or routine  
18 practice. The court may admit this evidence regardless of whether it is corroborated or whether there  
19 was an eyewitness.

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21 **Rule 5.407 Subsequent remedial measures.** ~~When, after an event,~~ measures are taken ~~which, if taken~~  
22 ~~previously,~~ that would have made the event an earlier injury or harm less likely to occur, evidence of the  
23 subsequent measures is not admissible to prove negligence or culpable conduct ~~in connection with the~~  
24 ~~event.~~ ~~This rule does not require the exclusion of~~ But the court may admit this evidence of subsequent  
25 ~~measures when offered in connection with~~ on a manufacturing defect claim based on strict liability in  
26 tort or breach of warranty, or when offered for another purpose, such as impeachment or ~~if disputed~~  
27 proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

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**Federal rule 407 restyled (2011):**

**Rule 407. Subsequent Remedial Measures.** 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:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

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.

**Comment on substantive distinction:**

In addition to several linguistic distinctions there are notable substantive distinctions between Iowa rule 5.407 and its pre- and post-federal counterpart. Restyled FRE 407 expressly prohibits the use of evidence of subsequent remedial measures to prove a defect in a product or its design. Iowa rule 5.407 does not. Iowa rule 5.407 expressly permits using evidence of subsequent remedial measures in cases involving strict liability and breach of warranty. FRE 407 does not. We have adopted sections one and two of the Restatement (Third) of Torts: Product Liability for product defect cases and no longer distinguish between negligence and strict liability theories in cases based on a design defect or a failure to warn. *See Wright v. Brooke Group Ltd.*, 652 N.W.2d 159, 169 (Iowa 2002). Accordingly, we no longer interpret the rule to allow evidence of subsequent remedial measures to prove liability in product cases based on design defect, failure to warn, or breach of warranty. *See Scott v. Dutton-Lainson Co.*, 774 N.W.2d 501, 508 (Iowa 2009).

The wording of current Iowa rule 5.407 may be inconsistent with case law. The restyling adds the following wording to the rule: “injury or harm,” “manufacturing defect,” and “when offered.”

The restyling deletes “in connection with the injury or harm” from the end of the first sentence as unnecessary.

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**Rule 5.408 ~~Compromise and offers to compromise and negotiations.~~**

*a. Prohibited uses.* Evidence of the following is not admissible—on behalf of any party—to prove or disprove the validity or amount of a disputed claim.

(1) ~~furnishing, Furnishing, promising, or offering—or promising to furnish, or~~ (2) accepting, ~~or offering or promising to accept, or offering to accept—~~ a valuable consideration in compromising or attempting to compromise a claim ~~which that~~ was disputed ~~as to~~ on either validity or amount, ~~is not admissible to prove liability for or invalidity of the claim or its amount.~~

(2) ~~Evidence of conduct~~ Conduct or a statements statement made in during compromise negotiations ~~is likewise not admissible about the claim.~~

*b. Exceptions.* ~~This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.~~ 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.

**Federal rule 408 restyled (2011):****Rule 408. Compromise Offers and Negotiations.**

(a) *Prohibited Uses.* Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

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

(2) conduct or a statement made during compromise negotiations about the claim—except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) *Exceptions.* 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.

**Comment on substantive distinction:**

Iowa rule 5.408 and its 2011 restyled federal counterpart contain significant differences. One substantive distinction is that the pre- and post-2011 FRE 408 do "not prohibit the introduction in a criminal case of statements or conduct during compromise negotiations regarding a civil dispute by" the government. Fed. R. Evid. 408 Advisory Committee's note. Iowa rule 5.408 is silent, but case law suggests that the Iowa rule 5.408 does not apply in criminal cases. *See State v. Burt*, 249 N.W.2d 651 (Iowa 1977); *see also State v. Dahlstrom*, 224 N.W.2d 443 (Iowa 1974).

Additionally, the pre- and post-2011 FRE expressly does not permit the use of offers of compromise to impeach a prior inconsistent statement or contradiction. Iowa rule 5.408 is silent on offers of compromise for impeachment purposes.

Finally, the Iowa rule expressly does not protect pre-existing information. This language was removed from the FRE in 2006 and the Advisory Committee noted that it was superfluous.

The current Iowa rule is restructured consistent with the 2011 FRE restyling. The restyling adopts the federal catch phrases for sub *a* and *b* and adds “—on behalf of any party—“ and “or disprove” to sub *a*.

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**Rule 5.409 Payment of expenses.** Evidence of furnishing, ~~or offering, or promising to pay, or offering to pay~~ expenses ~~occasioned by~~ resulting from an injury is not admissible to prove liability for the injury.

**Federal rule 409 restyled (2011)****Rule 409. Offers to Pay Medical and Similar Expenses.**

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

**Comment on nonsubstantive distinction:**

The pre- and post-2011 FRE expressly refers to medical and hospital expenses. Iowa rule 5.409 does not, although such expenses are implied and apparently contemplated by the rule.

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1 **Rule 5.410 ~~Inadmissibility of pleas, Pleas, plea discussions, and related statements.~~ Except as**  
 2 **~~otherwise provided in this rule or Iowa R. Crim. P. 2.10(5),~~**

3 **a. Prohibited uses.** ~~In a civil or criminal case, evidence of the following is not, in any civil or~~  
 4 ~~criminal proceeding, admissible against the defendant who made the plea or was a participant~~  
 5 ~~participated in the plea discussions:~~

6 (1) ~~A plea of guilty plea which that was later withdrawn.~~

7 (2) ~~A plea of nolo contendere plea in a federal court or criminal proceeding in another state.~~

8 (3) ~~Any A statement made in the course of any proceedings during a proceeding on either of those~~  
 9 ~~pleas under Fed. R. Crim. P. 11, Iowa R. Crim. P. 2.10, or a comparable state procedure in other states~~  
 10 ~~regarding either of the foregoing pleas.~~

11 (4) ~~Any A statement made in the course of during plea discussions with an attorney for the~~  
 12 ~~prosecuting authority which do if the discussions do not result in a guilty plea of guilty or which result in~~  
 13 ~~a plea of guilty later withdrawn or they resulted in a later-withdrawn guilty plea.~~

14 ~~However, such a statement is admissible under either of the following circumstances:~~

15 **b. Exceptions.** ~~The court may admit a statement described in rule 1.410(a)(3) or (4):~~

16 (i) (1) ~~In any proceeding wherein in which another statement made in the course of during the same~~  
 17 ~~plea or plea discussions has been introduced, if in fairness and the statement statements ought in fairness~~  
 18 ~~to be considered contemporaneously with it together.~~

19 (ii) (2) ~~In a criminal proceeding for perjury or false statement, if the defendant made the statement~~  
 20 ~~was made by the defendant under oath, on the record, and in the presence of with counsel present.~~

21 **Rule 5.411 Liability insurance.** ~~Evidence that a person was or was not insured against liability is not~~  
 22 ~~admissible upon the issue of to prove whether the person acted negligently or otherwise wrongfully. This~~  
 23 ~~rule does not require the exclusion of But the court may admit this evidence of insurance against liability~~  
 24 ~~when offered for another purpose, such as proof of agency, ownership, or control, or proving a witness's~~  
 25 ~~bias or prejudice of a witness or proving agency, ownership, or control.~~

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 27 **Rule 5.412 Sexual abuse cases; ~~relevance of~~ victim's past sexual behavior.**

28 **a. Prohibited uses.** ~~Notwithstanding any other provision of law, in a criminal case in which a~~  
 29 ~~person is accused of The following evidence is not admissible in a criminal proceeding involving alleged~~  
 30 ~~sexual abuse;~~

31 (1) ~~reputation Reputation or opinion evidence of the offered to prove that a victim engaged in past~~  
 32 ~~other sexual behavior of an alleged victim of such sexual abuse is not admissible.~~

33 (2) ~~Notwithstanding any other provision of law, in a criminal case in which a person is accused of~~  
 34 ~~sexual abuse, evidence Evidence of a victim's past other sexual behavior other than reputation or~~  
 35 ~~opinion evidence, is also not admissible, unless such evidence is either of the following:~~

36 **b. Exceptions.**

37 (1) **Criminal cases.** ~~The court may admit the following evidence in a criminal case: Admitted in~~  
 38 ~~accordance with rules 5.412(c)(1) and 5.412(c)(2) and that is constitutionally required to be admitted.~~

39 (2) ~~Admitted Evidence admitted in accordance with rule 5.412(c) and that is evidence of either of the~~  
 40 ~~following:~~

41 (A) ~~Past Evidence of specific instances of a victim's sexual behavior with persons other than the~~  
 42 ~~accused, if offered by the accused upon the issue of whether the accused was or was not, with respect to~~  
 43 ~~the alleged victim, to prove that someone other than the defendant was the source of semen, or injury, or~~  
 44 ~~other physical evidence.~~

1 (B) ~~Past Evidence of specific instances of a victim's sexual behavior with the accused and is offered~~  
 2 ~~by the accused upon the issue of whether the alleged victim consented to the sexual behavior with~~  
 3 ~~respect to which the person accused of sexual abuse, is alleged if the defendant offers it to prove~~  
 4 ~~consent.~~

5 (C) Evidence whose exclusion would violate the defendant's constitutional rights.

6 (2) Civil cases. Rule 5.412(b) does not apply in civil cases.

7 c. Procedure to determine admissibility.

8 (1) Motion. ~~If the person accused of sexual abuse defendant in a criminal sexual abuse case intends~~  
 9 ~~to offer evidence under rule 5.412(b), evidence of specific instances of the alleged victim's past sexual~~  
 10 ~~behavior, the accused shall the defendant must:~~

11 (A) ~~make File a written motion to offer such the evidence not later than at least 15 14 days before the~~  
 12 ~~date on which the trial in which such evidence is to be offered is scheduled to begin, except that unless~~  
 13 ~~the court may allow the motion to be made at a later date, including during trial, if the court determines~~  
 14 ~~either that the evidence is newly discovered and could not have been obtained earlier through the~~  
 15 ~~exercise of due diligence, or that the issue to which such evidence relates to an issue that has newly~~  
 16 ~~arisen in the case, and sets a different time.~~

17 ~~(B) Any motion made under this paragraph shall be served Serve the motion on all other parties and~~  
 18 ~~on the alleged victim, or when appropriate, the victim's guardian or representative.~~

19 (C) File with the motion an offer of proof on the evidence sought to be admitted. that specifically  
 20 describes the evidence and states the purpose for which the evidence is to be offered.

21 (2) Hearing. ~~The motion described in rule 5.412(e)(1) shall be accompanied by a written offer of~~  
 22 ~~proof. If the court determines that the offer of proof contains evidence described in rule 5.412(b), the~~  
 23 ~~court shall order must conduct a hearing in chamberscamera to determine if such evidence is admissible.~~

24 (A) At such the hearing the parties may call witnesses, including the alleged victim, and offer  
 25 relevant evidence.

26 (B) Notwithstanding rule 5.104(b), if the relevancy of the evidence which the accused seeks to offer in  
 27 the trial depends upon on the fulfillment of a condition of fact, the court, at the during a hearing in  
 28 chambers or at a subsequent hearing in chambers scheduled for such purpose, shall camera, must accept  
 29 evidence on the issue of whether such the condition of fact is fulfilled and shall determine such issue.

30 (3) (C) If the court determines on the basis of the hearing described in rule 5.412(e)(2) that the  
 31 evidence which the accused seeks to offer is relevant and that the probative value of such evidence  
 32 outweighs the danger of unfair prejudice, such the evidence shall will be admissible in the at trial to the  
 33 extent an order made by the court specifies, including the evidence on which may be offered and areas  
 34 with respect to which the alleged the victim may be examined or cross-examined.

35 d. For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the  
 36 sexual behavior with respect to which sexual abuse is alleged.

**Federal rule 412 (a)-(b)restyled (2011):**

**Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition.**

(a) *Prohibited Uses.* The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

- (1) evidence offered to prove that a victim engaged in other sexual behavior; or
- (2) evidence offered to prove a victim's sexual predisposition.

**(b) Exceptions.**

(1) *Criminal Cases*. The court may admit the following evidence in a criminal case:

(A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

**Comment on substantive distinctions:**

Iowa rule 5.412 and its 2011 restyled federal counterpart contain significant substantive, structural, and linguistic differences. The substantive differences predate the 2011 revision.

The Iowa rule refers to "past sexual behavior," see 5.412(a), while the federal rule refers to "other sexual behavior" in subsection (a)(1). Also, the federal rule refers to "sexual predisposition" in subsection (a)(2). The Iowa rape shield rule does not reference sexual predisposition.

The restyling retains the narrower phrase "sexual abuse" in the Iowa rule.

**Federal rule 412(b), cont. restyled (2011):**

(B) evidence of specific instances of a victim'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

(C) evidence whose exclusion would violate the defendant's constitutional rights.

(2) 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.

**Comment on substantive distinction:**

Subsection (b)(2) makes 2011 restyled FRE 412 applicable in civil cases. Iowa's rape shield rule only applies in criminal cases. *See State v. Kraker*, 494 N.W.2d 687 (Iowa 1993).

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**Federal rule 412(c)-(d) restyled (2011):**

(c) *Procedure to Determine Admissibility*.

(1) *Motion*. If a party intends to offer evidence under Rule 412(b), the party must:

(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) do so at least 14 days before trial unless the court, for good cause, sets a different time;

(C) serve the motion on all parties; and

(D) notify the victim or, when appropriate, the victim's guardian or representative.

(2) *Hearing*. Before admitting evidence under this rule, the court must conduct an in camera 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 must be and remain sealed.

(d) *Definition of "Victim."* In this rule, "victim" includes an alleged victim.

**Comment on substantive distinction:**

The Iowa rule requires a motion be made at least 15 days before trial and the 2011 restyled FRE counterpart provides such motion must be made 14 days before trial. The FRE utilizes "good cause" language for determining when the deadline may be excepted. The Iowa rule is more circumscribed and affords the court less discretion in deciding when the deadline can be excepted. The FRE requires notification of a victim's guardian or representative when appropriate. The Iowa rule does not expressly require this. The FRE expressly requires that the motion, related materials, and record of the hearing remain sealed.

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**Comment on substantive distinction:**

Subsection (c)(2) provides greater specificity regarding the procedure for admission. This subsection requires an offer of proof and provides for the calling of witnesses at the hearing, and the offering of other "relevant evidence." Furthermore, the Iowa rule expressly directs the judge to ignore rule 5.104(b) when the relevance of the evidence presented at the hearing depends on a condition of fact. FRE 412 no longer contains such a provision and the Advisory Committee notes indicate that it was removed due to confusion and constitutional concerns.

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**Comment on distinction:**

Subsection (c)(3) explains that if relevance and the preeminence of probative value are demonstrated at the hearing then the evidence is admissible. This is not expressly stated in the FRE counterpart but is presumably implied. Subsection (c)(3) also directs the court to determine the extent to which the evidence may be put to use. The FRE counterpart does not do so but the court clearly has the authority to do so.

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**Rules 5.413 to 5.500** Reserved.

**Federal rule 413 restyled (2011):****Rule 413. Similar Crimes in Sexual-Assault Cases.****Comment on substantive distinction:**

The Iowa rules do not specifically provide for the admission of similar crimes in sexual assault or child-molestation cases. Iowa Code § 701.11 permits evidence of similar offenses in criminal prosecutions for sexual abuse cases. The statute, however, has been held unconstitutional when used to admit such evidence to demonstrate general propensity. *State v. Cox*, 781 N.W.2d 757 (Iowa 2010).

**Federal rule 414 restyled (2011):****Rule 414. Similar Crimes in Child-Molestation Cases.****Comment on substantive distinction:**

The Iowa rules do not specifically provide for the admission of similar crimes in sexual assault or child-molestation cases. Iowa Code § 701.11 permits evidence of similar offenses in criminal prosecutions for sexual abuse cases. However, we have held the statute unconstitutional when used to admit such evidence to demonstrate general propensity. *State v. Cox*, 781 N.W.2d 757 (Iowa 2010).

**Federal rule 415 restyled (2011)****Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation.**

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**ARTICLE V**  
**PRIVILEGES**

**Rule 5.501 ~~General rule~~ Privilege in general.** Nothing in these rules ~~shall be deemed to modify~~ modifies or supersede ~~supersedes~~ existing law ~~relating to governing a claim of the privilege of a witness,~~ person, government, state, or political subdivision.

**Federal rule 501 restyled (2011)****Rule 501. Privilege in General.**

The common law—as interpreted by United States courts in the light of reason and experience—governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

**Comment on distinction:**

Iowa rule 5.501 necessarily departs from the pre- and post-2011 federal counterpart but remains analogous. In Iowa courts, Iowa law, not federal common law, governs privilege.

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**Rule 5.502 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.

1        *a. Disclosure made in a court or agency proceeding; scope of a waiver.* When the disclosure is made  
 2 in a court or agency proceeding and waives the attorney-client privilege or work-product protection, the  
 3 waiver extends to an undisclosed communication or information only if:

4        (1) The waiver is intentional;

5        (2) The disclosed and undisclosed communications or information concern the same subject matter;  
 6 and

7        (3) They ought in fairness to be considered together.

8        *b. Inadvertent disclosure.* When made in a court or agency proceeding, the disclosure does not  
 9 operate as a waiver if:

10       (1) The disclosure is inadvertent;

11       (2) The holder of the privilege or protection took reasonable steps to prevent disclosure; and

12       (3) The holder promptly took reasonable steps to rectify the error, including (if applicable)  
 13 following Iowa Rule of Civil Procedure 1.503(5)(b).

14       *c. Disclosure made in a federal or state proceeding.* When a disclosure is made in a federal or  
 15 state proceeding and is not the subject of a federal or state court order concerning waiver, the disclosure  
 16 does not operate as a waiver in an Iowa proceeding if the disclosure:

17       (1) Would not be a waiver under this rule if it had been made in an Iowa proceeding; or

18       (2) Is not a waiver under the law of the jurisdiction where the disclosure occurred.

19       *e. d. Controlling effect of a court order.* A court may order that the privilege or protection is not  
 20 waived by disclosure connected with the litigation pending before the court—in which event the  
 21 disclosure is also not a waiver in any other proceeding.

22       *~~d.—e.~~ Controlling effect of a party agreement.* An agreement on the effect of disclosure in a state  
 23 proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

24       *e.—f. Controlling effect of this rule.* Notwithstanding rules 5.101 and 5.1101, this rule applies to all  
 25 proceedings; in the circumstances set out in the rule.

26       *~~f.—g.~~ Definitions.* In this rule:

27       (1) “Attorney-client privilege” means the protection that applicable law provides for confidential  
 28 attorney-client communications; ~~and~~

29       (2) “Work-product protection” means the protection that applicable law provides for tangible  
 30 material (or its intangible equivalent) prepared in anticipation of litigation or for trial.  
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**Rule 502(c) restyled (2011)**

(c) *Disclosure Made in a State Proceeding.* When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning waiver, the disclosure does not operate as a waiver in a federal proceeding if the disclosure:

(1) would not be a waiver under this rule if it had been made in a federal proceeding; or

(2) is not a waiver under the law of the state where the disclosure occurred.

**Comment on distinction:** The restyling adds federal rule 502(c) to the Iowa rule.

FRE 502 includes disclosures made “to a federal office or agency.” Iowa’s rule preventing inadvertent waiver of privilege includes disclosures made during a court and agency proceeding but not disclosures made “to a state office or agency.”

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33 **Rules 5.503 to 5.600** Reserved.

**ARTICLE VI**  
**WITNESSES**

**Rule 5.601 ~~General rule of competency~~ Competency to testify in general.** ~~Unless otherwise provided by statute or rule, every~~ Every person is competent to be a witness, unless a statute or rule provides otherwise.

**Rule 5.602 ~~Lack of~~ Need for personal knowledge.** A witness may ~~not~~ testify to a matter ~~unless only if~~ evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, ~~but need not,~~ consist of the witness's own testimony of the witness. This rule is subject to the provisions of rule 5.703 relating to opinion does not apply to a witness's expert testimony by expert witnesses under rule 5.703.

**Rule 5.603 Oath or affirmation to testify truthfully.** Before testifying, ~~every~~ a witness shall be required to declare that the witness will testify truthfully, by must give an oath or affirmation to testify truthfully. ~~Administered~~ It must be in a form calculated to awaken the witness's conscience and designed to impress that duty on the witness's mind with the witness's duty to do so conscience.

**Rule 5.604 ~~Interpreters~~ Interpreter.** An interpreter is ~~subject to the provisions of these rules relating to qualification as an expert and the administration of~~ must be qualified under Iowa Court rule 47 and must give an oath or affirmation that the interpreter will make a true translation to interpret accurately during the proceeding to the best of the interpreter's ability.

**Rule 5.605 ~~Competency of judge~~ Judge's competency as a witness.** The judge presiding ~~judge at the trial~~ may not testify ~~in that trial~~ as a witness at the trial. ~~No objection~~ A party need be made in order not object to preserve the point issue.

**Rule 5.606 ~~Competency of juror~~ Juror's competency as a witness.**

*a. At the trial.* ~~A member of the jury~~ juror may not testify as a witness before ~~that jury in the other jurors at the trial of the case in which the juror is sitting.~~ If the a juror is called ~~so~~ to testify, the ~~opposing court must give a party~~ shall be afforded an opportunity to object out of the presence of outside the jury jury's presence.

*b. Inquiry* During an inquiry into the validity of a verdict or indictment.

*(1) Prohibited testimony or other evidence.* ~~Upon~~ During an inquiry into the validity of a verdict or indictment, a juror may not testify ~~as to~~ about any matter or statement made or incident that occurred occurring during the course of the jury's deliberations; or to the effect of anything upon that juror's or any other another juror's vote; or any juror's mind or emotions as influencing the juror to assent to or dissent from mental processes concerning the verdict or indictment, or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may The court may not receive a juror's affidavit or evidence of any a juror's statement by the juror concerning a matter about which the juror would be precluded from testifying be received for on these purposes matters.

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

1 (A) Extraneous prejudicial information was improperly brought to the jury's attention.

2 (B) An outside influence was improperly brought to bear on any juror.

3 (C) A mistake was made in entering the verdict on the verdict form.

4 **Federal rule 606(b)(2)(C) restyled (2011):**

(C) a mistake was made in entering the verdict on the verdict form.

**Comment on substantive distinction:**

The Iowa rule does not expressly provide for testimony from a juror regarding a mistake in entering the verdict. The restyling adds subrule (C) to the Iowa rule.

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7 **Rule 5.607 Who may impeach a witness.** ~~The credibility of a witness may be attacked by any~~ Any  
8 party, including the party calling that called the witness, may attack the witness's credibility.

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10 **Rule 5.608 Evidence of Witness's character and conduct of witness for truthfulness or**  
11 **untruthfulness.**

12 ~~a. Opinion and reputation Reputation or opinion evidence of character.~~ The A witness's credibility  
13 of a witness may be attacked or supported by evidence testimony about the witness's reputation for  
14 having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that  
15 character. But evidence or reputation, subject to the following limitations:

16 (1) ~~The evidence may refer only to character for truthfulness or untruthfulness.~~

17 (2) ~~Evidence of truthful character is admissible only after the witness's character of the witness for~~  
18 truthfulness has been attacked by opinion or reputation evidence or otherwise.

19 ~~b. Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of~~  
20 attacking or supporting the witness's credibility, other than conviction of crime as provided in rule  
21 5.609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if  
22 probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness-

23 (1) ~~concerning the witness's character for truthfulness or untruthfulness, or~~

24 (2) ~~concerning the character for truthfulness or untruthfulness of another witness as to which~~  
25 character the witness being cross-examined has testified. The giving of testimony, whether by an  
26 accused or by any other witness, does not operate as a waiver of the witness's privilege against self-  
27 incrimination when examined with respect to matters which relate only to credibility. Except for a  
28 criminal conviction under Rule 5.609, extrinsic evidence is not admissible to prove specific instances of  
29 a witness's conduct in order to attack or support the witness's character for truthfulness. But the court  
30 may, on cross-examination, allow them to be inquired into if they are probative of the character for  
31 truthfulness or untruthfulness of:

32 (1) The witness; or

33 (2) Another witness whose character the witness being cross-examined has testified about.

34 By testifying on another matter, a witness does not waive any privilege against self-incrimination for  
35 testimony that relates only to the witness's character for truthfulness.

36  
37 **Rule 5.609 Impeachment by evidence of a criminal conviction of crime.**

38 ~~a. General rule~~ In general. For the purpose of attacking the credibility of a witness The following  
39 apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

1 ~~(1) Evidence that a witness other than the accused has been convicted of~~ For a crime shall be  
 2 admitted, subject to rule 5.403, if the crime that in the convicting jurisdiction was punishable by death or  
 3 by imprisonment in excess of for more than one year, pursuant to the law under which the witness was  
 4 convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court  
 5 determines that the probative value of admitting this evidence outweighs its prejudicial effect to the  
 6 accused; and the evidence:

7 (A) Must be admitted, subject to rule 5.403, in a civil case or in a criminal case in which the witness  
 8 is not a defendant.

9 (B) Must be admitted in a criminal case in which the witness is a defendant, if the probative value of  
 10 the evidence outweighs its prejudicial effect to that defendant.

11 ~~(2) Evidence that any witness has been convicted of a crime shall be admitted if it involved~~  
 12 ~~dishonesty or false statement, regardless of the punishment. For any crime regardless of the punishment,~~  
 13 ~~the evidence must be admitted if the crime involved dishonesty or false statement.~~

14 *b. ~~Time limit~~Limit on using the evidence after 10 years.* This subdivision (b) applies Evidence of a  
 15 conviction under this rule is not admissible if a period of more than ten 10 years has elapsed have passed  
 16 since the witness's date of the conviction or of the release of the witness from the confinement imposed  
 17 for it, that conviction, whichever is the later. Evidence date, unless the court determines, in the interests  
 18 of justice, that the probative value of the conviction supported by specific facts and circumstances  
 19 substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old  
 20 as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance  
 21 written notice of intent to use such evidence to provide the adverse party with a fair opportunity to  
 22 contest the use of such evidence. only if:

23 (1) Its probative value, supported by specific facts and circumstances, substantially outweighs its  
 24 prejudicial effect; and

25 (2) The proponent gives an adverse party reasonable written notice of the intent to use it so that the  
 26 party has a fair opportunity to contest its use.

27 *c. Effect of pardon.* Evidence of a conviction is not admissible under this rule if the conviction has  
 28 been the subject of a pardon.;

29 (1) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other  
 30 equivalent procedure based on a finding that the person has been rehabilitated, and the person has not  
 31 been convicted of a later crime punishable by death or by imprisonment for more than one year; or

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

**Federal rule 609(c) restyled (2011)**

*(c) Effect of a Pardon, Annulment, or Certificate of rehabilitation.*

Evidence of a conviction is not admissible if:

(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 year;  
 or

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

**Comment on substantive distinction:**

The pre- and post-2011 FRE include “annulment” and “certificate of rehabilitation.”  
Iowa’s rule is limited to “effect of pardon.”

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

6 (1) It is offered in a criminal case;

7 (2) The adjudication was of a witness other than the defendant;

8 (3) An adult’s conviction for that offense would be admissible to attack the adult’s credibility; and

9 (4) Admitting the evidence is necessary to fairly determine guilt or innocence.

10 *e. Pendency of an appeal.* ~~The pendency of an appeal therefrom does not render evidence of a~~  
11 ~~conviction inadmissible. A conviction that satisfies rule 5.609 is admissible even if an appeal is pending.~~  
12 Evidence of the pendency of ~~an~~the appeal is also admissible.  
13

14 **Rule 5.610 Religious beliefs or opinions.** Evidence of ~~the beliefs or opinions of a witness~~ witness’s  
15 religious beliefs or opinions on matters of religion is not admissible ~~for the purpose of showing that by~~  
16 ~~reason of their nature to attack or support~~ the witness’s credibility ~~is impaired or enhanced.~~

17  
18 **Rule 5.611 Mode and order of ~~interrogation and presentation~~ examining witnesses and presenting**  
19 **evidence.**

20 *a. Control by the court; purposes.* The court ~~shall~~ should exercise reasonable control over the mode  
21 and order of ~~interrogating~~ examining witnesses and presenting evidence so as to:

22 (1) ~~make the interrogation and presentation~~ Make those procedures effective for ~~the ascertainment of~~  
23 determining the truth;

24 (2) ~~avoid needless consumption of~~ Avoid wasting time; ~~and,~~

25 (3) ~~protect~~ Protect witnesses from harassment or undue embarrassment.

26 *b. Scope of cross-examination.* Cross-examination should ~~be limited to~~ not go beyond the subject  
27 matter of the direct examination and matters affecting the witness’s credibility ~~of the witness.~~ The court  
28 may, ~~in the exercise of discretion,~~ permit allow inquiry into additional matters as if on direct  
29 examination.

30 *c. Leading questions.* Leading questions should not be used on ~~the~~ direct examination ~~of a witness~~  
31 except as ~~may be~~ necessary to develop ~~that~~ the witness’s testimony. Ordinarily ~~leading questions~~ the  
32 court should be permitted allow leading questions:

33 (1) ~~on~~ On cross-examination; and

34 (2) ~~When a party calls a hostile witness, an adverse party, or a witness identified with an adverse~~  
35 ~~party, interrogation may be by leading questions.~~

36 **Rule 5.612 Writing used to refresh a witness’s memory.**

37 *a. Scope.* ~~Except as otherwise provided in criminal proceedings by Iowa R. Crim. P. 2.14, if~~ This rule  
38 gives an adverse party certain options when a witness uses a writing to refresh ~~the witness’s~~ memory ~~for~~  
39 ~~the purpose of testifying, either:~~

40 (1) While testifying, or

41 (2) Before testifying, if the court decides that justice requires the party to have those options. ~~in its~~  
42 ~~discretion finds a necessity in the interests of justice,~~

1 b. Adverse party's options; deleting unrelated matter. Unless Iowa Rule of Criminal Procedure 2.14  
 2 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the  
 3 hearing, to inspect it, to cross-examine the witness ~~thereon~~ about it, and to introduce ~~into~~ into evidence  
 4 ~~those portions which relate~~ any portion that relates to the ~~testimony of the witness~~ witness's testimony.  
 5 If ~~the producing party claims it is claimed~~ that the writing contains ~~matters not related to the subject~~  
 6 unrelated matter, of the ~~testimony~~ the court ~~shall~~ must examine the writing in camera, ~~excise~~ delete any  
 7 ~~portions not so related~~ unrelated portion, and order ~~delivery of the remainder~~ that the rest be delivered to  
 8 the adverse party ~~entitled thereto~~. Any portion ~~withheld~~ deleted over ~~objections~~ objection ~~shall~~ must be  
 9 preserved ~~and made available to the appellate court in the event of an appeal~~ for the record.

10 c. Failure to produce or deliver the writing. If a writing is not produced or ~~is not delivered pursuant~~  
 11 ~~to order under this rules~~ ordered, the court ~~shall make~~ may issue any appropriate order, ~~justice requires~~,  
 12 ~~except that in criminal cases when~~ But if the prosecution ~~ejects~~ does not to comply in a criminal case,  
 13 ~~the order shall be one striking the testimony or, if the court in its discretion, determines that the interests~~  
 14 ~~of~~ must strike the witness's testimony or—if justice so require, declaring requires—declare a mistrial.

#### 16 **Rule 5.613 ~~Prior statements of witnesses~~ Witness's prior statement.**

17 a. Examining witness concerning prior ~~Showing or disclosing the statement during examination.~~ In  
 18 When examining a witness ~~concerning a~~ about the witness's prior statement ~~made by the witness,~~  
 19 ~~whether written or not, the statement a party need not be shown~~ show it ~~nor~~ or disclose its contents  
 20 ~~disclosed to the witness, at that time, but~~ But the party must, on request, ~~the same shall be shown or~~  
 21 ~~disclosed to opposing counsel~~ show it or disclose its contents to an adverse party's attorney.

22 b. Extrinsic evidence of a ~~prior inconsistent statement of witness.~~ Extrinsic evidence of a witness's  
 23 ~~prior inconsistent statement by a witness is not admissible unless~~ only if the witness is ~~afforded~~ given an  
 24 opportunity to explain or deny the ~~same statement~~ and ~~the opposite~~ an adverse party is afforded given an  
 25 opportunity to ~~interrogate~~ examine the witness ~~thereon~~ about it, or ~~the interests of~~ if justice otherwise  
 26 ~~requires~~ so requires. This rule ~~subdivision(b)~~ does not apply to admissions of a party opponent as defined  
 27 ~~in an opposing party's statement under rule 5.801(d)(2).~~

#### 29 **Rule 5.614 ~~Calling and interrogation of witnesses by court~~ Court's calling or examining a witness.**

30 a. Calling by court. For good cause in exceptional cases, the court may call a witness on its own  
 31 ~~motion or at the suggestion of a party, party's request.~~ call witnesses, and all parties are Each party is  
 32 entitled to cross-examine ~~witnesses thus called~~ the witness.

#### **Federal rule 614(a) restyled (2011):**

##### **Rule 614. Court's Calling or Examining a Witness.**

(a) *Calling.* The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

##### **Comment on substantive distinction:**

Iowa rule 5.614(a) sets forth a "good cause in exceptional cases" standard not embodied in the pre- or post-2011 FRE. Thus, the FRE gives the court much more discretion to decide when to call witnesses. This is a minor substantive difference and the restyling retains the current Iowa rule language "For good cause in exceptional cases."

34 b. Interrogation by court ~~Examining.~~ When necessary in the interest of justice, the court may  
 35 ~~interrogate witnesses, whether called by the court or by a party~~ examine a witness regardless of who  
 36

1 calls the witness.

2 ~~c. Objections. Objections to the calling of witnesses by the court or to interrogation by it may~~  
 3 ~~be made.~~ A party may object to the court's calling or examining a witness either at the that time or at the  
 4 next available opportunity when the jury is not present.

5  
 6 **Rule 5.615 ~~Exclusion of Excluding witnesses.~~** ~~At the a party's request of a party the court may order~~  
 7 ~~witnesses excluded so that they cannot hear the other witnesses' testimony, of other witnesses, and it~~  
 8 ~~may make the order of Or the court may do so on its own motion. This But this~~ rule does not authorize  
 9 ~~exclusion of any of the following~~ excluding:

10 (1) a. A party who is a natural person.

11 (2) b. An officer or employee of a party ~~which that~~ is not a natural person, after being designated as  
 12 it's the party's representative by its attorney.

13 (3) c. A person whose presence ~~is shown by~~ a party shows to be essential to ~~the presentation of~~  
 14 presenting the party's cause ~~claim or defense.~~

15 (4) d. A person authorized by statute to be present.

16  
 17 **Rules 5.616 to 5.700** Reserved.

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 20  
 21 **ARTICLE VII**  
 22 **OPINIONS AND EXPERT TESTIMONY**

23  
 24 **Rule 5.701 Opinion testimony by lay witnesses.** ~~If the a witness is not testifying as an expert, the~~  
 25 ~~witness's testimony in the form of opinions or inferences an opinion is limited to those opinions or~~  
 26 ~~inferences which are one that is:~~

27 ~~(a) a. rationally~~ Rationally based on the witness's perception; ~~of the witness and~~

28 ~~(b) b. helpful~~ Helpful to a ~~clear~~ clearly understanding ~~of the witness's testimony or the determination of~~  
 29 to determining a fact in issue; ~~and~~

30 c. Not based on scientific, technical, or other specialized knowledge within the scope of rule 5.702.

31  
 32 **Federal rule 701(c) restyled (2011):**

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

**Comment on substantive distinction:**

FRE 702 expressly forbids a lay witness from testifying on matters related to scientific, technical, or other specialized knowledge. the Iowa rule has no such provision and does not expressly forbid a lay witness from giving testimony based upon specialized knowledge. The restyling adds federal subrule (c), as more of a clarification of Iowa's rule rather than a substantive change.

33 **Rule 5.702 Testimony by ~~experts~~ expert witnesses.** ~~If scientific, technical, or other specialized~~  
 34 ~~knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a A~~  
 35 ~~witness who is~~ qualified as an expert by knowledge, skill, experience, training, or education may testify  
 36 ~~thereto~~ in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized

1 knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

2

**Federal rule 702 restyled (2011):**

**Rule 702. Testimony by Expert Witnesses.**

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:

- (a) 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;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

**Comment on substantive distinction:**

Iowa rule 5.702 contains a substantive departure from its pre- and post-2011 federal counterpart in that it does not expressly set forth the gate-keeping functions contained in old FRE 702(1)-(3) or restyled FRE 702(b)-(d). Iowa, however, by case law has adopted some of the federal language and arguably interpreted rule 5.702 as including the principle set forth in FRE 702(3). *Ranes v. Adams Laboratories, Inc.*, 778 N.W.2d 677, 685 (Iowa 2010) (noting "reliability is an implicit requirement of admissibility under Iowa Rule of Evidence 5.702").

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5 **Rule 5.703 Bases of an expert's opinion testimony by experts.** ~~The facts or data in the particular case~~  
 6 ~~upon which an expert bases an opinion or inference may be those perceived by or made known to the~~  
 7 ~~expert at or before the trial or hearing. An expert may base an opinion on facts or data in the case that~~  
 8 ~~the expert has been made aware of or personally observed. If of a type reasonably relied upon by experts~~  
 9 ~~in the particular field would reasonably rely on those kinds of facts or data in forming opinions an~~  
 10 ~~opinion or inferences upon on the subject, ~~the facts or data they~~ need not be admissible in evidence for~~  
 11 ~~the opinion to be admitted.~~

**Federal rule 703 restyled (2011):****Rule 703. Bases of an Expert's Opinion Testimony.**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

**Comment on substantive distinction:**

The FRE contains more detailed language regarding the bases of an expert opinion and Iowa rule 5.703 contains a substantive departure from its pre- and post-2011 federal counterpart in that it does not expressly set forth a framework governing disclosure to the jury of otherwise inadmissible data relied on by an expert (*see* 3d sentence of restyled 703). The Iowa rule contains a principle similar to that contained in FRE 703. The 2000 amendment to the FRE set forth "a presumption against disclosure to the jury of information used as the basis of an expert's opinion and not admissible for any substantive purpose, when that information is offered by the proponent of the expert." Fed. R. Evid. 703 Advisory Committee's note. The Iowa rule does not contain this provision.

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**Rule 5.704 Opinion on an ultimate issue.** ~~Testimony in the form of an An opinion or inference otherwise admissible~~ is not objectionable just because it embraces an ultimate issue ~~to be decided by the trier of fact.~~

**Federal rule 704 restyled (2011):****Rule 704. Opinion on an Ultimate Issue.**

(a) *In General—Not Automatically Objectionable.* An opinion is not objectionable just because it embraces an ultimate issue.

(b) *Exception.* In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

**Comment on substantive distinction:**

Pre- and post-2011 FRE 704(b) present a substantive difference from Iowa rule 5.704. FRE 704 prohibits expert testimony on mental state or condition if it is an element of the crime. The Iowa rule does not contain an express exception for such testimony.

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**Rule 5.705 ~~Disclosure of~~ Disclosing the facts or data underlying expert an expert's opinion.** ~~The~~ Unless the court orders otherwise, an expert may ~~testify in terms of~~ state an opinion or inference—and give the reasons therefor for it—without first testifying to the underlying facts or data, ~~unless the court requires otherwise. The~~ But the expert may ~~in any event~~ be required to disclose ~~the underlying those~~ facts or data on cross-examination.

1 **Rule 5.706 Court-appointed ~~experts~~ expert witnesses.**

2 *a. Appointment process.* ~~The~~ On a party's motion the court may ~~on the motion of any party enter an~~  
 3 order the parties to show cause why expert witnesses should not be appointed; and may ~~request~~ ask the  
 4 parties to submit nominations. The court may appoint any expert ~~witnesses agreed upon by that~~ the  
 5 parties agree on and any of its own choosing; and may ~~appoint expert witnesses of its own selection. An~~  
 6 ~~expert witness shall not be appointed by the court unless the witness~~ But the court may only appoint  
 7 someone who consents to act.

8

**Federal rule 706(a) restyled (2011):**

(a) *Appointment Process.* On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

**Comment on minor substantive distinction:**

FRE 706 allows the court to enter the order to show cause why an expert should not be appointed sua sponte: "On a party's motion or on its own, the court may order the party's . . . ." Under the Iowa rule a party must make the motion. Additional distinctions are nonsubstantive and present as a result of the 2011 revision.

9

10

11 *b. Expert's role.* ~~A witness so appointed shall be informed~~ The court must inform the expert of the  
 12 ~~witness's expert's duties, by the~~ The court in ~~may do so in writing, and have a copy of which shall be~~  
 13 filed with the clerk; or may do so orally at a conference in which the parties ~~shall~~ have an opportunity to  
 14 participate. The expert:

15 (1) ~~A witness so appointed shall~~ Must advise the parties of ~~the witness's~~ any findings ~~the expert~~  
 16 makes, if any;

17 (2) ~~the witness's deposition may~~ May be ~~taken~~ deposed by any party;

18 (3) ~~and the witness may~~ May be called to testify by the court or any party.

19 (4) ~~The witness shall~~ May be ~~subject to cross examination~~ cross-examined by ~~each~~ any party,  
 20 including ~~a party calling~~ the party that called the ~~witness~~ expert.

21 *b. c. Compensation.* ~~Expert witnesses so appointed are~~ The expert is entitled to a reasonable  
 22 compensation as set by ~~in whatever sum~~ the court ~~may allow~~. Except as otherwise provided by law, the  
 23 compensation ~~shall~~ must be paid by the parties in ~~such~~ the proportion and at ~~such~~ the time ~~as that~~ the  
 24 court directs, and ~~thereafter~~ the compensation is then charged ~~in like manner~~ as other costs.

25

**Federal rule 706(c) restyled (2011):**

(c) *Compensation.* The expert is entitled to a reasonable compensation, as set by the court. The compensation is payable as follows:

- (1) in a criminal case or in a civil case involving just compensation under the Fifth Amendment, from any funds that are provided by law; and
- (2) in any other civil case, by the parties in the proportion and at the time that the court directs—and the compensation is then charged like other costs.

**Comment on substantive distinction:**

Iowa rule 5.706(b) contains a minor substantive departure from its pre- and post-2011 federal counterpart. Under the Iowa rule all compensation is to be paid "in like manner as other costs." Under FRE 706(c), however, in a criminal case or in a civil case involving just compensation, the compensation is payable from any funds provided by law. Under the FRE compensation is charged like "other costs" in civil cases not involving just compensation under the Fifth Amendment.

1

~~*e. d. Disclosure of Disclosing the appointment to the jury.*~~ In the exercise of its discretion, the The court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

2

~~*d. e. Parties' experts choice of their own selection experts.*~~ Nothing in this rule Rule 5.706 does not limit limits the parties a party in calling its own experts expert witnesses of their own selection.

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**Rules 5.707 to 5.800** Reserved.

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## ARTICLE VIII HEARSAY

12

13

**Rule 5.801 Definitions that apply to this Article; exclusions from hearsay.** The following definitions apply under this article:

14

*a. Statement.* A "statement" is "Statement" means a person's:

15

(1) ~~an oral~~ Oral assertion or written assertion; or

16

(2) ~~nonverbal~~ Nonverbal conduct, if of a person, if it is intended by the person as an assertion.

17

*b. Declarant.* A "declarant" is a "Declarant" means the person who ~~makes a~~ made the statement.

18

*c. Hearsay.* "Hearsay" is "Hearsay" means a statement; that:

19

(1) ~~other than one made by the~~ The declarant does not make while testifying at the current trial or hearing; and

20

(2) ~~offered~~ A party offers in into evidence to prove the truth of the matter asserted in the statement.

21

*d. Statements which that are not hearsay.* The following statements are A statement that meets the following conditions is not hearsay:

22

(1) Prior A declarant-witness's prior statement-by witness. The declarant testifies at the ~~trial or hearing~~ and is subject to cross-examination ~~concerning the~~ about a prior statement, and the statement;

23

(A) ~~is (A) Is~~ is inconsistent with the declarant's testimony, and was given under ~~oath subject to the~~ oath subject to the penalty of perjury at a trial, hearing, or other proceeding; or in a deposition; ~~or~~

24

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1 (B) Is consistent with the declarant's testimony and is offered to rebut an express or implied charge  
 2 ~~against that the declarant of recent fabrication~~ recently fabricated it or acted from a recent improper  
 3 influence or motive; in so testifying; or

4 (C) ~~one of identification of~~ Identifies a person ~~made after perceiving the person; or as someone the~~  
 5 declarant perceived earlier.

6 (2) ~~Admission by party opponent~~ An opposing party's statement. The statement is offered against a  
 7 an opposing party and; is

8 (A) ~~the party's own statement,~~ Was made by the party in either an individual or a representative  
 9 capacity; or;

10 (B) ~~a statement of which~~ Is one the party has manifested an ~~adoption or belief in its truth, or~~ that it  
 11 adopted or believed to be true;

12 (C) ~~a statement~~ Was made by a person whom the party authorized ~~by the party~~ to make a statement  
 13 concerning on the subject; ~~or;~~

14 (D) ~~a statement~~ Was made by the party's agent or ~~servant concerning~~ employee on a matter within the  
 15 scope of the agency or employment, made during the existence of the that relationship and while it  
 16 existed, or;

17 (E) ~~a statement~~ Was made by a the party's coconspirator ~~of a party~~ during ~~the course and~~ in  
 18 furtherance of the conspiracy. Prior to admission of hearsay evidence under rule 801(d)(2)(E), the trial  
 19 court must make a preliminary finding, by a preponderance of evidence, that there was a conspiracy, that  
 20 both the declarant and the party against whom the statement is offered were members of the conspiracy,  
 21 and that the statements were made in the course and in furtherance of the conspiracy.  
 22

**Federal rule 801(d)(2)(E) restyled (2011):**

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but 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).

**Comment on substantive distinction:**

Iowa rule 801(d)(2)(E) is substantively distinguishable from its federal counterpart.

The federal rule provides for corroboration testimony by co-conspirators on certain issues. The Iowa rule does not contain these requirements. The last sentence of (E) is added to be consistent with Iowa case law. *State v. Tonelli*, 749 N.W.2d 689, 694 (Iowa 2008).

23  
 24 **Rule 5.802 Hearsay** The rule against hearsay. Hearsay is not admissible ~~except as provided by the~~  
 25 unless any of the following provide otherwise: the Constitution of the state State of Iowa; ~~by a statute;~~  
 26 by the ~~these~~ rules of evidence; ~~or by other rules of the~~ an Iowa Supreme Court rule.

27  
 28 **Rule 5.803 Hearsay exceptions; availability of declarant immaterial** Exceptions to the rule  
 29 against hearsay—regardless of whether the declarant is available as a witness.

30 The following are not excluded by the ~~hearsay rule~~ against hearsay, even though regardless of  
 31 whether the declarant is available as a witness:

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

1 perceived it.

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

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

10 (4) ~~Statements~~ Statement made for purposes of medical diagnosis or treatment. ~~Statements~~ A  
11 statement that:

12 (A) ~~Is made for purposes of and is reasonably pertinent to~~ is made for purposes of and is reasonably pertinent to medical diagnosis or treatment; and

13 (B) ~~describing~~ Describes medical history, ~~or past or present symptoms, pain, or sensations, or the~~  
14 inception or their general character of the cause or external source thereof insofar as reasonably pertinent  
15 to diagnosis or treatment of symptoms or sensations.

16 (5) *Recorded recollection.* A record that: memorandum or record concerning

17 (A) Is on a matter about which a the witness once ~~had knowledge~~ knew about but now has  
18 insufficient recollection to enable the witness cannot recall well enough to testify fully and accurately;;

19 (B) ~~shown to have been~~ Was made or adopted by the witness when the matter was fresh in the  
20 witness's memory; and

21 (C) ~~to reflect that~~ Accurately reflects the witness's knowledge correctly.

22 If admitted, the ~~memorandum or record~~ may be read into evidence, but it may not itself be received as  
23 an exhibit ~~unless only if~~ offered by an adverse party.

24 (6) *Records of a regularly conducted activity.* A ~~memorandum, report, record, or data compilation,~~  
25 in any form, of acts an act, events event, conditions condition, opinions opinion, or diagnoses diagnosis  
26 if:

27 (A) The record was made at or near the time by, or from information transmitted by, ~~someone~~ a  
28 person with knowledge;

29 (B) if The record was kept in the course of a regularly conducted business activity of a business,  
30 organization, occupation, or calling, whether or not for profit;

31 (C) ~~and the~~ Making the record was a regular practice of that business activity; was to make the  
32 memorandum, report, record, or data compilation, all as

33 (D) All these conditions are shown by the testimony of the custodian or ~~other~~ another qualified  
34 witness, or by a certification that complies with rule 5.902(11), or rule 5.902(12), or with a statute  
35 permitting certification; and

36 (E) ~~unless~~ The opponent does not show that the source of information or the method or circumstances  
37 of preparation indicate a lack of trustworthiness. ~~The term "business" as used in this subrule includes~~  
38 business, institution, association, profession, occupation, and calling of every kind, whether or not  
39 conducted for profit.

40 (7) *Absence of entry in records kept in accordance with the provisions of rule 5.803(6)* a record of  
41 a regularly conducted activity. Evidence that a matter is not included in ~~the memoranda reports, records,~~  
42 or data compilations, in any form, kept in accordance with the provisions of a record described in rule  
43 5.803(6); if;

44 (A) The evidence is admitted to prove ~~the nonoccurrence or nonexistence of~~ that the matter did not

1 occur or exist;

2 ~~(B) if the matter was of a kind of which a memorandum, report, record, or data compilation~~ A record  
3 ~~was regularly made and preserved, kept for a matter of that kind; and~~

4 ~~(C) unless~~ The opponent does not show that the possible sources source of the information or other  
5 ~~circumstances indicate a lack of trustworthiness.~~

6 ~~(8) Public records and reports.~~

7 ~~(A) To the extent not otherwise provided in rule 5.803(8)(B), records, reports, statements, or~~  
8 ~~data compilations in any form~~ a record or statement of a public office or agency setting forth if it sets  
9 out:

10 (i) its regularly conducted and regularly recorded activities; ~~or~~

11 (ii) matters observed pursuant to while under a duty imposed by law and as to which there was a duty  
12 to report; ~~or~~

13 (iii) factual findings resulting from a legally authorized investigation made pursuant to authority  
14 granted by law.

15 Rule 5.803(8)(A) does not apply if the opponent shows that the source of the information or other  
16 circumstances indicate a lack of trustworthiness.

17 (B) The following are not within this public records exception to the hearsay rule:

18 (i) Investigative reports by police and other law enforcement personnel.

19 (ii) Investigative reports prepared by or for a government, a public office, or an agency when offered  
20 by it in a case in which it is a party.

21 (iii) Factual findings offered by the state or a political subdivision in criminal cases.

22 (iv) Factual findings resulting from special investigation of a particular complaint, case, or incident.

23 ~~(v) Any matter as to which the sources of information or other circumstances indicate a lack of~~  
24 ~~trustworthiness.~~

25 ~~Rule 5.803(8)(B), however, shall~~ does not supersede specific statutory provisions regarding the  
26 admissibility of particular public records and reports.

27

**Federal rule 803(8) restyled (2011):**

(8) *Public Records*. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) The opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

**Comment on substantive distinction:**

Iowa rule 5.803(8) contains substantive differences from its pre- and post-2011 federal counterpart. For example, the Iowa public records exception does not include agency records offered by that agency in a case where the agency is a party. The federal rule does not contain an analogous provision although such records would arguably be excepted from the operation of FRE 803(8) under subsection (B).

Minor substantive or technical difference. Iowa rule 5.803(8)(B)(5) is similar to subsection (B) of its pre-and post-2011 federal counterpart. However, the Iowa rule expressly provides that it does not override "specific statutory provisions regarding the admissibility of particular public records and reports."

The restyling restructures subrule (A) of 803(8) and deletes (v) from subrule (B).

1

2 (9) ~~*Records Public records of vital statistics. Records or data compilations, in any form, A record of*~~  
3 ~~*births*~~ birth, ~~*fatal deaths*~~ death, ~~*adoptions*~~ adoption, ~~*deaths*~~ death, ~~*marriages*~~ marriage, ~~*divorees*~~ divorce,  
4 ~~*dissolutions*~~ dissolution, ~~*and annulments*~~ or annulment, ~~*if the report thereof was made*~~ reported to a public  
5 office ~~*pursuant to requirements of law*~~ in accordance with a legal duty.

6 (10) ~~*Absence of a public record or entry. To prove the absence of a record, report, statement, or data*~~  
7 ~~*compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report,*~~  
8 ~~*statement, or data compilation, in any form, was regularly made and preserved by a public office or*~~  
9 ~~*agency, evidence in the form of a certification in accordance with rule 5.902, or testimony, that diligent*~~  
10 ~~*search failed to disclose the record, report, statement, or data compilation, or entry. Testimony—or a*~~  
11 ~~*certification under rule 5.902—that a diligent search failed to disclose a public record or statement if:*~~

12 (A) The testimony or certification is admitted to prove that

13 (i) The record or statement does not exist, or

14 (ii) A matter did not occur or exist, if a public office regularly kept a record or statement for a matter  
15 of that kind, and

16 (B) In a criminal case, a prosecutor who intends to offer a certification provides written notice of that  
17 intent at least 14 days before trial, and the defendant does not object in writing within 7 days of  
18 receiving the notice—unless the court sets a different time for the notice or the objection.

19

20 (11) ~~*Records of religious organizations concerning personal or family history. Statements A*~~  
21 ~~*statement of births*~~ birth, legitimacy, ancestry, ~~*marriages*~~ marriage, ~~*divorees*~~ divorce, ~~*deaths*~~ death,  
22 ~~*legitimacy, ancestry,*~~ relationship by blood or marriage, or other similar facts of personal or family  
23 history, contained in a regularly kept record of a religious organization.

24 (12) ~~*Marriage, baptismal, Certificates of marriage, baptism, and similar certificates*~~ ceremonies.  
25 ~~*Statements A statement*~~ A statement of fact contained in a certificate;

1 ~~(A) that the maker performed a marriage or other ceremony or administered a sacrament, made by a~~  
 2 ~~clergyman, public official, or other person~~ Made by a person who is authorized by the rules or practices  
 3 ~~of a religious organization or by law to perform the act certified;~~

4 ~~(B) and purporting to have been issued at the time of the act or within a reasonable time~~  
 5 ~~thereafter.~~ Attesting that the person performed a marriage or similar ceremony or administered a  
 6 sacrament; and

7 ~~(C) Purporting to have been issued at the time of the act or within a reasonable time after it.~~

8 (13) *Family records.* ~~Statements~~ A statement of fact concerning about personal or family history  
 9 contained in a family record, such as a ~~Bibles~~Bible, ~~genealogies~~genealogy, ~~charts~~chart,  
 10 ~~engravings~~engraving on a ~~rings~~ring, ~~inscriptions~~inscription on a ~~family portraits~~portrait, ~~engravings~~ or  
 11 ~~engraving~~ on ~~urns, crypts, or tombstones, or the like~~ an urn or burial marker.

12 (14) *Records of documents affecting that affect an interest in property.* The record of a document  
 13 ~~purporting that purports~~ to establish or affect an interest in property; if:

14 ~~(A) as proof of~~ The record is admitted to prove the content of the original recorded document, along  
 15 with its signing and its ~~execution and~~ delivery by each person ~~by whom it~~ who purports to have ~~been~~  
 16 ~~executed~~signed it;

17 ~~(B) if the~~ The record is a record of kept in a public office; and

18 ~~(C) an applicable~~ A statute authorizes the recording of documents of that kind in that office.

19 (15) *Statements in documents affecting that affect an interest in property.* A statement contained in a  
 20 document ~~purporting that purports~~ to establish or affect an interest in property if the matter stated was  
 21 relevant to the ~~purpose of the document~~document's purpose, ~~unless later~~ dealings with the property  
 22 ~~since the document was made have been~~ are inconsistent with the truth of the statement or the purport of  
 23 the document.

24 (16) *Statements in ancient documents.* ~~Statements~~ A statement in a document ~~in existence that is at~~  
 25 least 30 years or more the old and whose authenticity of which is established.

**Federal rule 803(16) restyled (2011)**

**(16) Statements in Ancient Documents.** A statement in a document that is at least 20 years old and whose authenticity is established.

**Comment on substantive distinction:**

Iowa rule 5.803(16) contains a minor substantive distinction from the pre- and post-2011 federal rule. While the Iowa rule requires the document to have been in existence for 30 years or more the FRE requires only 20 years.

27 (17) *Market reports; and similar commercial publications.* Market quotations, ~~tabulations~~, lists,  
 28 directories, or other ~~published~~ compilations, that are generally used and relied upon on by the public or  
 29 by persons in particular occupations.

30 (18) *Learned Statements in learned treatises, periodicals, or pamphlets.* A statement contained in a  
 31 treatise, periodical, or pamphlet if:

32 ~~(A) To the extent~~ The statement is called to the attention of an expert witness upon cross-examination  
 33 or relied upon on by ~~that witness~~ the expert in direct examination; and

34 ~~(B) statements contained in published treatises, periodicals, or pamphlets on a subject of history,~~  
 35 ~~medicine, or other science or art,~~ The publication is established as a reliable authority by the expert's  
 36 admission or testimony, ~~or admission of the witness or by other expert~~ another expert's testimony, or by  
 37 judicial notice.  
 38

1 If admitted, the ~~statements~~ statement may be read into evidence but ~~may not be received as exhibits~~an  
2 exhibit.

3 (19) *Reputation concerning personal or family history.* ~~Reputation~~ A reputation among ~~members of a~~  
4 person's family by blood, adoption, or marriage; ~~or among a person's associates; or in the~~  
5 community; ~~concerning a~~ the person's birth, adoption, legitimacy, ancestry, marriage, divorce,  
6 ~~dissolution,~~ death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or ~~other~~ similar  
7 ~~fact~~ facts of personal or family history.

8 **Comment on "dissolution":**

The Iowa rule includes "dissolution" as well as "divorce," while the pre- and post-  
2011 FRE use only "divorce." See also 1.804(b)(4).

9  
10 (20) *Reputation concerning boundaries or general history.* ~~Reputation~~ A reputation in a community;  
11 ~~arising before the controversy; concerning~~ as to boundaries of land in the community or customs  
12 ~~affecting lands in the community, that affect the land, and reputation as to events of general history or~~  
13 concerning general historical events important to ~~the~~ that community, ~~or state, or nation in which~~  
14 ~~located.~~

15 (21) *Reputation as to concerning character.* ~~Reputation of~~ A reputation among a person's ~~character~~  
16 ~~among the person's~~ associates or in the community concerning the person's character.

17 (22) *Judgment of a previous conviction.* Evidence of a final judgment; of conviction if:

18 (A) The judgment was entered after a trial or ~~upon a plea of guilty plea,~~ (but not ~~upon a plea of nolo~~  
19 ~~contendere plea;~~)

20 (B) ~~adjudging a person guilty of~~ The conviction was for a crime punishable by death or by  
21 ~~imprisonment in excess of one~~ for more than a year;

22 (C) The evidence is admitted to prove any fact essential to sustain the judgment; and

23 (D) ~~but not including, when~~ When offered by the ~~state or political subdivision~~ prosecutor in a  
24 criminal prosecution case for purposes a purpose other than impeachment, ~~judgments~~ the judgment was  
25 ~~against persons other than the accused~~ defendant.

26 The pendency of an appeal of a previous conviction may be shown but does not affect admissibility.

27 (23) *Judgment as to Judgments involving personal, family, or general history, or boundaries*  
28 ~~boundary.~~ Judgments as proof of matters A judgment that is admitted to prove a matter of personal,  
29 family, or general history, or boundaries, if the matter:

30 (A) Was essential to the judgment; and

31 (B) ~~if the same would be provable~~ Could be proved by evidence of reputation.

32 (24) [Transferred to rule 5.807.]

33  
34 **Rule 5.804 Hearsay exceptions; Exceptions to the rule against hearsay—when the declarant is**  
35 **unavailable as a witness.**

36 a. *Definition of unavailability* Criteria for being unavailable. "Unavailability as a witness" includes  
37 ~~situations in which~~ A declarant is considered to be unavailable as a witness if the declarant:

38 (1) Is exempted ~~by ruling of the court on the ground of privilege~~ from testifying ~~concerning~~ about  
39 the subject matter of the declarant's statement because the court rules that a privilege applies; ~~or~~

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

1 (3) ~~Testifies to a lack of memory of not remembering~~ the subject matter of the declarant's statement;  
2 ~~or~~

3 (4) ~~Is unable to~~ Cannot be present or ~~to~~ testify at the trial or hearing because of death or a then  
4 existing then-existing infirmity, physical illness, or mental illness or infirmity; or

5 (5) Is absent from the trial or hearing and the statement's proponent ~~of a statement~~ has not been  
6 unable able, to procure the declarant's attendance by process or other reasonable means, to procure the  
7 declarant's attendance. A declarant is not unavailable as a witness if exemption, refusal, claim of lack of  
8 memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement  
9 for the purpose of preventing the witness

10 But rule 5.804(a) does not apply if the statement's proponent procured or wrongfully caused the  
11 declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

12 *b. Hearsay The exceptions.* The following are not excluded by the rule against hearsay rule if the  
13 declarant is unavailable as a witness:

14 (1) *Former testimony.* Testimony that:

15 (A) Was given as a witness at another a trial, or hearing, or lawful deposition, whether given during  
16 the current of the same or a different proceeding or a different one; and or in a deposition taken in  
17 compliance with law in the course of the same or another proceeding, if the

18 (B) party against whom the testimony is Is now offered against a party who had—or, in a civil action  
19 case, whose or proceeding, a predecessor in interest; had—an opportunity and similar motive to develop  
20 the testimony it by direct, cross-, or redirect examination.

21 (2) *Statement under the belief of impending imminent death.* A statement made by a that the  
22 declarant, while believing that the declarant's death was to be imminent, concerning the made about its  
23 cause or circumstances of what the declarant believed to be the declarant's impending death.  
24

**Federal rule 804(b)(2) restyled (2011):**

(2) *Statement Under the Belief of Imminent Death.* In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

**Comment on substantive distinction:**

Iowa rule 5.804(b)(2) contains a substantive distinction from its pre- and post-2011 federal counterpart. Under the federal rules the dying declaration is only admissible in "a prosecution for homicide or in a civil action." The Iowa rule appears to allow the admission of a dying declaration in any sort of proceeding.

25 (3) *Statement against interest.* A statement that:  
26

27 (A) ~~which was at the time of its making so far contrary to the declarant's pecuniary or proprietary~~  
28 ~~interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim~~  
29 ~~by the declarant against another, that a reasonable person in the declarant's position would not have~~  
30 ~~made the statement unless believing it to be true~~

31 A reasonable person in the declarant's position would have made only if the person believed it to be true  
32 because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great  
33 a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or  
34 criminal liability; and

35 (B) ~~A statement tending to expose the declarant to criminal liability and offered to exculpate the~~  
36 ~~accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the~~

1 ~~statement. Is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is~~  
 2 ~~offered in a criminal case as one that tends to expose the declarant to criminal liability and is offered to~~  
 3 ~~exculpate the defendant.~~

4 **Federal rule 804(b)(3) restyled (2011):**

(3) *Statement Against Interest.* A statement that:

(A) 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; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

**Comment on substantive distinction:**

Iowa rule 5.804(b)(3) contains a substantive difference from its pre-and post-2011 federal counterpart. The FRE requires corroborating circumstances for all statements against penal interest while the Iowa rule only requires corroboration if such statements tend to exculpate the accused.

5  
 6 (4) *Statement of personal or family history.* A statement about:

7 (A) ~~A statement concerning the~~ The declarant's own birth, adoption, legitimacy, ancestry, marriage,  
 8 divorce, dissolution, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar  
 9 ~~fact~~ facts of personal or family history, even though the declarant had no means way of acquiring  
 10 personal knowledge of the matter stated about that fact; or

11 (B) ~~A statement~~ Another person concerning the foregoing matters any of these facts, and as well as  
 12 death also, of another person, if the declarant was related to the other person by blood, adoption, or  
 13 marriage, or was so intimately associated with the other's person's family as to be likely to have  
 14 accurate that the declarant's information concerning the matter declared is likely to be accurate.

15 (5) [Transferred to rule 5.807.]

16 (6) ~~Forfeiture by wrongdoing.~~ Statement offered against a party that wrongfully caused the  
 17 declarant's unavailability. A statement offered against a party that ~~has engaged or acquiesced in~~  
 18 ~~wrongdoing that was intended to, and did, procure the~~ wrongfully caused—or acquiesced in wrongfully  
 19 causing—the declarant's unavailability of the declarant as a witness, and did so intending that result.

20  
 21 **Rule 5.805 Hearsay within hearsay.** Hearsay ~~included~~ within hearsay is not excluded ~~under~~ by the  
 22 ~~hearsay rule~~ against hearsay if each part of the combined statements conforms with an exception to the  
 23 ~~hearsay rule provided in this chapter.~~

24  
 25 **Rule 5.806 Attacking and supporting the declarant's credibility of declarant.** When a hearsay  
 26 ~~statement, or a statement defined described~~ in rule 5.801(d)(2)(C), (D), or (E), has been admitted in  
 27 into evidence, the credibility of the declarant declarant's credibility may be attacked, and if attacked may  
 28 be then supported, by any evidence which that would be admissible for those purposes if the declarant  
 29 had testified as a witness. The court may admit evidence Evidence of a of the declarant's inconsistent  
 30 statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to

1 ~~explain or deny it. by the declarant at any time, inconsistent with the declarant's hearsay statement, is~~  
 2 ~~not subject to any requirement that the declarant may have been afforded an opportunity to deny or~~  
 3 ~~explain.~~ If the party against whom a hearsay the statement has been was admitted calls the declarant as a  
 4 witness, the party is ~~entitled to~~ may examine the declarant on the statement as if ~~under~~ on cross-  
 5 examination.

### 7 **Rule 5.807 Residual exception.**

8 a. In general. ~~A~~ Under the following circumstances, a hearsay statement is not excluded by the rule  
 9 against hearsay even if the statement is not specifically covered by any of the exceptions a hearsay  
 10 exception in rules rule 5.803 or 5.804:

11 ~~(1) but having~~ The statement has equivalent circumstantial guarantees of trustworthiness; is not  
 12 excluded by the hearsay rule if the court determines that (A) the statement

13 ~~(2) It is offered as evidence of a material fact;~~

14 ~~(B) (3) the statement~~ It is more probative on the point for which it is offered than any other evidence  
 15 which that the proponent can procure obtain through reasonable efforts; and

16 ~~(4) the general purposes~~ Admitting it will best serve the purposes of these rules and the interests of  
 17 justice will best be served by admission of the statement into evidence.

18 b. Notice. ~~However, a~~ The statement may not be admitted under this exception unless is admissible  
 19 only if, before the trial or hearing, the proponent of it makes known to the gives an adverse party  
 20 sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to  
 21 prepare to meet it, the proponent's intention reasonable notice of the intent to offer the statement and the  
 22 its particulars of it, including the declarant's name and address, so that the party has a fair opportunity to  
 23 meet it of the declarant.

24  
 25 **Rules 5.808 to 5.900** Reserved.

## 26 27 28 **ARTICLE IX**

### 29 **AUTHENTICATION AND IDENTIFICATION**

#### 30 31 **Rule 5.901 Requirement of authentication or identification Authenticating or identifying evidence.**

32 a. General provision In general. ~~The~~ To satisfy the requirement of authentication or identification  
 33 as a condition precedent to admissibility is satisfied by authenticating or identifying an item of evidence,  
 34 the proponent must produce evidence sufficient to support a finding that the matter in question item is  
 35 what its what the proponent claims it is.

36 b. IllustrationsExamples. ~~By way of illustration~~ The following are examples only, and not by way  
 37 of limitation a complete list--; the following are examples of authentication or identification conforming  
 38 with the requirements of this rule of evidence that satisfies the requirement:

39 (1) Testimony of a witness with knowledge. Testimony that ~~a matter~~ an item is what it is claimed to  
 40 be.

41 (2) Nonexpert opinion on about handwriting. ~~Nonexpert opinion as to the genuineness of A~~  
 42 nonexpert's opinion that handwriting is genuine, based upon on a familiarity with it that was not  
 43 acquired for purposes of the current litigation.

44 (3) Comparison by trier or an expert witness or the trier of fact. ~~Comparison by the trier of fact or~~

1 ~~by expert witnesses with specimens which have been authenticated~~ A comparison with an authenticated  
 2 specimen by an expert witness or the trier of fact.

3 (4) ~~Distinctive characteristics and the like. Appearance~~ The appearance, contents, substance, internal  
 4 patterns, or other distinctive characteristics of the item, taken in conjunction together with all the  
 5 circumstances.

6 (5) ~~Voice identification~~ Opinion about a voice. Identification of a An opinion identifying a person's  
 7 voice, whether heard firsthand or through mechanical or electronic transmission or recording, by  
 8 opinion based upon on hearing the voice at any time under circumstances connecting that connect it  
 9 with the alleged speaker.

10 (6) ~~Telephone conversations~~ Evidence about a telephone conversation. Telephone conversations, by  
 11 For a telephone conversation, evidence that a call was made to the number assigned at the time to:

12 (A) ~~by the telephone company to a~~ A particular person or business, if (A) in the case of a person,  
 13 circumstances, including self-identification, show that the person answering to be was the one called; or

14 (B) ~~in the case of a~~ A particular business, if the call was made to a place of business and the  
 15 conversation the call related to business reasonably transacted over the telephone.

16 (7) ~~Public~~ Evidence about public records or reports. Evidence that;

17 (A) ~~a writing authorized by law to be~~ A document was recorded or filed and in fact recorded or filed  
 18 in a public office as authorized by law; or

19 (B) ~~a~~ A purported public record, report, or statement, or data compilation, in any form, is from the  
 20 public office where items of this nature kind are kept.

21 (8) ~~Ancient~~ Evidence about ancient documents or data compilation/compilations. Evidence that For  
 22 a document or data compilation, in any form, evidence that it:

23 (A) ~~is~~ Is in such a condition as to create that creates no suspicion concerning about its authenticity;

24 (B) ~~was~~ Was in a place where it, if authentic, it would likely be; and

25 (C) ~~has been in existence~~ Is at least 30 years or more at the time it is old when offered.

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

28 (10) Methods provided by a statute or rule. Any method of authentication or identification provided  
 29 allowed by a statute or by rules prescribed by the Iowa Supreme Court rule.

**Federal rule 901(b)(8)(C) restyled (2011):**

(C) is at least 20 years old when offered.

**Comment on substantive distinction:**

Iowa rule 5.901(b)(8)(C) contains a substantive difference from its pre-and post-2011 federal counterpart. Under the federal rule the document or data compilation must be at least 20 years old, compared to Iowa's requirement that it have been in existence for 30 years or more.

31  
 32 **Rule 5.902 Self-authentication** Evidence that is self-authenticating. Extrinsic

33 The following items of evidence are self-authenticating; they require no extrinsic evidence of  
 34 authenticity as a condition precedent to admissibility is not required with respect to the following to  
 35 be admitted:

36 (1) ~~Domestic public documents under seal~~ that are sealed and signed. A document bearing a that  
 37 bears:

38 (A) A seal purporting to be that of the United States, or of; any state, district, commonwealth,

1 territory, or insular possession ~~thereof, of the United States; or the former~~ Panama Canal Zone, ~~or the~~  
 2 Trust Territory of the Pacific Islands, ~~or of~~; a political subdivision, of any of these entities; or a  
 3 department, agency, or officer, or agency thereof, of any entity named above; and

4 ~~(B) a~~ A signature purporting to be an attestation or execution or attestation.

5 (2) *Domestic public documents that are not under seal—sealed but are signed and certified.* A  
 6 document ~~purporting to bear that bears no seal if:~~

7 ~~(A) If it bears the signature in the official capacity of an officer or employee of any an entity included~~  
 8 named in rule 5.902(1)(A); and

9 ~~(B) having no seal, if a Another public officer having who has a seal and having official duties in the~~  
 10 ~~district or political subdivision of the officer or employee within that same entity certifies under seal—or~~  
 11 its equivalent—that the signer has the official capacity and that the signature is genuine.

12 (3) *Foreign public documents.* A document ~~purporting that purports to be executed signed or attested~~  
 13 ~~in an official capacity by a person who is authorized by the laws of a foreign country country’s law to do~~  
 14 so. The document must be make the execution or attestation, and accompanied by a final certification as  
 15 to that certifies the genuineness of the signature and official position (A) of the executing or attesting  
 16 person, of the signer or attester—or (B) of any foreign official whose certificate of genuineness of  
 17 relates to the signature and official position relates to the execution or attestation or is in a chain of  
 18 certificates of genuineness of signature and official position relating to the execution signature or  
 19 attestation. A final The certification may be made by a secretary of a United States embassy or legation;  
 20 by a consul general, consul, vice consul, or consular agent of the United States; or by a diplomatic or  
 21 consular official of the foreign country assigned or accredited to the United States. If all parties have  
 22 been given a reasonable opportunity has been given to all parties to investigate the document’s  
 23 authenticity and accuracy of official documents, the court may, for good cause shown, either:

24 ~~(A) order Order that they it be treated as presumptively authentic without final certification; or~~

25 ~~(B) permit them Allow it to be evidenced by an attested summary with or without final certification.~~

26 (4) *Certified copies of public records.* A copy of an official record—or a copy report or entry therein,  
 27 ~~or of a document that was recorded or filed in a public office as authorized by law—if the copy is to be~~  
 28 ~~recorded or filed and actually recorded or filed in a public office, including data compilations in any~~  
 29 ~~form, certified as correct by:~~

30 ~~(A) the The custodian or other another person authorized to make the certification; or~~

31 ~~(B) by A certificate complying that complies with rule 5.902(1), (2), or (3), or complying with any~~  
 32 Act of Congress a federal, state, or territorial statute, or rule prescribed by the United States Supreme  
 33 Court rule pursuant to statutory authority, or statutes of Iowa or any other state or territory of the United  
 34 States, or rule prescribed by the Iowa Supreme Court rule.

**Federal rule 902(4) restyled (2011)**

(4) *Certified Copies of Public Records.* 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:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.

**Comment on minor substantive distinction:**

Iowa rule 5.902(4) departs from its pre- and post-2011 federal counterpart in a necessary but minor manner. The Iowa rule includes “statutes . . . of any other state or

territory of the United States” (emphasis added), which is not included in the federal versions. This is also repeated in rule 5.902(10).

1  
2 (5) *Official publications.* ~~Books, pamphlets, or other publications~~ A book, pamphlet, or other  
3 publication purporting to be issued by public authority.

4 (6) *Newspapers and periodicals.* Printed ~~materials~~ material purporting to be a ~~newspapers~~ newspaper  
5 or ~~periodicals~~ periodical.

6 (7) *Trade inscriptions and the like.* ~~Inscriptions, signs, tags, or labels~~ An inscription, sign, tag, or  
7 label, purporting to have been affixed in the course of business and indicating origin, ownership, or  
8 control, ~~or origin~~.

9 (8) *Acknowledged documents.* ~~Documents~~ A document accompanied by a certificate of  
10 acknowledgment that is lawfully executed ~~in the manner provided by law~~ by a notary public or ~~other~~  
11 another officer who is authorized ~~by law~~ to take acknowledgments.

12 (9) *Commercial paper and related documents.* Commercial paper, ~~signatures thereon~~ a signature on  
13 it, and related documents, relating thereto to the extent ~~provided~~ allowed by general commercial law.

14 (10) *Presumptions under Acts of Congress* a federal statute or a statute of Iowa or any other state or  
15 territory of the United States. ~~Any~~ A signature, document, or ~~other matter declared by Act of Congress~~  
16 ~~or anything else that~~ a federal statute or a statute of Iowa or any other state or territory of the United  
17 States declares to be presumptively or prima facie genuine or authentic.

18 (11) *Certified Domestic Records of Regularly Conducted Activity* domestic records of a regularly  
19 conducted activity. The original or a ~~duplicate copy~~ copy of a domestic record ~~of regularly conducted activity~~  
20 ~~that would be admissible under~~ that meets the requirements of rule 5.803(6)(A)-(C) ~~if accompanied as~~  
21 ~~shown by a written declaration~~ certification of its ~~the~~ custodian or ~~other another~~ qualified person, in a  
22 ~~manner complying that complies~~ with any Act of Congress a federal statute, or a rule prescribed by the  
23 United States Supreme Court ~~pursuant to statutory authority, or statutes~~ a statute of Iowa or any other  
24 state or territory of the United States, or ~~rule prescribed by the other~~ Iowa Supreme Court rule,  
25 certifying that the record (A) was made at or near the time of the occurrence of the matters set forth by,  
26 or from information transmitted by, a person with knowledge of those matters; (B) was kept in the  
27 course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a  
28 regular practice. ~~A party intending to offer a record into evidence under this paragraph~~ Before the trial or  
29 hearing, the proponent must provide ~~give~~ written notice of that intention to all an adverse parties, party  
30 reasonable written notice of the intent to offer the record—and must make the record and declaration  
31 certification available for inspection ~~sufficiently in advance of their offer into evidence to provide an~~  
32 adverse so that the party with has a fair opportunity to challenge them.

33 (12) *Certified foreign records of a regularly conducted activity.* In a civil case, the original or a  
34 ~~duplicate copy~~ copy of a foreign record ~~of regularly conducted activity that would be admissible under~~ meets  
35 the requirements of rule 5.803(6) ~~5.902(11), modified as follows: if accompanied by a written~~  
36 ~~declaration by its custodian or other qualified person certifying that the record (A) was made at or near~~  
37 ~~the time of the occurrence of the matters set forth by, or from information transmitted by, a person with~~  
38 ~~knowledge of those matters; (B) was kept in the course of the regularly conducted activity; and (C) was~~  
39 ~~made by the regularly conducted activity as a regular practice.~~ The declaration the certification, rather  
40 than complying with a federal statute or a United States Supreme Court rule or a statute of Iowa or any  
41 other state or territory of the United States or other Iowa Supreme Court rule, must be signed in a  
42 manner that, if falsely made, would subject the maker to a criminal penalty under the laws of in the

1 country where the ~~declaration certification~~ is signed. ~~A party intending to offer a record into evidence~~  
 2 ~~under this paragraph must provide written notice of that intention to all adverse parties, and must make~~  
 3 ~~the record and declaration available for inspection sufficiently in advance of their offer into evidence to~~  
 4 ~~provide an adverse party with a fair opportunity to challenge them. The proponent must also meet the~~  
 5 ~~notice requirements of rule 5.902(11).~~

6  
 7 **Rule 5.903 Subscribing witness's testimony unnecessary.** ~~The testimony of a A subscribing witness~~  
 8 ~~witness's testimony is not necessary to authenticate a writing unless only if required by laws the law of~~  
 9 ~~the jurisdiction whose laws govern the that governs its validity of the writing. Nothing in this This rule~~  
 10 ~~shall does not affect the admission of a foreign will into probate in this state.~~

**Federal rule 903 restyled (2011)**

**Rule 903. Subscribing Witness's Testimony.**

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

**Comment on substantive distinction:**

Iowa rule 5.903 contains a substantive distinction from its pre-and post-2011 federal counterpart. FRE 903 does not contain the second sentence regarding the admission of foreign wills into probate. The second sentence is revised consistent with the 2011 FRE restyling.

12  
 13  
 14 **Rules 5.904 to 5.1000** Reserved.

15  
 16  
 17  
 18 **ARTICLE X**

19 **CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS**

20  
 21 **Rule 5.1001 Definitions that apply to this article.** ~~For purposes of In~~ this article ~~the following~~  
 22 ~~definitions are applicable:~~

23 (1) ~~a. Writings and recordings. "Writings" and "recordings" consist A "writing" consists of letters,~~  
 24 ~~words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating,~~  
 25 ~~photographing, magnetic impulse, mechanical or electronic recording, or other in any form of data~~  
 26 ~~compilation.~~

27 (2) ~~b. A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.~~

28 ~~c. Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion~~  
 29 ~~pictures A "photograph" means a photographic image or its equivalent stored in any form.~~

30 (3) ~~d. Original. An "original" "original" of a writing or recording is means the writing or recording~~  
 31 ~~itself or any counterpart intended to have the same effect by a the person executing who executed or~~  
 32 ~~issuing issued it. For electronically stored information, "original" means any printout—or other output~~  
 33 ~~readable by sight—if it accurately reflects the information. An "original" of a photograph includes the~~  
 34 ~~negative or any a print therefrom from it. If data are stored in a computer or similar device, any printout~~  
 35 ~~or other output readable by sight, shown to reflect the data accurately, is an "original."~~

36 (4) ~~e. Duplicate. A "duplicate" "duplicate" is means a counterpart produced by the same impression~~

1 as the original, or from the same matrix, or by means of photography, including enlargements and  
 2 miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other  
 3 equivalent techniques ~~which~~ a mechanical, photographic, chemical, electronic, or other equivalent  
 4 process or technique that accurately ~~reproduce~~ reproduces the original.

5  
 6 **Rule 5.1002 Requirement of the original.** ~~To prove the content of a~~ An original writing, recording, or  
 7 photograph, ~~an original~~ is required to prove its content, ~~except as otherwise provided in~~ unless these  
 8 rules or ~~by a statute~~ provides otherwise.

9  
 10 **Rule 5.1003 Admissibility of duplicates.** A duplicate is admissible to the same extent as ~~an~~ the original  
 11 unless ~~(1) a genuine question is raised as to~~ about the original's authenticity of the original or ~~(2) under~~  
 12 the circumstances, ~~admission of~~ make it unfair to admit the duplicate ~~would be unfair~~.

13 **Rule 5.1004 Admissibility of other evidence of ~~contents~~ content.** ~~The~~ An original is not required and  
 14 other evidence of the ~~contents~~ content of a writing, recording, or photograph is admissible if:

15 (1) ~~a. Originals lost or destroyed.~~ All the originals are lost or ~~have been~~ destroyed, ~~unless and not by~~  
 16 the proponent ~~lost or destroyed them~~ acting in bad faith; or

17 (2) ~~b. Original not obtainable.~~ ~~No~~ An original ~~can~~ cannot be obtained by any available judicial  
 18 process ~~or procedure~~; or

19 (3) ~~c. Original in possession of opponent.~~ At a time when an original was ~~under the control of the~~ The  
 20 party against whom ~~the original would be~~ offered had control of the original; ~~was at that party was~~ time  
 21 put on notice, by ~~the pleadings or otherwise, that the~~ contents original would be a subject of proof at the  
 22 trial or hearing; ~~and that party does not~~ fails to produce the original it at the trial or hearing; or

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

25  
 26 **Rule 5.1005 ~~Public Copies of public records to prove content.~~** ~~The contents~~

27 *a. Using a copy to prove content.* ~~The proponent may use a copy to prove the content of an official~~  
 28 record, ~~or of a document authorized to be~~ that was recorded or filed ~~and actually recorded or filed,~~  
 29 ~~including data compilations in any form, if~~ in a public office as authorized by law—if these conditions  
 30 are met:

31 (1) ~~The record or document is~~ otherwise admissible; ~~may be proved by~~

32 (2) The copy; is certified as correct in accordance with rule 5.902(4); ~~or testified to be correct by a~~  
 33 witness who has compared it with the original testifies the copy is correct.

34 *b. Using other evidence to prove content.* If a no such copy ~~which complies with the foregoing~~  
 35 ~~cannot~~ can be obtained by ~~the exercise of~~ reasonable diligence, then ~~other evidence of the proponent~~  
 36 may use other evidence to prove the content ~~contents may be given~~.

37  
 38  

<p><b>Comment on rule 5.1005:</b> A major emphasis of the FRE restyling effort was to break rules into subparts “to achieve clearer presentations,” by “substituting vertical for horizontal lists.” The restyling accomplishes this here and elsewhere and removes much of the passive construction throughout.</p>
--

39 **Rule 5.1006 Summaries to prove content.** ~~The~~ contents proponent may use a summary, chart, or  
 40 calculation to prove the content of voluminous writings, recordings, or photographs ~~which~~ that cannot

1 ~~conveniently~~ be conveniently examined in court, ~~may be presented in the form of a chart, summary, or~~  
 2 ~~calculation.~~ The proponent must make the originals, or duplicates, shall be made available for  
 3 examination or copying, or both, by other parties at reasonable time and place. ~~The~~ And the court may  
 4 order ~~that they be produced~~ the proponent to produce them in court.

6 **Rule 5.1007 Testimony or written admission statement of a party to prove content.** ~~Contents of~~  
 7 ~~writings, recordings, or photographs may be proved~~ The proponent may prove the content of a writing,  
 8 recording, or photograph by the testimony, ~~or deposition,~~ or written statement of the party against whom  
 9 the evidence is offered, ~~or by that party's written admission, without accounting~~ The proponent need not  
 10 account for the ~~nonproduction of the~~ original.

12 **Rule 5.1008 Functions of the court and jury.** ~~When~~ Ordinarily, the court determines ~~the admissibility~~  
 13 ~~of other evidence of contents of writings, recordings, or photographs under these rules depends upon the~~  
 14 ~~fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for~~  
 15 ~~the court to determine in accordance with the provisions of rule 5.104~~ whether the proponent has  
 16 fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or  
 17 photograph under rules 5.1004 or 5.1005. ~~When, however, an issue is raised~~ But in a jury trial, the jury  
 18 determines—in accordance with rule 5.104(b)—any issue about whether:

19 (a) ~~a.~~ whether the An asserted writing, recording, or photograph ever existed; or

20 (b) ~~b.~~ whether another Another writing, recording, or photograph one produced at the trial or hearing  
 21 is the original; or

22 (c) ~~c.~~ whether other Other evidence of ~~contents~~ content ~~correctly~~ accurately reflects the ~~contents,~~ the  
 23 issue is for the trier of fact to determine as in the case of other issues of fact content.

25 **Rules 5.1009 to 5.1100** Reserved.

## ARTICLE XI MISCELLANEOUS RULES

31 **Rule 5.1101 Applicability of the rules.**

32 a. ~~General applicability~~ To courts and judges. ~~These rules~~ The Iowa Rules of Evidence apply ~~in all~~  
 33 to proceedings in before the courts of this state, including proceedings before magistrates and court-  
 34 appointed referees and masters, except as ~~otherwise provided by rules of the Iowa Supreme Court~~ rules  
 35 otherwise provide.

### **Federal rule 1101 restyled (2011)**

#### **Rule 1101. Applicability of the Rules.**

(a) *To Courts and Judges.* These rules apply to proceedings before:

- United States district courts;
- United States bankruptcy and magistrate judges;
- United States courts of appeals;
- the United States Court of Federal Claims; and
- the district courts of Guam, the Virgin Islands, and the Northern Mariana Islands.

(b) *To Cases and Proceedings*. These rules apply in:

- civil cases and proceedings, including bankruptcy, admiralty, and maritime cases;
- criminal cases and proceedings; and
- contempt proceedings, except those in which the court may act summarily.

**Comment on substantive distinction:**

There is an ambiguity in both pre-and post-2011 FRE, and in the Iowa rules, regarding which rules are being referenced in rule 5.1101 by “these rules:” the Article IX Miscellaneous Rules, or the Iowa Rules of Evidence in whole? Read in conjunction with rule 5.101 and other provisions, it would appear rule 5.1101 intends to reference all Iowa Rules of Evidence and that change is made to the Iowa rule.

Iowa rule 5.1101 does not contain the FRE subsection (b) *To Cases and Proceedings* presenting a necessary substantive difference from the pre- and post-2011 FRE. The Iowa rules, however, are made applicable to all court proceedings in Iowa in subsection (a). The absence of this federal counterpart creates a structural difference between the federal and Iowa rule.

The federal rule expressly makes the rules applicable in a wide variety of proceedings; the Iowa counterpart is not so express.

1  
2 *b. Rules of on privilege.* ~~Rule 5.501, with respect to~~ The rules on privilege, apply to all  
3 stages of all actions, cases, and proceedings a case or proceeding.

4 *c. Rules inapplicable Exceptions.* ~~These rules, other than rule 5.501, with respect to~~ The Iowa Rules  
5 of Evidence—except for those on privilege,—do not apply in to the following situations:

6 (1) *Preliminary questions of fact.* ~~The court’s determination, under rule 5.104(a), of questions of~~  
7 fact on a preliminary question of fact governing to the admissibility of evidence when the issue is to be  
8 determined by the court under rule 5.104(a).

9 (2) *Grand jury.* ~~Proceedings before grand juries~~ Grand-jury proceedings.

10 (3) *Summary contempt.* ~~Contempt proceedings in which an adjudication is made without prior~~  
11 notice and a hearing.

**Rule 1101(c) restyled (2011)**

(c) *Rules on Privilege.* The rules on privilege apply to all stages of a case or proceeding.

**Comment on substantive distinction:**

Iowa rule 5.1101(c)(3) presents a substantive difference from its pre- and post-2011 federal counterpart. FRE 1101(c) does not expressly state that the rules should be inapplicable in contempt proceedings.

The restyling adopts the FRE language, “except for those on privilege,” which is broader language than a reference to only 5.501.

13  
14 (4) *Miscellaneous proceedings.* ~~Proceedings~~ Miscellaneous proceedings such as: for extradition or  
15 rendition; issuing an arrest warrant, criminal summons, or search warrant; a preliminary hearings  
16 examination in a criminal cases, case; sentencing; and granting or revoking probation or supervised  
17 release; issuance of warrants for arrest, criminal complaints, and search warrants; and proceedings with  
18 respect and considering whether to release on bail or otherwise.

**Federal rule 1101(e) restyled (2011):**

(e) *Other Statutes and Rules.* A federal statute or a rule prescribed by the Supreme Court may provide for admitting or excluding evidence independently from these rules.

**Comment on substantive distinction:**

The old federal rule 1101(e) provided “Rules applicable in part,” and was specific to particular provisions of the U.S.C. and there was no analogous Iowa subsection. The restyled federal rule, however, is substantively different from the old rule as set forth above.

**Note:** The working group decided not to adopt a version of FRE *Other statutes and rules*, which would be a new sub rule (d) in the Iowa rule as follows: “d. *Other statutes and rules.* An Iowa statute or an Iowa Supreme Court rule may provide for admitting or excluding evidence independently from these rules.”

1

2 **Rule 5.1102** Reserved.**Federal rule 1102 restyled (2011):**

**Rule 1102. Amendments.** These rules may be amended as provided in 28 U.S.C. § 2702.

**Comment on distinction:**

OFFICIAL COMMENT (to Iowa rules)--1983: Amendments to the rules are specifically governed by section 684.18, The Code. Consequently, there is no need for Rule 1102. That section number is, however, reserved.

3

4 **Rule 5.1103 Title.** ~~The rules in this chapter shall be known as the~~ These Iowa Rules of Evidence and  
5 may be cited as Iowa R. Evid.  
6**Federal rule 1103 restyled (2011):****Rule 1103. Title.**

These rules may be cited as the Federal Rules of Evidence.

**Comment on distinction:**

The restyled federal rule deleted “these rules may be known . . . as” and now just says “may be cited as.” The *Bluebook*, however, and presumably all other citation authorities would allow citation to the federal rules as “Fed. R. Evid.” The Iowa rules will continue to be *cited* as Iowa R. Evid., as set forth in the Preface to the Iowa Court Rules.

7