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CHAPTER 5
RULES OF EVIDENCE

ARTICLE I
GENERAL PROVISIONS

Rule 5.101 Scope. These rules govern proceedings in the courts of this state to the extent and with the exceptions stated in rule 5.1101.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.102 Purpose and construction. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.
[Report 1983; November 9, 2001, effective February 15, 2002]

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.

b. Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

c. Hearing of jury. In jury cases, proceedings shall be conducted to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.104 Preliminary questions.

a. Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of rule 5.104(*b*). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

b. Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

c. Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness and so requests.

d. Testimony by accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case. Testimony given by the accused upon a preliminary question is not admissible against the accused on the issue of guilt but may be used for impeachment if inconsistent with testimony given by the accused at the trial.

e. Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.105 Limited admissibility. When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.
[Report 1983; November 9, 2001, effective February 15, 2002]

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

a. When an act, declaration, conversation, writing, or recorded statement, or part thereof, is introduced by a party, any other part or any other act, declaration, conversation, writing, or recorded statement is admissible when necessary in the interest of fairness, a clear understanding, or an adequate explanation.

b. Upon request by an adverse party, the court may, in its discretion, require the offering party to introduce contemporaneously with the act, declaration, conversation, writing, or recorded statement, or part thereof, any other part or any other act, declaration, conversation, writing, or recorded statement which is admissible under rule 5.106(*a*). 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*).

[Report 1983; November 9, 2001, effective February 15, 2002]

Rules 5.107 to **5.200** Reserved.

ARTICLE II
JUDICIAL NOTICE

Rule 5.201 Judicial notice of adjudicative facts.

a. Scope of rule. This rule governs only judicial notice of adjudicative facts.

b. Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

c. When discretionary. A court may take judicial notice, whether requested or not.

d. When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

e. Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

f. Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

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

[Report 1983; November 9, 2001, effective February 15, 2002]

Rules 5.202 to **5.300** Reserved.

ARTICLE III
PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 5.301 Presumptions in general in civil actions and proceedings. Nothing in these rules shall be deemed to modify or supersede existing law relating to presumptions in civil actions and proceedings.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rules 5.302 to **5.400** Reserved.

ARTICLE IV
RELEVANCY AND ITS LIMITS

Rule 5.401 Definition of "relevant evidence." *"Relevant evidence"* means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.402 Relevant evidence generally admissible; irrelevant evidence inadmissible. All relevant evidence is admissible, except as otherwise provided by the Constitutions of the United

States or the state of Iowa, by statute, by these rules, or by other rules of the Iowa Supreme Court. Evidence which is not relevant is not admissible.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.403 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.404 Character evidence not admissible to prove conduct; exceptions; other crimes.

a. Character evidence generally. Evidence of a person's character or a trait of the person's character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

(1) *Character of accused.* Evidence of a pertinent trait of the person's character offered by an accused, or by the prosecution to rebut the same.

(2) *Character of victim.*

(A) *In criminal cases.* Subject to rule 5.412, evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in any case where the victim is unavailable to testify due to death or physical or mental incapacity to rebut evidence that the victim was the first aggressor.

(B) *In civil cases.* Evidence of character for violence of the victim of assaultive conduct offered on the issue of self defense by a party accused of the assaultive conduct, or evidence of peaceable character to rebut the same.

(3) *Character of witness.* Evidence of the character of a witness, as provided in rules 5.607, 5.608, and 5.609.

b. Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.405 Methods of proving character.

a. Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

b. Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of the person's conduct.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.406 Habit; routine practice. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.407 Subsequent remedial measures. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered in connection with a claim based on strict liability in tort or breach of warranty or for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.408 Compromise and offers to compromise. Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration

in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require 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, negativing 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]

Rule 5.409 Payment of expenses. Evidence of furnishing or offering or promising to pay expenses occasioned by an injury is not admissible to prove liability for the injury.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.410 Inadmissibility of pleas, plea discussions, and related statements. Except as otherwise provided in this rule or Iowa R. Crim. P. 2.10(5), evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

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

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

(3) Any statement made in the course of any proceedings under Fed. R. Crim. P. 11, Iowa R. Crim. P. 2.10, or comparable procedure in other states regarding either of the foregoing pleas.

(4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

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

(*i*) In any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.

(*ii*) In a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.
[Report 1983; July 31, 1987, effective October 1, 1987; November 9, 2001, effective February 15, 2002]

Rule 5.411 Liability insurance. Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.
[Report 1983; November 9, 2001, effective February 15, 2002]

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

a. Notwithstanding any other provision of law, in a criminal case in which a person is accused of sexual abuse, reputation or opinion evidence of the past sexual behavior of an alleged victim of such sexual abuse is not admissible.

b. Notwithstanding any other provision of law, in a criminal case in which a person is accused of sexual abuse, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence is either of the following:

(1) Admitted in accordance with rules 5.412(*c*)(1) and 5.412(*c*)(2) and is constitutionally required to be admitted.

(2) Admitted in accordance with rule 5.412(*c*) and is evidence of either of the following:

(A) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury.

(B) Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which sexual abuse is alleged.

c. (1) If the person accused of sexual abuse intends to offer under rule 5.412(*b*) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which

such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

(2) The motion described in rule 5.412(*c*)(1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in rule 5.412(*b*), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding rule 5.104(*b*), if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

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

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

[Report 1983; November 9, 2001, effective February 15, 2002]

Rules 5.413 to **5.500** Reserved.

ARTICLE V
PRIVILEGES

Rule 5.501 General rule. Nothing in these rules shall be deemed to modify or supersede existing law relating to the privilege of a witness, person, government, state or political subdivision.
[Report 1983; November 9, 2001, effective February 15, 2002]

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 Rule of Civil Procedure 1.503(5)(*b*).

c. 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.

d. 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.

e. 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.

f. Definitions. In this rule:

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

(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]

Rules 5.503 to **5.600** Reserved.

ARTICLE VI
WITNESSES

Rule 5.601 General rule of competency. Unless otherwise provided by statute or rule, every person is competent to be a witness.
[Report 1983; 1985 Iowa Acts, ch 174, §16; 1990 Iowa Acts, ch 1015; November 9, 2001, effective February 15, 2002]

Rule 5.602 Lack of personal knowledge. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of rule 5.703 relating to opinion testimony by expert witnesses.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.603 Oath or affirmation. Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the witness's duty to do so.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.604 Interpreters. An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.605 Competency of judge as witness. The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.606 Competency of juror as witness.

a. At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

b. Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify 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 a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.607 Who may impeach. The credibility of a witness may be attacked by any party, including the party calling the witness.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.608 Evidence of character and conduct of witness.

a. Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to the following limitations:

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

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

b. Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of crime as provided in rule 5.609, may not be proved by extrinsic evidence. They may, however, in the discretion of the

court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness's character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the witness's privilege against self-incrimination when examined with respect to matters which relate only to credibility.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.609 Impeachment by evidence of conviction of crime.

a. General rule. For the purpose of attacking the credibility of a witness:

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

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

b. Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

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

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

e. Pendency of appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

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

Rule 5.610 Religious beliefs or opinions. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.611 Mode and order of interrogation and presentation.

a. Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

b. Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

c. Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop that witness's testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

[Report 1983; amended February 21, 1985, effective July 1, 1985; November 9, 2001, effective February 15, 2002]

Rule 5.612 Writing used to refresh memory. Except as otherwise provided in criminal proceedings by Iowa R. Crim. P. 2.14, if a witness uses a writing to refresh the witness's memory for the purpose of testifying, either:

(1) While testifying, or

(2) Before testifying, if the court in its discretion finds a necessity in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion, determines that the interests of justice so require, declaring a mistrial.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.613 Prior statements of witnesses.

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

b. Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This rule does not apply to admissions of a party-opponent as defined in rule 5.801(*d*)(2).

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.614 Calling and interrogation of witnesses by court.

a. Calling by court. For good cause in exceptional cases, the court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

b. Interrogation by court. When necessary in the interest of justice, the court may interrogate witnesses, whether called by the court or by a party.

c. Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.615 Exclusion of witnesses. At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of any of the following:

(1) A party who is a natural person.

(2) An officer or employee of a party which is not a natural person designated as its representative by its attorney.

(3) A person whose presence is shown by a party to be essential to the presentation of the party's cause.

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

[Report 1983; November 9, 2001, effective February 15, 2002; April 2, 2009, effective June 1, 2009]

Rules 5.616 to **5.700** Reserved.

ARTICLE VII
OPINIONS AND EXPERT TESTIMONY

Rule 5.701 Opinion testimony by lay witnesses. If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences

which are (*a*) rationally based on the perception of the witness and (*b*) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.702 Testimony by experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.703 Bases of opinion testimony by experts. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the trial or hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.704 Opinion on ultimate issue. Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.705 Disclosure of facts or data underlying expert opinion. The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.706 Court-appointed experts.

a. Appointment. The court may on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, if any; the witness's deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

b. Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

c. Disclosure of appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

d. Parties' experts of own selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rules 5.707 to **5.800** Reserved.

ARTICLE VIII
HEARSAY

Rule 5.801 Definitions. The following definitions apply under this article:

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

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

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

d. Statements which are not hearsay. The following statements are not hearsay:

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

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

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.802 Hearsay rule. Hearsay is not admissible except as provided by the Constitution of the state of Iowa, by statute, by the rules of evidence, or by other rules of the Iowa Supreme Court.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.803 Hearsay exceptions; availability of declarant immaterial. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

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

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

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

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

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

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and the regular practice of that business activity was to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with rule 5.902(11), rule 5.902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this subrule includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Absence of entry in records kept in accordance with the provisions of rule 5.803(6).* Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of rule 5.803(6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Public records and reports.*

(A) To the extent not otherwise provided in rule 5.803(8)(B), records, reports, statements, or

data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to a duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

(B) The following are not within this 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 political subdivision in criminal cases.

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

(*v*) Any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.

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

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, adoptions, deaths, marriages, divorces, dissolutions and annulments, if the report thereof was made to a public office pursuant to requirements of law.

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

(11) *Records of religious organizations.* Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Marriage, baptismal, and similar certificates.* Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family records.* Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) *Records of documents affecting an interest in property.* The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) *Statements in documents affecting an interest in property.* A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in ancient documents.* Statements in a document in existence 30 years or more the authenticity of which is established.

(17) *Market reports, commercial publications.* Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) *Learned treatises.* To the extent called to the attention of an expert witness upon cross-examination or relied upon by that witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) *Reputation concerning personal or family history.* Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community,

concerning a person's birth, adoption, marriage, divorce, dissolution, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

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

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

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

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

(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]

Rule 5.804 Hearsay exceptions; declarant unavailable.

a. Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

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

(3) Testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) Is unable to be present or to testify at the trial or hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the trial or hearing and the proponent of a statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

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

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

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

(3) *Statement against interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of personal or family history.*

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, dissolution, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) A statement concerning the foregoing matters, and death also, of another person, if the declarant

was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) [Transferred to rule 5.807.]

(6) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.
[Report 1983; November 9, 2001, effective February 15, 2002; April 2, 2009, effective June 1, 2009]

Rule 5.805 Hearsay within hearsay. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in this chapter.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.806 Attacking and supporting credibility of declarant. When a hearsay statement, or a statement defined in rule 5.801(*d*)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.807 Residual exception. A statement not specifically covered by any of the exceptions in rules 5.803 or 5.804 but having equivalent circumstantial guarantees of trustworthiness is not excluded by the hearsay rule if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. [Report April 2, 2009, effective June 1, 2009]

Rules 5.808 to **5.900** Reserved.

ARTICLE IX
AUTHENTICATION AND IDENTIFICATION

Rule 5.901 Requirement of authentication or identification.

a. General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

b. Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

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

(2) *Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) *Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) *Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one

called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) *Public records or reports.* Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) *Ancient documents or data compilation.* Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 30 years or more at the time it is offered.

(9) *Process or system.* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

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

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.902 Self-authentication. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic public documents under seal.* A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic public documents not under seal.* A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in rule 5.902(1), having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) *Foreign public documents.* A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them 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 report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with rule 5.902(1), (2), or (3) or complying with any Act of Congress or rule prescribed by the United States Supreme Court pursuant to statutory authority, or statutes of Iowa or any other state or territory of the United States, or rule prescribed by the Iowa Supreme Court.

(5) *Official publications.* Books, pamphlets, or other publications purporting to be issued by public authority.

(6) *Newspapers and periodicals.* Printed materials purporting to be newspapers or periodicals.

(7) *Trade inscriptions and the like.* Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) *Acknowledged documents.* Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) *Commercial paper and related documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) *Presumptions under Acts of Congress or statute of Iowa or any other state or territory of the United States.* Any signature, document or other matter declared by Act of Congress or statute of

Iowa or any other state or territory of the United States to be presumptively or prima facie genuine or authentic.

(11) *Certified Domestic Records of Regularly Conducted Activity.* The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under rule 5.803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the United States Supreme Court pursuant to statutory authority, or statutes of Iowa or any other state or territory of the United States, or rule prescribed by the Iowa Supreme Court, certifying that the record (A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (B) was kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

(12) *Certified Foreign Records of Regularly Conducted Activity.* In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under rule 5.803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record (A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (B) was kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice.

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

[Report 1983; November 9, 2001, effective February 15, 2002; March 25, 2009, effective May 25, 2009]

Rule 5.903 Subscribing witness's testimony unnecessary. The testimony of a subscribing witness is not necessary to authenticate a writing unless required by laws of the jurisdiction whose laws govern the validity of the writing. Nothing in this rule shall affect the admission of a foreign will into probate in this state.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rules 5.904 to **5.1000** Reserved.

ARTICLE X
CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

Rule 5.1001 Definitions. For purposes of this article the following definitions are applicable:

(1) *Writings and recordings. "Writings"* and *"recordings"* consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) *Photographs. "Photographs"* include still photographs, X-ray films, video tapes, and motion pictures.

(3) *Original.* An *"original"* of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) *Duplicate.* A *"duplicate"* is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.1002 Requirement of original. To prove the content of a writing, recording, or photograph, an original is required, except as otherwise provided in these rules or by statute.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.1003 Admissibility of duplicates. A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) under the circumstances, admission of the duplicate would be unfair.
[Report 1983; November 9, 2001, effective February 15, 2002]

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

(1) *Originals lost or destroyed.* All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

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

(3) *Original in possession of opponent.* At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the trial or hearing, and that party does not produce the original at the trial or hearing; or

(4) *Collateral matters.* The writing, recording, or photograph is not closely related to a controlling issue.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.1005 Public records. The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 5.902, or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.1006 Summaries. The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.1007 Testimony or written admission of party. Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rule 5.1008 Functions of court and jury. When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 5.104. When, however, an issue is raised (*a*) whether the asserted writing ever existed, or (*b*) whether another writing, recording, or photograph produced at the trial is the original, or (*c*) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.
[Report 1983; November 9, 2001, effective February 15, 2002]

Rules 5.1009 to **5.1100** Reserved.

ARTICLE XI
MISCELLANEOUS RULES

Rule 5.1101 Applicability of rules.

a. General applicability. These rules apply in all proceedings in the courts of this state, including proceedings before magistrates and court-appointed referees and masters, except as otherwise provided by rules of the Iowa Supreme Court.

b. Rules of privilege. Rule 5.501, with respect to privilege, applies at all stages of all actions, cases, and proceedings.

c. Rules inapplicable. These rules, other than rule 5.501, with respect to privilege, do not apply in the following situations:

(1) *Preliminary questions of fact.* The determination of questions of fact preliminary to the admissibility of evidence when the issue is to be determined by the court under rule 5.104(*a*).

(2) *Grand jury.* Proceedings before grand juries.

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

(4) *Miscellaneous proceedings.* Proceedings for extradition or rendition; preliminary hearings in criminal cases, sentencing, and granting or revoking probation; issuance of warrants for arrest, criminal complaints, and search warrants; and proceedings with respect to release on bail or otherwise.

[Report 1983; November 9, 2001, effective February 15, 2002; March 25, 2009, effective May 25, 2009]

Rule 5.1102 Reserved.

Rule 5.1103 Title. The rules in this chapter shall be known as the Iowa Rules of Evidence and may be cited as Iowa R. Evid.

[Report 1983; November 9, 2001, effective February 15, 2002]