ARTICLE I. GENERAL PROVISIONS.

Rule 101. Title and Scope.

(a) Title. These rules are titled and should be cited as the Idaho Rules of Evidence, or abbreviated I.R.E.

(b) Scope. These rules govern all cases and proceedings in the courts of the State of Idaho and all cases and proceedings to which rules of evidence are applicable, except as otherwise provided in this rule.

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

(d) Rules Inapplicable in Part. These rules apply in the following proceedings, subject to the enumerated exceptions:

(1) preliminary hearings except as modified by Rule 5.1(b) of the Idaho Criminal Rules;

(2) proceedings under the Juvenile Corrections Act except as modified by the Idaho Juvenile Rules;

(3) masters proceedings unless the appointing court directs otherwise in the order of appointment pursuant to Rule 53 of the Idaho Rules of Civil Procedure;

(4) proceedings under the Uniform Post-Conviction Procedure Act except as modified by Idaho Code Section 19-4907;

(5) proceedings for suspension of driver's license for failure to take an evidentiary test for alcohol concentration except as modified by Rule 9.2(a) of the Idaho Misdemeanor Criminal Rules;

(6) proceedings conducted under the Idaho Rules of Family Law Procedure, except as modified by I.R.F.L.P. 102;

(7) restitution hearings except as modified by I.C. § 19-5304(6).

(e) Rules Inapplicable. These rules, except for those on privilege, do not apply to the following:

(1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;

(2) Special Inquiry Judge proceedings;

(3) the following miscellaneous criminal proceedings:

proceedings for extradition or rendition;

sentencing;
granting or revoking probation;
issuing an arrest warrant, criminal summons, or search warrant;
considering whether to release on bail or otherwise;

(4) contempt proceedings in which the court may act summarily;

(5) in the small claims department of the district court;

(6) hearings conducted under the Child Protective Act, I.C. Section 16-1601, et seq., except that these rules apply at adjudicatory hearings conducted under I.C. Section 16-1619 and in termination of parental rights cases under I.C. Section 16-1624;

(7) informal hearings for emergency medical treatment under I.C. Section 16-1627;

(8) hearings conducted under I.C. Section 18-609A on a request for judicial authorization for performance of an abortion on a minor.

(f) Definitions. In these rules:

(1) "case" includes an action or proceeding;

(2) "record" includes a memorandum, report, or data compilation;

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

Rule 102. Purpose and Construction.

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.

Rule 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) 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. If requested in an action tried without a jury, an offer of proof in the form of a full presentation of the evidence must be allowed and reported unless the evidence plainly is not admissible on any ground or the evidence is privileged.

(c) 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.

(d) Taking Notice of Plain Error. A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

Rule 104. Preliminary Questions.

(a) In General. 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) it is a criminal case and 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.

(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.

Rule 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.

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

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

ARTICLE II. JUDICIAL NOTICE.

Rule 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.

When a court takes judicial notice of records, exhibits, or transcripts from the court file in the same or a separate case, the court must identify the specific documents or items so noticed. When a party requests judicial notice of records, exhibits, or transcripts from the court file in the same or a separate case, the party must identify the specific items for which judicial notice is requested or offer to the court and serve on all parties copies of those items.

(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.

ARTICLE III. PRESUMPTIONS.

Rule 301. Presumptions in Civil Cases Generally.

(a) Effect. In a civil case, unless a statute, Idaho appellate decision, or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally. The burden of producing evidence is satisfied by evidence sufficient to permit reasonable minds to conclude that the presumed fact does not exist. If the party against whom the presumption operates does not meet the burden of producing evidence, the presumed fact must be deemed proved. If that party meets the burden of producing evidence, the jury must not be instructed on the presumption and the trier of fact may determine the existence or nonexistence of the presumed fact without regard to the presumption.

(b) Jury Instructions. When a presumption operates in a civil case, the court must instruct the jury that the fact has been proved without using the term "presumption."

Rule 302. Applying Federal Law to Presumptions in Civil Cases.

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

Rule 303. Presumptions in Criminal Cases.

(a) Scope. Unless otherwise provided by statute, in criminal cases presumptions that operate against the defendant, recognized at common law or created by statute, are governed by this rule. For purposes of this rule, statutory provisions that certain facts are prima facie evidence of other facts or of guilt are treated as presumptions.

(b) Submission to Jury. The court may submit the question of guilt or of the existence of a presumed fact to the jury only if, on the evidence as a whole, a reasonable juror could find guilt or the presumed fact beyond a reasonable doubt.

(c) Instructing the Jury. When the existence of a presumed fact operates against the defendant:

(1) the court must not instruct the jury to find a presumed fact against the defendant and must not instruct the jury in terms of a presumption;

(2) the court must instruct the jurors that they may draw reasonable inferences from facts proved beyond a reasonable doubt and may convict the defendant in reliance upon an inference of fact if they find that such inference is valid and if they find that the evidence as a whole, including the inference, convinces them beyond a reasonable doubt that the defendant is guilty.

ARTICLE IV. RELEVANCY AND ITS LIMITS.

Rule 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.

Rule 402. General Admissibility of Relevant Evidence.

Relevant evidence is admissible unless these rules, or other rules applicable in the courts of this state, provide otherwise. Irrelevant evidence is not admissible.

Rule 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.

Rule 404. Character Evidence; Crimes or Other Acts.

(a) Character Evidence.

(1) **Prohibited Uses**. Evidence of a person's character or trait of character 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 in a Criminal Case**. The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) a defendant may offer evidence of an alleged victim's pertinent trait of character, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) **Exceptions for a Witness.** Evidence of a witness's character may be admitted under Rules 607, 608 and 609.

(b) Crimes, Wrongs, or Other Acts.

(1) **Prohibited Uses.** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) **Permitted Uses; Notice in a Criminal Case.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case, the prosecutor must:

(A) file and serve reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so reasonably in advance of trial – or during trial if the court, for good cause shown, excuses lack of pretrial notice.

Rule 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.

Rule 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.

Rule 407. Subsequent Remedial Measures.

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

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

But the court may admit this evidence for another purpose, such as impeachment or – if disputed – proving ownership, control, or the feasibility of precautionary measures.

Rule 408. Compromise Offers and Negotiations.

(a) Prohibited Uses. Evidence of the following is not admissible – on behalf of any party – either to prove or disprove the validity or amount of a disputed claim:

(1) furnishing, promising, or offering – or accepting, promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and
(2) conduct or a statement made during compromise negotiations about the claim. Compromise negotiations encompass mediation.

(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. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

Rule 409. Offers to Pay Medical and Similar expenses.

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

Rule 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 was a participant 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 Idaho Criminal Rule 11 or a comparable federal or state procedure; or

(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did 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 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; or

(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; or

(3) under subsection (a)(3) above, in the same criminal action or proceeding for impeachment purposes.

Evidence that a person was or was not insured against liability is not admissible upon the issue 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.

Rule 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.

Rule 412. Sex Crime Cases; Relevance of Alleged Victim's Past Sexual Behavior.

(a) Prohibited Uses. Notwithstanding any other provision of law, in a criminal case in which a defendant is accused of a sex crime, reputation or opinion evidence of the alleged victim's past sexual behavior is not admissible.

(b) Additional Prohibited Uses and Exceptions. Notwithstanding any other provision of law, in a criminal case in which a defendant is accused of a sex crime, evidence of an alleged victim's past specific instances of sexual behavior is also not admissible, but the following such evidence may be admitted:

(1) an alleged victim's past sexual behavior, if offered to prove that someone other than the defendant was the source of semen or injury; or

(2) an alleged victim's past sexual behavior with respect to the person accused of the sex crime, if offered by the defendant to prove consent; or

(3) an alleged victim's prior false allegations of sex crimes made at an earlier time; or

(4) an alleged victim's sexual behavior with someone other than the defendant that occurred at the time of the event giving rise to the sex crime charged; or

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

(c) Procedure to Determine Admissibility.

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

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

(B) do so at least five (5) days before trial unless the court, based on a determination 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 the evidence relates has newly arisen in the case, allows the motion to be made at a later date; and

(C) serve the motion on all parties.

(2) Hearing. Before admitting evidence under this rule, the court must conduct an in camera hearing at which the parties may call witnesses, including the alleged victim, and offer other relevant evidence. Notwithstanding the provisions of Rule 104(b), if the relevance of the evidence which the defendant seeks to offer depends upon the fulfillment

of a condition of fact, the court, at the hearing in chambers or at a subsequent in camera hearing scheduled for such purpose, must accept evidence on the issue of whether such condition of fact is fulfilled and determine the issue.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence that the defendant intends to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, the evidence must be admitted to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the parties may examine or cross-examine the alleged victim.

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

(e) For purposes of this rule, the term "sex crime" means –

(1) rape, the infamous crime against nature, forcible penetration with a foreign object; sexual abuse of a child under age sixteen years, sexual exploitation of a child, lewd conduct with a minor child under sixteen, or sexual battery of a minor child sixteen or seventeen years of age;

(2) any other crime under the law of the state of Idaho that involved: contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person; or contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

(3) assault with intent to commit any of the crimes included in subsections (1) and (2);

(4) battery with intent to commit any of the crimes included in subsections (1) and (2);

(5) kidnaping for the purpose of committing any of the crimes included in subsections (1) and (2); or

(6) any attempt or conspiracy to commit any of the crimes included in subsections (1) and (2).

Rule 413. Proceedings of Medical Malpractice Screening Panels.

Evidence of the proceedings or of conduct or statements made in proceedings before a hearing panel for prelitigation consideration of medical malpractice claims, or the results of or any findings or determinations made in the proceedings is not admissible in a civil action or proceeding by, against or between the parties to or any witness in the hearing panel proceedings.

Rule 414. Expressions of Condolence or Sympathy.

(a) Prohibited Uses. In any civil action brought by or on behalf of a patient who experiences an unanticipated outcome of medical care, or in any arbitration proceeding related to, or in lieu of, such civil action, all statements and affirmations, whether in writing or oral, and all gestures or conduct expressing sympathy, commiseration, condolence, or compassion, made by a health care professional or an employee of a health care professional to a patient or family member or friend of a patient, which relate to the care provided to the patient, or which relate to the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated

outcome of medical care is not admissible as evidence of an admission of liability or on the issue of damages.

(b) Exceptions. Notwithstanding subsection (1) of this rule, a statement of fault which is otherwise admissible and is part of or in addition to a statement identified in subsection (a) may be admissible.

(c) Definitions. For purposes of this rule:

(1) "Health care professional" means any person licensed, certified, or registered by the state of Idaho to deliver health care and any clinic, hospital, nursing home, ambulatory surgical center or other place in which health care is provided. The term also includes any professional corporation or other professional entity comprised of such health care professionals as permitted by the laws of Idaho.

(2) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected, hoped for or desired result.

ARTICLE V. PRIVILEGES

(NOTE: NO CHANGES ARE PROPOSED TO THIS SECTION OF THE IDAHO RULES AND THEY WOULD BE INSERTED HERE AS THEY CURRENTLY APPEAR)

ARTICLE VI. WITNESSES.

Rule 601. Competency to Testify in General.

Every person is competent to be a witness except:

(a) Incompetency Determined by Court. Persons whom the court finds are incapable of receiving just impressions of the facts about which they are examined, or of relating them accurately.

(b) Claim Against Estate.

(1) Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted against a personal representative,

(2) upon a claim or demand against the estate of a deceased person,

(3) as to any communication or agreement, not in writing, with the deceased person.

(c) Other Exceptions. If these rules provide otherwise.

Rule 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 703.

Rule 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.

Rule 604. Interpreter.

An interpreter must be qualified as an expert under these rules and must give an oath or affirmation to make a true translation.

Rule 605. Judge's Competency as a Witness.

The presiding judge may not testify as a witness in the trial. A party need not object to preserve the issue.

Rule 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 on 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.
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> **(2) Exceptions.** A juror may testify about whether:
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> (A) extraneous prejudicial information was improperly brought to the jury's attention;
>
> (B) an outside influence was improperly brought to bear on any juror; or
>
> (C) the jury determined any issue by resort to chance.

Rule 607. Who May Impeach a Witness.

Any party, including the party that called the witness, may attack the witness's credibility.

Rule 608. A 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 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.

(c) Effect of Giving Testimony. 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.

Rule 609. Impeachment by Evidence of a Criminal Conviction.

(a) In General. For the purpose of attacking 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 must 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 witness's character for truthfulness and that the probative value of 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 impeachment of a party to the action or proceeding, the party has the option to present evidence of the nature of the conviction, but evidence of the circumstances of the conviction is not admissible.

(b) Limit on Using the Evidence after 10 years. This subdivision (b) applies if more than 10 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 a Withheld or Vacated Judgment; Pardon for Innocence. Evidence of a withheld judgment or a vacated judgment must not be admitted as a conviction. A conviction that has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence is not admissible under this rule.

(d) Effect of a 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 such information must 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.

Rule 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.

Rule 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; and

(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.

Rule 612. Writing or Object Used to Refresh a Witness's Memory.

(a) Scope. This rule gives an adverse party certain options when a witnesses uses a writing or object to refresh memory for the purpose of testifying:

(1) while testifying; or

(2) before testifying, if:

(A) the court decides that justice requires the party to have those options and it is practicable to have the writing or object produced, and

(B) the writing or object is not privileged under these rules and not protected from disclosure by Idaho Rule of Civil Procedure 26 or Idaho Criminal Rule 16.

(b) Adverse Party's Options; Deleting Unrelated Matter. An adverse party is entitled to have the writing or object produced at the hearing or deposition in which the witness is testifying, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony.

If production of the writing or object at the hearing or deposition is impracticable, the court may order it made available for inspection.

If the producing party claims that the writing or object includes unrelated matter, the court must examine the writing or object 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 or Object. If a writing or object is not produced, made available for inspection, or 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.

Rule 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 801(d)(2).

Rule 614. Court's Calling or Examining of Witnesses.

(a) Calling. When the court is the trier of fact, it may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) Examining. The court may examine a witness regardless of who calls the witness.

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

Rule 615. Excluding witnesses.

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

(1) a party who is a natural person;

(2) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;

(3) a person whose presence a party shows to be essential to presenting the party's claim or defense; or

(4) a crime victim whose exclusion is prohibited under Article 1, Section 22 of the Idaho Constitution.

(b) Preliminary Hearings. Notwithstanding subsections (a)(1), (2), and (3) of this rule, in a preliminary hearing if either party requests it, the magistrate must exclude all non-party witnesses who have not been examined.

(c) Child Witnesses. Notwithstanding subsections (a) and (b) of this rule or any statutory provision, when a child is summoned as a witness in any hearing in any criminal matter, including any preliminary hearing, the court may allow parents, a counselor, friend or other person having a supportive relationship with the child to remain in the courtroom during the child's testimony.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY.

Rule 701. Opinion Testimony by Lay Witnesses.

If a witness is not testifying as an expert, testimony in the form of an opinion or inference 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 702.

Rule 702. Testimony by Expert Witnesses.

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if 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.

Rule 703. Bases of an Expert's Opinion Testimony.

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

Rule 704. Opinion on an Ultimate Issue.

An opinion or inference is not objectionable just because it embraces an ultimate issue.

Rule 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 prior disclosure of the underlying facts or data, provided that, if requested pursuant to the rules of discovery, the underlying facts or data were disclosed. But the expert may be required to disclose those facts or data on cross-examination.

Rule 706. Court-Appointed Expert Witnesses.

(a) Appointment Process. On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit

nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

(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, pursuant to Rule 614(a);

(4) may be called to testify by any party; and

(5) 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. The compensation is payable as follows:

(1) in a criminal case or in a civil case involving just compensation for the taking of property, from any funds that are provided by law; and

(2) in any other civil case, by the parties in the proportion and at the time that the court directs – the compensation is then charged like other costs.

(d) Parties' Choice of Their Own Experts. This rule does not limit a party in calling its own experts.

ARTICLE VIII. HEARSAY

Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay.

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it 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 in 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:

(i) 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

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

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

(2) Statement by Party-Opponent. The statement is offered against a 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.

Rule 802. Hearsay Rule.

Hearsay is not admissible except as provided by these rules or other rules promulgated by the Supreme Court of Idaho.

Rule 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 their source.

(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 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 902(11) or (12); 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 a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (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 record or statement of a public office if:

(A) it sets out:

(i) the office's regularly recorded and regularly conducted activities; or

(ii) a matter observed while under a legal duty to report, or factual findings resulting from an investigation conducted under legal authority, but not including:

(a) a statement or factual finding offered by the public office in a case in which it is a party; or

(b) an investigative report by law enforcement personnel or a public office's factual finding resulting from a special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case; and

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

(9) Public Records of Vital Statistics. A record of a birth, death, fetal death, or marriage, if reported to a public office in accordance with a legal duty.

(10) Absence of a Public Record. Testimony – or certification under Rule 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 on 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, except upon motion and for good cause shown.

(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 may be shown but does not affect admissibility.

(23) Medical or Dental Tests and Test Results for Diagnostic or Treatment Purposes. A written, graphic, numerical, symbolic or pictorial representation of the results of a medical or dental test performed for purposes of diagnosis or treatment for which foundation has been established pursuant to Rule 904, unless the opponent shows that the sources of information or other circumstances indicate a lack of trustworthiness. This exception shall not apply to:

(A) psychological tests;

(B) reports generated pursuant to I.R.C.P. 35(a);

(C) medical or dental tests performed in anticipation of or for purposes of litigation; or

(D) public records specifically excluded from the Rule 803(8) exception to the hearsay rule.

(24) Other Exceptions.

(a) In General. A statement not specifically covered by any of the foregoing exceptions if:

(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.

Rule 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:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (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. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(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.

(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) 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.

(6) Other exceptions.

(A) In General. A statement not specifically covered by any of the foregoing exceptions if:

(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.

Rule 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.

Rule 806. Attacking and Supporting the Declarant's Credibility.

When a hearsay statement – or a statement described in Rule 801(d)(2)(C), (D), or (E) – has been admitted in 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.

ARTICLE IX. AUTHENTICATION and IDENTIFICATION

Rule 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 a 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 Supreme Court rule, by an Idaho statute, or by the Idaho Constitution.

Rule 902. Evidence That Is Self-Authenticating.

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order 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 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 attester--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 902(1), (2), or (3), an Idaho statute, or a rule prescribed by the Supreme Court.

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

(6) Newspapers and Periodicals. Printed material 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 acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(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 Created by Law. A signature, document, or anything else that a federal or Idaho statute or Supreme Court rule 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 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person. As used in this subsection, "certification" means a written declaration signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the jurisdiction where the certification is signed. 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. The original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: as used in this subsection, "certification" means a written declaration 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 902(11).

Rule 903. Subscribing Witness's Testimony.

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

Rule 904. Authentication of medical or dental tests and test results for diagnostic or treatment purposes.

(1) Authentication of Items Described in Rule 803(23).

An item described in Rule 803(23) is self-authenticating, and no extrinsic evidence of authenticity is required for its admission, if:

(A) the proposed exhibit identifies the person or entity who conducted or interpreted the test, the name of the patient, and the date the test was performed; and

(B) notice was given as provided in subsection (2) of this rule.

(2) Notice. No less than 45 days before trial, any party intending to offer an item under this rule must serve on all parties a notice, stating that the item is being offered under this rule and shall be deemed authentic and admissible without testimony or further identification, unless objection is filed and served within 14 days of the date of notice, pursuant to subsection (3) of this rule. The notice served on the parties shall include a brief description of the item along with the name, address and telephone number of the item's author or maker, and the notice shall be accompanied by a copy of the item if it is practicable to provide a copy. The notice, but not the accompanying item, shall be filed with the court.

(3) Objection to Authenticity or Admissibility. Within 14 days of notice, any other party may object by filing and serving on all parties a written objection to any item offered under this rule, identifying each item to which objection is made. The grounds for the objection shall be specifically set forth, except objection on the grounds of relevancy need not be made until trial. If the court in a civil case finds that an objection was made without reasonable basis and the item is admitted at trial, the court may award the offering party any expenses incurred and reasonable attorney fees.

(4) Effect of Rule. This rule does not restrict argument or proof relating to the weight to be accorded the evidence submitted, nor does it restrict the trier of fact's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties. Nothing contained in this rule shall prohibit the admissibility of a written, graphic, numerical, symbolic or pictorial representation in evidence where otherwise admissible.

ARTICLE X. CONTENTS of WRITINGS, RECORDINGS, and PHOTOGRAPHS

Rule 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, sounds, 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.

Rule 1002. Requirement of the Original.

An original writing, recording, or photograph is required in order to prove its content unless these rules or a statute provides otherwise.

Rule 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 continuing effectiveness, or the circumstances make it unfair to admit the duplicate.

Rule 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 by the proponent acting in bad faith;

(b) an original cannot be obtained by any reasonably practicable, 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.

Rule 1005. Copies of Public Records to Prove Content.

(a) Proof of public record. 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: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

(b) Use of official transcripts of district court proceedings. In all cases where a party desires to place in evidence a transcript or partial transcript of a district court proceeding, or disclose the contents of a transcript during the examination of a witness, the transcript must be an official transcript as provided in , Idaho Court Administrative Rule 27(d).

Rule 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 a reasonable time and place. And the court may order the proponent to produce them in court.

Rule 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.

Rule 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 1004 or 1005. But in a jury trial, the jury determines – in accordance with Rule 104(b) – any issue about whether:

(a) an asserted writing, recording, or photograph ever existed;

(b) another one produced at the trial or hearing is the original; or

(c) other evidence of content accurately reflects the content.