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CHAPTER 5
RULES OF EVIDENCE

ARTICLE I
GENERAL PROVISIONS

Rule 5.101 Scope; definitions.

a. Scope. These rules 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.

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

(7) "Victim" includes an alleged victim.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.102 Purpose. These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.103 Rulings on evidence.

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.

c. Court's statement about the ruling; directing an offer of proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

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.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.104 Preliminary questions.

a. 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.

b. 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 proof be introduced later.

c. Conducting a hearing so that the jury cannot hear it. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

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

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

(3) Justice so requires.

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. Testimony given by a defendant in a criminal case upon a preliminary question is not admissible against the defendant on the issue of guilt but may be used for impeachment if inconsistent with defendant's testimony at trial.

e. Evidence relevant to weight and credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.105 Limiting evidence that is not admissible against other parties or for other purposes. If the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.106 Remainder of related acts, declarations, conversations, writings, or recorded statements.

a. If a party introduces all or part of an act, declaration, conversation, writing, or recorded statement, an adverse party may require the introduction, at that time, of any other part or any other act, declaration, conversation, writing, or recorded statement that in fairness ought to be considered at the same time.

b. Upon an adverse party's request, the court may require the offering party to introduce at the same time with all or part of the act, declaration, conversation, writing, or recorded statement, any other part or any other act, declaration, conversation, writing, or recorded statement that is admissible under rule 5.106(*a*). Rule 5.106(*b*), 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*).

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rules 5.107 to **5.200** Reserved.

ARTICLE II
JUDICIAL NOTICE

Rule 5.201 Judicial notice of adjudicative facts.

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

b. Kinds of facts that may be judicially noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

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

(2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

c. Taking notice. The court:

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

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

d. Timing. The court may take judicial notice at any stage of the proceeding.

e. Opportunity to be heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

f. Instructing the jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rules 5.202 to **5.300** Reserved.

ARTICLE III
PRESUMPTIONS IN CIVIL CASES

Rule 5.301 Presumptions in civil cases generally. These rules do not modify or supersede existing law relating to presumptions in civil cases.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rules 5.302 to **5.400** Reserved.

ARTICLE IV
RELEVANCE AND ITS LIMITS

Rule 5.401 Test for relevant evidence. Evidence is relevant if:

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

b. The fact is of consequence in determining the action.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.402 General admissibility of relevant evidence. Relevant evidence is admissible, unless any of the following provide otherwise: the United States Constitution or Iowa Constitution, statute, these rules, or other Iowa Supreme Court rule. Irrelevant evidence is not admissible.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.403 Excluding relevant evidence for prejudice, confusion, waste of time, or other reasons. The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.404 Character evidence; crimes or other acts.

a. Character evidence.

(1) *Prohibited acts.* Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) *Exceptions for a defendant or victim.*

(A) *In criminal cases.*

(i) 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.

(ii) Subject to the limitations in rule 5.412, a defendant may offer evidence of the victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

(iii) When the victim is unavailable to testify due to death or physical or mental incapacity, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(B) *In civil cases.*

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

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

(3) *Exceptions for a witness.* Evidence of a witness's character may be admitted under rules 5.607, 5.608, and 5.609.

b. Crimes, wrongs, or other acts.

(1) *Prohibited use.* 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.* 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.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.405 Methods of proving character.

a. By reputation or opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

b. By specific instances of conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.406 Habit; routine practice. Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.407 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 or culpable conduct. But the court may admit this evidence when offered on a manufacturing defect claim based on strict liability in tort, breach of warranty, or when offered for another purpose, such as impeachment or—if disputed—proving ownership, control, or feasibility of precautionary measures.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.408 Compromise offers and negotiations.

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

(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 that was disputed on either validity or amount.

(2) Conduct or a statement made during compromise negotiations about the claim.

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.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.409 Payment of expenses. Evidence of furnishing, promising to pay, or offering to pay expenses resulting from an injury is not admissible to prove liability for the injury.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.410 Pleas, plea discussions, and related statements.

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

(1) A guilty plea that was later withdrawn.

(2) A nolo contendere plea.

(3) A statement made during a proceeding on either of those pleas under Fed. R. Crim. P. 11, Iowa R. Crim. P. 2.10, or a comparable state procedure.

(4) A statement made during plea discussions with an attorney for the prosecuting authority if the discussions do not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

b. Exceptions. The court may admit a statement described in rule 5.410(*a*)(3) or (4):

(1) In any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together.

(2) In a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

[Report 1983; July 31, 1987, effective October 1, 1987; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.411 Liability insurance. Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.412 Sexual abuse cases; victim's past sexual behavior.

a. Prohibited uses. The following evidence is not admissible in a criminal proceeding involving alleged sexual abuse:

(1) Reputation or opinion evidence offered to prove that a victim engaged in other sexual behavior.

(2) Evidence of a victim's other sexual behavior other than reputation or opinion evidence.

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.

(B) Evidence of specific instances of a victim's sexual behavior with respect to the person accused of sexual abuse, if the defendant offers it to prove consent.

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

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

c. Procedure to determine admissibility.

(1) *Motion.* If the defendant in a criminal sexual abuse case intends to offer evidence under rule 5.412(*b*), the defendant must:

(A) File a motion to offer the evidence at least 14 days before trial unless the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence, or that the evidence relates to an issue that has newly arisen in the case, and the court sets a different time.

(B) Serve the motion on all parties and on the victim, or when appropriate, the victim's guardian or representative.

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

(2) *Hearing.* If the court determines that the offer of proof contains evidence described in rule 5.412(*b*), the court must conduct a hearing in camera to determine if such evidence is admissible.

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

(B) Notwithstanding rule 5.104(*b*), if the relevance of the evidence depends on the fulfillment of a condition of fact, the court, during a hearing in camera, must accept evidence on whether the condition of fact is fulfilled.

(C) If the court determines that the evidence is relevant and that the probative value outweighs the danger of unfair prejudice, the evidence will be admissible at trial to the extent the court specifies, including the evidence on which the victim may be examined or cross-examined.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rules 5.413 to **5.500** Reserved.

ARTICLE V
PRIVILEGES

Rule 5.501 Privilege in general. Nothing in these rules modifies or supersedes existing law governing a claim of privilege.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

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.

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

(1) The waiver is intentional;

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

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

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

(1) The disclosure is inadvertent;

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

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

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

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

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

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

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

f. Controlling effect of this rule. Notwithstanding rules 5.101 and 5.1101, this rule applies to all proceedings in the circumstances set out in the rule.

g. Definitions. In this rule:

(1) "Attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications.

(2) "Work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.
[Report April 2, 2009; effective June 1, 2009; September 28, 2016, effective January 1, 2017]

Rules 5.503 to **5.600** Reserved.

ARTICLE VI
WITNESSES

Rule 5.601 Competency to testify in general. Every person is competent to be a witness unless a statute or rule provides otherwise.
[Report 1983; 1985 Iowa Acts, ch 174, §16; 1990 Iowa Acts, ch 1015; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.602 Need for personal knowledge. A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.

Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under rule 5.703.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.603 Oath or affirmation to testify truthfully. Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.604 Interpreter. An interpreter must be qualified under Iowa Court Rules chapter 47 and must give an oath or affirmation to interpret accurately during the proceeding to the best of the interpreter's ability.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.605 Judge's competency as a witness. The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.606 Juror's competency as a witness.

a. At the trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

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

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

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

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

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

(C) A mistake was made in entering the verdict on the verdict form.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.607 Who may impeach a witness. Any party, including the party that called the witness, may attack the witness's credibility.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.608 Witness's character for truthfulness or untruthfulness.

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

b. Specific instances of conduct. Except for a criminal conviction under rule 5.609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) The witness; or

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

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.609 Impeachment by evidence of a criminal conviction.

a. In general. The following apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) For a crime that in the convicting jurisdiction was punishable by death or by imprisonment for more than one year, the evidence:

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

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

(2) For any crime regardless of the punishment, the evidence must be admitted if the crime involved dishonesty or false statement.

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

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

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

c. Effect of 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.

d. Juvenile adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:

(1) It is offered in a criminal case;

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

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

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

e. Pendency of an appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency of the appeal is also admissible.

[Report 1983; Court Order December 7, 1995, effective March 1, 1996; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.610 Religious beliefs or opinions. Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.611 Mode and order of examining witnesses and presenting evidence.

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

(1) Make those procedures effective for determining the truth.

(2) Avoid wasting time.

(3) Protect witnesses from harassment or undue embarrassment.

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

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

(1) On cross-examination; and

(2) When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

[Report 1983; amended February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.612 Writing used to refresh a witness's memory.

a. Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

(1) While testifying; or

(2) Before testifying, if the court decides that justice requires the party to have those options.

b. Adverse party's options; deleting unrelated matter. Unless Iowa Rule of Criminal Procedure 2.14 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce into evidence any portion that relates to the witness's testimony. If the producing party claims that the writing contains unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

c. Failure to produce or deliver the writing. If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or—if justice so requires—declare a mistrial.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.613 Witness's prior statement.

a. Showing or disclosing the statement during examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

b. Extrinsic evidence of a prior inconsistent statement. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (*b*) does not apply to an opposing party's statement under rule 5.801(*d*)(2).

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.614 Court's calling or examining a witness.

a. Calling. For good cause in exceptional cases, the court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

b. Examining. When necessary, the court may examine a witness regardless of who calls the witness.

c. Objections. A party may object to the court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.615 Excluding witnesses. At a party's request the court may order witnesses excluded so that they cannot hear other witness's testimony. Or the court may do so on its own. But this rule does not authorize excluding:

a. A party who is a natural person.

b. An officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney.

c. A person whose presence a party shows to be essential to presenting the party's claim or defense.

d. A person authorized by statute to be present.

[Report 1983; November 9, 2001, effective February 15, 2002; April 2, 2009, effective June 1, 2009; September 28, 2016, effective January 1, 2017]

Rules 5.616 to **5.700** Reserved.

ARTICLE VII
OPINIONS AND EXPERT TESTIMONY

Rule 5.701 Opinion testimony by lay witnesses. If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

a. Rationally based on the witness's perception;
b. Helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
c. Not based on scientific, technical, or other specialized knowledge within the scope of rule 5.702.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.702 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 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.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.703 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.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.704 Opinion on an ultimate issue. An opinion is not objectionable just because it embraces an ultimate issue.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.705 Disclosing the facts or data underlying an expert's opinion. Unless the court orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.706 Court-appointed expert witnesses.
a. Appointment process. On a party's motion 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.
b. Expert's role. The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:
(1) Must advise the parties of any findings the expert makes.
(2) May be deposed by any party.
(3) May be called to testify by the court or any party.
(4) May be cross-examined by any party, including the party that called the expert.
c. Compensation. The expert is entitled to a reasonable compensation as set by the court. Except as otherwise provided by law, the compensation must be paid by the parties in the proportion and at the time that the court directs, and the compensation is then charged like other costs.
d. Disclosing the appointment to the jury. The court may authorize disclosure to the jury that the court appointed the expert.
e. Parties' choice of their own experts. Rule 5.706 does not limit a party in calling its own experts.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rules 5.707 to **5.800** Reserved.

ARTICLE VIII
HEARSAY

Rule 5.801 Definitions that apply to this Article; exclusions from hearsay.

a. Statement. "Statement" means a person's:

(1) Oral assertion or written assertion; or

(2) Nonverbal conduct, if intended as an assertion.

b. Declarant. "Declarant" means the person who made the statement.

c. Hearsay. "Hearsay" means a statement that:

(1) The declarant does not make while testifying at the current trial or hearing; and

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

d. Statements that are not hearsay. A statement that meets the following conditions is not hearsay:

(1) *A declarant-witness's prior statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

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

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

(C) Identifies a person as someone the declarant perceived earlier.

(2) *An opposing party's statement.* The statement is offered against an opposing party and:

(A) Was made by the party in an individual or representative capacity;

(B) Is one the party manifested that it adopted or believed to be true;

(C) Was made by a person whom the party authorized to make a statement on the subject;

(D) Was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) Was made by the party's coconspirator during and in furtherance of the conspiracy. Prior to admission of hearsay evidence under rule 5.801(*d*)(2)(E), the trial court must make a preliminary finding, by a preponderance of evidence, that there was a conspiracy, that both the declarant and the party against whom the statement is offered were members of the conspiracy, and that the statements were made in the course and in furtherance of the conspiracy.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.802 The rule against hearsay. Hearsay is not admissible unless any of the following provide otherwise: the Constitution of the State of Iowa; a statute; these rules of evidence; or an Iowa Supreme Court rule.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.803 Exceptions to the rule against hearsay—regardless of whether the declarant is available as a witness. The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) *Present sense impression.* A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

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

(3) *Then existing mental, emotional, or physical condition.* A statement of the declarant's then existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) *Statement made for medical diagnosis or treatment.* A statement that:

(A) Is made for—and is reasonably pertinent to—medical diagnosis or treatment; and

(B) Describes medical history, past or present symptoms or sensations, or the inception or general cause of symptoms or sensations.

(5) *Recorded recollection.* A record that:

(A) Is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) Was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) Accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence, but it may be received as an exhibit only if offered by an adverse party.

(6) *Records of a regularly conducted activity.* A record of an act, event, condition, opinion, or diagnosis if:

(A) The record was made at or near the time by—or from information transmitted by—someone with knowledge;

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

(C) Making the record was a regular practice of that activity;

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

(E) The opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

(7) *Absence of a record of regularly conducted activity.* Evidence that a matter is not included in a record described in rule 5.803(6) if:

(A) The evidence is admitted to prove that the matter did not occur or exist;

(B) A record was regularly kept for a matter of that kind; and

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

(8) *Public records.*

(A) To the extent not otherwise provided in rule 5.803(8)(B), a record or statement of a public office or agency if it sets out:

(i) Its regularly conducted and regularly recorded activities;

(ii) Matters observed while under a legal duty to report; or

(iii) Factual findings from a legally authorized investigation.

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

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

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

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

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

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

Rule 5.803(8)(B) does not supersede specific statutory provisions regarding the admissibility of particular public records and reports.

(9) *Public records of vital statistics.* A record of a birth, fetal death, adoption, death, marriage, divorce, dissolution, or annulment, if reported to a public office in accordance with a legal duty.

(10) *Absence of a public record.* Testimony—or a certification under rule 5.902—that a diligent search failed to disclose a public record or statement if:

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

(i) The record or statement does not exist; or

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

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

(11) *Records of religious organizations concerning personal or family history.* A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Certificates of marriage, baptism, and similar ceremonies.* A statement of fact contained in a certificate:

(A) Made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) Attesting that the person performed a marriage or similar ceremony or administered a

sacrament; and

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

(13) *Family records.* A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

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

(A) The record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) The record is kept in a public office; and

(C) A statute authorizes recording documents of that kind in that office.

(15) *Statements in documents that affect an interest in property.* A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose—unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in ancient documents.* A statement in a document that is at least 30 years old and whose authenticity is established.

(17) *Market reports and similar commercial publications.* Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

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

(A) The statement is called to the attention of an expert witness upon cross-examination or relied on by the expert on direct examination; and

(B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) *Reputation concerning personal or family history.* A reputation among a person's family by blood, adoption, or marriage—or among a person's associates or in the community—concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) *Reputation concerning boundaries or general history.* A reputation in a community—arising before the controversy—concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) *Reputation concerning character.* A reputation among a person's associates or in the community concerning the person's character.

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

(A) The judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) The conviction was for a crime punishable by death or by imprisonment for more than a year;

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

(D) When offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

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

(23) *Judgments involving personal, family, or general history, or a boundary.* A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) Was essential to the judgment; and

(B) Could be proved by evidence of reputation.

(24) [Transferred to rule 5.807.]

[Report 1983; amended February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002; March 25, 2009, effective May 25, 2009; April 2, 2009, effective June 1, 2009; September 28, 2016, effective January 1, 2017]

Rule 5.804 Exceptions to the rule against hearsay—when the declarant is unavailable as a witness.

a. Criteria for being unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) Is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) Refuses to testify about the subject matter despite a court order to do so;

(3) Testifies to not remembering the subject matter;

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

(5) Is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance.

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

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

(1) *Former testimony.* Testimony that:

(A) Was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) Is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) *Statement under the belief of imminent death.* A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(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 and is offered to exculpate the defendant.

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

(A) The declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) Another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage, or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) [Transferred to rule 5.807.]

(6) *Statement offered against a party that wrongfully caused the declarant's unavailability.* A statement offered against a party that wrongfully caused—or acquiesced in wrongfully causing—the declarant's unavailability as a witness, and did so intending that result.

[Report 1983; November 9, 2001, effective February 15, 2002; April 2, 2009, effective June 1, 2009; September 28, 2016, effective January 1, 2017]

Rule 5.805 Hearsay within hearsay. Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.806 Attacking and supporting the declarant's credibility. When a hearsay statement—or a statement described in rule 5.801(*d*)(2)(C), (D), or (E)—has been admitted into evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.807 Residual exception.

a. In general. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in rule 5.803 or 5.804:

(1) The statement has equivalent circumstantial guarantees of trustworthiness;

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

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

(4) Admitting it will best serve the purposes of these rules and the interests of justice.

b. Notice. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

[Report April 2, 2009, effective June 1, 2009; September 28, 2016, effective January 1, 2017]

Rules 5.808 to **5.900** Reserved.

ARTICLE IX
AUTHENTICATION AND IDENTIFICATION

Rule 5.901 Authenticating or identifying evidence.

a. In general. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

b. Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) *Testimony of witness with knowledge.* Testimony that an item is what it is claimed to be.

(2) *Nonexpert opinion about handwriting.* A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an expert witness or the trier of fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive characteristics and the like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion about a voice.* An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence about a telephone conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) A particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) A particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence about public records.* Evidence that:

(A) A document was recorded or filed in a public office as authorized by law; or

(B) A purported public record or statement is from the office where items of this kind are kept.

(8) *Evidence about ancient documents or data compilations.* For a document or data compilation, evidence that it:

(A) Is in a condition that creates no suspicion about its authenticity;

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

(C) Is at least 30 years old when offered.

(9) *Evidence about a process or system.* Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods provided by a statute or rule.* Any method of authentication or identification allowed by a statute or Iowa Supreme Court rule.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.902 Evidence that is self-authenticating. The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity to be admitted:

(1) *Domestic public documents that are sealed and signed.* A document that bears:

(A) A seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of

any entity named above; and

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

(2) *Domestic public documents that are not sealed but are signed and certified.* A document that bears no seal if:

(A) It bears the signature of an officer or employee of an entity named in rule 5.902(1)(A); and

(B) Another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) *Foreign public documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attestor—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

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

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

(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 5.902(1), (2), or (3), a federal, state, or territorial statute, United States Supreme Court rule, or Iowa Supreme Court rule.

(5) *Official publications.* A book, pamphlet, or other publication purporting to be issued by public authority.

(6) *Newspapers and periodicals.* Printed materials purporting to be a newspaper or periodical.

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

(8) *Acknowledged documents.* A document accompanied by a certificate of acknowledgement that is lawfully executed by a notary public or another officer who is authorized to take acknowledgements.

(9) *Commercial paper and related documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) *Presumptions under a federal statute or a statute of Iowa or any other state or territory of the United States.* A signature, document, or anything else that a federal statute or a statute of Iowa or any other state or territory of the United States declares to be presumptively or prima facie genuine or authentic.

(11) *Certified domestic records of a regularly conducted activity.* The original or a copy of a domestic record that meets the requirements of rule 5.803(6)(A) to (C) as shown by a certification of the custodian or another qualified person that complies with a federal statute, a rule prescribed by the United States Supreme Court, a statute of Iowa or any other state or territory of the United States, or other Iowa Supreme Court rule. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.

(12) *Certified foreign records of a regularly conducted activity.* In a civil case, the original or a copy of a foreign record that meets the requirements of rule 5.902(11), modified as follows: the certification, rather than complying with a federal statute or a United States Supreme Court rule or a statute of Iowa or any other state or territory of the United States or other Iowa Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of rule 5.902(11).

[Report 1983; November 9, 2001, effective February 15, 2002; March 25, 2009, effective May 25, 2009; September 28, 2016, effective January 1, 2017]

Rule 5.903 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. This rule does not affect the admission of a foreign will into probate in this state.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rules 5.904 to **5.1000** Reserved.

ARTICLE X
CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 5.1001 Definitions that apply to this article. In this article:

a. A "writing" consists of letters, words, numbers, or their equivalent set down in any form.

b. A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.

c. A "photograph" means a photographic image or its equivalent stored in any form.

d. An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout—or other output readable by sight—if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.

e.. A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.1002 Requirement of the original. An original writing, recording, or photograph is required to prove its content, unless these rules or a statute provides otherwise.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.1003 Admissibility of duplicates. A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

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

a. All the originals are lost or destroyed, and not be the proponent acting in bad faith;

b. An original cannot be obtained by any available judicial process;

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

d. The writing, recording, or photograph is not closely related to a controlling issue.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.1005 Copies of public records to prove content.

a. Using a copy to prove content. The proponent may use a copy to prove the content of an official record—or of a document that was recorded or filed in a public office as authorized by law—if these conditions are met:

(1) The record or document is otherwise admissible.

(2) The copy is certified as correct in accordance with rule 5.902(4) or a witness who has compared it with the original testifies the copy is correct.

b. Using other evidence to prove content. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.1006 Summaries to prove content. The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at reasonable time and place. And the court may order the proponent to produce them in court.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.1007 Testimony or statement of a party to prove content. The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rule 5.1008 Functions of the court and jury. Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under rule 5.1004 or 5.1005. But in a jury trial, the jury determines—in accordance with rule 5.104(*b*)—any issue about whether:

a. An asserted writing, recording, or photograph ever existed; or

b. Another one produced at the trial or hearing is the original; or

c. Other evidence of content accurately reflects the content.

[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]

Rules 5.1009 to **5.1100** Reserved.

ARTICLE XI
MISCELLANEOUS RULES

Rule 5.1101 Applicability of the rules.

a. To courts and judges. The Iowa Rules of Evidence apply to proceedings before the courts of this state, including proceedings before magistrates and court-appointed referees and masters, except as Iowa Supreme Court rules otherwise provide.

b. Rules on privilege. The rules on privilege apply to all stages of a case or proceeding.

c. Exceptions. The Iowa Rules of Evidence—except for those on privilege—do not apply to the following:

(1) The court's determination, under rule 5.104(*a*), on a preliminary question of fact governing admissibility.

(2) Grand-jury proceedings.

(3) Contempt proceedings in which an adjudication is made without prior notice and a hearing.

(4) Miscellaneous proceedings such as: extradition or rendition; issuing an arrest warrant, criminal summons, or search warrant; a preliminary examination in a criminal case; sentencing; granting or revoking probation or supervised release; and considering whether to release on bail or otherwise.
[Report 1983; November 9, 2001, effective February 15, 2002; March 25, 2009, effective May 25, 2009; September 28, 2016, effective January 1, 2017]

Rule 5.1102 Reserved.

Rule 5.1103 Title. These Iowa Rules of Evidence may be cited as Iowa R. Evid.
[Report 1983; November 9, 2001, effective February 15, 2002; September 28, 2016, effective January 1, 2017]