

## In the Iowa Supreme Court

**In the Matter of Adopting  
Amendments to the Iowa Rules of  
Evidence in Chapter 5 of the Iowa  
Court Rules****Order**

The Iowa Supreme Court adopts amendments to the Iowa Rules of Evidence in Chapter 5 of the Iowa Court Rules, effective January 1, 2023, subject to Legislative Council review pursuant to Iowa Code section 602.4202.

**I. Introduction**

The Iowa Rules of Evidence adopted in 1984 were patterned after the Federal Rules of Evidence, albeit with some substantive differences. The court previously undertook a non-substantive restyling of the Iowa Rules of Evidence effective January 1, 2017, consistent with the 2011 restyling of the federal rules, adopting gender-neutral, plain language. Yet the Iowa rules have not been amended to track various carefully vetted substantive amendments to the corresponding federal rules.

On August 31, 2021, the Iowa Supreme Court established the Iowa Rules of Evidence Substantive Review Task Force (Task Force) to evaluate and recommend substantive updates to the Iowa Rules of Evidence. The Task Force included the following members:

- Honorable Thomas Waterman, Justice, Iowa Supreme Court, Davenport, *Chair*
- Honorable Sharon Greer, Judge, Iowa Court of Appeals, Marshalltown, *Vice-Chair*
- Laurie Doré, Professor, Drake University Law School, Des Moines, *Reporter*
- Honorable Mark Bennett, Retired Federal Judge, Drake University Law School, Des Moines
- Honorable Linda Fangman, Judge, Iowa District Court, Waterloo
- Honorable Shawn Showers, Judge, Iowa District Court, Washington
- Derek Muller, Professor, University of Iowa College of Law, Iowa City
- Brian Galligan, attorney, Des Moines

- Michael Giudicessi, attorney, Des Moines
- Aaron Hawbaker, assistant public defender, Waterloo
- Martha Lucey, State Appellate Defender, Des Moines
- Jeffrey Noble, assistant Polk County attorney, Des Moines
- Michael Reilly, attorney, Council Bluffs
- Amanda Richards, attorney, Davenport
- Patrick Sealey, attorney, Sioux City
- Sheryl Soich, assistant attorney general, criminal appeals, Des Moines
- Steven Wandro, attorney, Des Moines
- Timothy Eckley, attorney, Iowa Supreme Court, Allen Township,  
*Ex Officio*

The Task Force formed civil, criminal, and hearsay committees to study the differences between the Iowa rules and federal rules. The Task Force addressed the committee recommendations in several plenary meetings and submitted an interim report to the court in February 2022, with proposed amendments to the Iowa Rules of Evidence. The court then sought public comment on the proposed amendments.

In June 2022, the Task Force met to consider the public comments and finalize its recommendations to the court; the recommendations are contained in the final Task Force report provided with this order. On August 15, 2022, the Task Force presented its final report and recommendations to the supreme court in the court's historic courtroom located in the State Capitol Building. The court thanks the Task Force members for their service.

The court has conducted its own review of the Task Force recommendations and final report as well as the public comments received on the recommendations.

## **II. Amended rules of evidence**

Upon finalizing its review of the Task Force's final report and recommendations, and after further deliberation, the court approves the following amendments to the Iowa Rules of Evidence. These amendments were

unanimously, or nearly unanimously, supported by the Task Force members and conform to well vetted amendments to the corresponding federal rules adopted after the Iowa rules were enacted in 1984.

- Iowa R. Evid. 5.404(a) (character evidence)
- Iowa R. Evid. 5.404(b) (notice for evidence of other bad acts in criminal cases)
- Iowa R. Evid. 5.408(a)(1) (compromise negotiations, impeachment)
- Iowa R. Evid. 5.412 (rape shield rule)
- Iowa R. Evid. 5.703 (bases for expert testimony)
- Iowa R. Evid. 5.706(a) (expert appointed on court's own motion)
- Iowa R. Evid. 5.801(d)(2) (party-opponent statements by authorized and unauthorized employees or agents, or by co-conspirators)
- Iowa R. Evid. 5.803(16) (ancient documents hearsay exception)
- Iowa R. Evid. 5.804(b)(3) (statements against penal interest in criminal cases)
- Iowa R. Evid. 5.807 (residual hearsay exception)
- Iowa R. Evid. 5.901(b)(8) (ancient documents authentication)
- Iowa R. Evid. 5.902(13) (self-authentication of electronically generated records)
- Iowa R. Evid. 5.902(14) (self-authentication of data copied from electronic devices)

A strikethrough and underscore version of the amended rules is provided with this order. The accompanying final Task Force report includes explanations and supporting rationales for the substantive amendments.

### **III. Rejected recommendations**

Upon full consideration, the court declines to adopt three proposed amendments that many task force members opposed:

- Iowa R. Evid. 5.408(a)(2) (the court declines to add a public office exception)
- Iowa R. Evid. 5.609(a)(2) (the court declines to add an elements test for crimes of dishonesty)

- Iowa R. Evid. 5.702 (the court declines to codify the additional gate-keeping requirements for expert testimony found in Fed. R. Evid. 702)

Those Iowa rules remain unchanged.


While the Task Force expressed near-unanimous support for amending Iowa rule 5.801(d)(1)(B) (prior consistent statement) to conform to Federal Rule of Evidence 801(d)(1)B(ii), the court declines to adopt this amendment and the Iowa rule remains unchanged.

#### **IV. Effective date**

These amendments, subject to Legislative Council review pursuant to Iowa Code section 602.4202, will take effect January 1, 2023, and apply in all actions filed on or after that date as well as in trials and evidentiary hearings conducted on or after January 1, 2023, in actions filed before that date.

Dated this 14th day of September, 2022.

#### **The Iowa Supreme Court**

By:   
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Susan Larson Christensen, Chief Justice