

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO)
RULES OF EVIDENCE (I.R.E.) 609, 801(d)(1)(B),) ORDER
803, and 804(b)(3))
_____)

The Court having reviewed a recommendation from the Evidence Rules Advisory Committee to amend the Idaho Rules of Evidence, and the Court having reviewed and approved the recommended amendments,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Rules of Evidence as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 609 be, and the same is hereby, amended to read as follows:

Rule 609. Impeachment by evidence of conviction of crime.

(a) **General rule.** For the purposes of attacking ~~the credibility of a witness a witness's character for truthfulness~~, evidence of the fact that the witness has been convicted of a felony and the nature of the felony shall be admitted if elicited from the witness or established by public record, but only if the court determines in a hearing outside the presence of the jury that the fact of the prior conviction or the nature of the prior conviction, or both, are relevant to the ~~credibility of the witness witness's character for truthfulness~~ and that the probative value of admitting this evidence outweighs its prejudicial effect to the party offering the witness. If the evidence of the fact of a prior felony conviction, but not the nature of the conviction, is admitted for the purpose of impeachment of a party to the action or proceeding, the party shall have the option to present evidence of the nature of the conviction, but evidence of the circumstances of the conviction shall not be admissible.

(d) **Pardon, annulment or certificate of rehabilitation not based on innocence; pendency of an appeal.** If the conviction has been the subject of a pardon, annulment or certificate of rehabilitation or other equivalent procedure not based on a finding of innocence, or is the subject of a pending appeal, the evidence of a conviction is not rendered inadmissible, but shall be considered by the court in determining admissibility. Evidence of the pardon, annulment, certificate of

rehabilitation or other equivalent procedure, or pendency of an appeal is admissible if evidence of the conviction is admitted.

Comment Subsection (a): The 2016 amendment substitutes the term “character for truthfulness” for the term “credibility” in the first sentence of the Rule. The limitations of Rule 609 are not applicable if a conviction is admitted for a purpose other than to prove the witness’s character for untruthfulness.

2. That Rule 801(d)(1)(B) be, and the same is hereby, amended to read as follows:

Rule 801. Definitions.

(d) Statements which are not hearsay. A statement is not hearsay if--

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

3. That Rule 803 be, and the same is hereby, amended to read as follows:

Rule 803. Hearsay exceptions; availability of declarant immaterial.

(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 if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the opponent shows the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph 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 paragraph (6).** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the opponent shows the sources of information or other circumstances indicate lack of trustworthiness.

(8) **Public records and reports.** ~~Unless the sources of information or other circumstances indicate lack of trustworthiness,~~ Records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law, unless the opponent shows the sources of information or other circumstances indicate lack of trustworthiness. The following are not within this exception to the hearsay rule: (A) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case; (B) investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party; (C) factual findings offered by the government in criminal cases; (D) factual findings resulting from special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.

(10) **Absence of public record or entry.** To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry. In a criminal case, such a certification shall be admissible only if 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.

4. That Rule 804(b)(3) be, and the same is hereby, amended to read as follows:

Rule 804. Hearsay exceptions; declarant unavailable.

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

(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 declarant to civil or criminal liability, or to render invalid a claim by declarant against another, that a reasonable man in declarant's position would not have made the statement unless declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

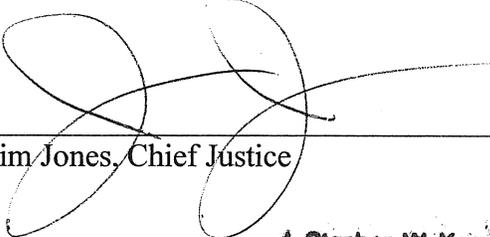
IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of January, 2016.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Rules of Evidence.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 1st day of September, 2015.

By Order of the Supreme Court



Jim Jones, Chief Justice

ATTEST: Stephen Kenyon
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 9.1.15

Stephen Kenyon

Clerk

By: Sara D. Johnson Deputy