

**INDIANA RULES OF
EVIDENCE
AND TRIAL OBJECTIONS
OUTLINE**



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Indiana Rules of Court Rules of Evidence

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INDIANA RULES OF EVIDENCE

Rule 101. Scope

- (a) **Scope.** These rules apply to proceedings in the courts of this State to the extent and with the exceptions stated in this rule.
- (b) **General Applicability.** These rules apply in all proceedings in the courts of the State of Indiana except as otherwise required by the Constitution of the United States or Indiana, by the provisions of this rule, or by other rules promulgated by the Indiana Supreme Court. If these rules do not cover a specific evidence issue, common or statutory law shall apply. The word “judge” in these rules includes referees, commissioners and magistrates.
- (c) **Rules of Privilege.** The rules and laws with respect to privileges apply at all stages of all actions, cases, and proceedings.
- (d) **Rules Inapplicable.** The rules, other than those with respect to privileges, do not apply in the following situations:
 - (1) *Preliminary questions of fact.* The determination of a question of fact preliminary to the admission of evidence, where the court determines admissibility under Rule 104(a).

- (2) *Miscellaneous proceedings.* Proceedings relating to extradition, sentencing, probation, or parole, issuance of criminal summonses or warrants for arrest or search, preliminary juvenile matters, direct contempt, bail hearings, small claims, and grand jury proceedings.

Rule 102. Purpose

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

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.
 - (2) If the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

- (b) **Not Needing to Renew an Objection or Offer of Proof.** Once the court rules definitively on the record at trial a party need not renew an objection or offer of proof to preserve a claim of error for appeal.
- (c) **Court's Statement About the Ruling; Directing an Offer of Proof.** The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.
- (d) **Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.
- (e) **Taking Notice of Fundamental Error.** A court may take notice of a fundamental error affecting a substantial right, even if the claim of error was not properly preserved.
- (f) **Preponderance of Evidence.** When deciding whether to admit evidence, the court must decide any question of fact by a preponderance of the evidence.

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 is not present and cannot hear if:
 - (1) the hearing involves the admissibility of a confession;
 - (2) a defendant in a criminal case is a witness and so requests; or
 - (3) justice so requires.
- (d) **Cross-Examining a Defendant in a Criminal Case.** By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.
- (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 Writing 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.

Rule 201. Judicial Notice

(a) Kinds of Facts That May Be Judicially Noticed.

The court may judicially notice:

(1) a fact that:

- (A)** is not subject to reasonable dispute because it is generally known within the trial court’s territorial jurisdiction, or
- (B)** can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(2) the existence of:

- (A) published regulations of governmental agencies;
 - (B) ordinances of municipalities; or
 - (C) records of a court of this state.
- (b) **Kinds of Laws That May Be Judicially Noticed.** A court may judicially notice a law, which includes:
 - (1) the decisional, constitutional, and public statutory law;
 - (2) rules of court;
 - (3) published regulations of governmental agencies;
 - (4) codified ordinances of municipalities;
 - (5) records of a court of this state; and
 - (6) laws of other governmental subdivisions of the United States or any state, territory or other jurisdiction of the United States.
- (c) **Taking Notice.** The court:
 - (1) may take judicial notice on its own; or
 - (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) **Timing.** The court may take judicial notice at any stage of the proceeding.

- (e) **Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
- (f) **Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Rule 301. Presumptions in Civil Cases Generally

In a civil case, unless a constitution, statute, judicial 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. A presumption has continuing effect even though contrary evidence is received.

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 any of the following provides otherwise:

- (a) the United States Constitution;
- (b) the Indiana constitution;
- (c) a statute not in conflict with these rules;
- (d) these rules; or
- (e) other rules applicable in the courts of this state.

Irrelevant evidence is not admissible.

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, 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, 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 character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

- (2) *Exceptions for a Defendant or Victim 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) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it; and
 - (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. On request by a defendant in a criminal case, the prosecutor must:

- (A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and
- (B) do so before trial—or during trial if the court, for good cause, 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. If, in a criminal case, a defendant provides reasonable pretrial notice that the defendant intends to offer character evidence, the prosecution must provide the defendant with any relevant specific instances of conduct that the prosecution may use on cross-examination.
- (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

or to impeach by a prior inconsistent statement or a contradiction:

- (1) furnishing, promising, or offering, or accepting, promising to accept, or offering to accept a valuable consideration in order to compromise the claim; and
 - (2) conduct or a statement made during compromise negotiations about the claim. Compromise negotiations include alternative dispute resolution.
- (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.

Rule 409. Payment or Offer to Pay Medical or Other Expenses

Evidence of paying, furnishing, promising to pay, or offering to pay:

- (a) medical, hospital, or similar expenses resulting from an injury; or
- (b) damage to property,

is not admissible to prove liability for the injury or damages.

Rule 410. Withdrawn Pleas and Offers

- (a) **Prohibited Uses.** In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:
- (1) a guilty plea or admission of the charge that was later withdrawn;
 - (2) a nolo contendere plea;
 - (3) an offer to plead to the crime charged or to any other crime, made to one with authority to enter into or approve a binding plea agreement; or
 - (4) a statement made in connection with any of the foregoing withdrawn pleas or offers to one with authority to enter into a binding plea agreement or who has a right to object to, approve, or reject the agreement.
- (b) **Exceptions.** The court may admit such a plea, offer, or statement:
- (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.

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-Offense Cases: The Victim's or Witness's Sexual Behavior or Predisposition

- (a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:
 - (1) evidence offered to prove that a victim or witness engaged in other sexual behavior; or
 - (2) evidence offered to prove a victim's or witness's sexual predisposition.
- (b) Exceptions.
 - (1) *Criminal Cases*. The court may admit the following evidence in a criminal case:
 - (A) evidence of specific instances of a victim's or witness's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

- (B) evidence of specific instances of a victim's or witness's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and
 - (C) evidence whose exclusion would violate the defendant's constitutional rights.
- (2) *Civil Cases.* In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.
- (c) Procedure to Determine Admissibility.
 - (1) *Motion.* If a party intends to offer evidence under Rule 412(b), the party 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 ten (10) days before trial unless the court, for good cause, sets a different time;
 - (C) serve the motion on all parties; and

- (D) notify the victim or, when appropriate, the victim's guardian or representative.
- (2) *Hearing.* Before admitting evidence under this rule, the court must conduct an *in camera* hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing is confidential and excluded from public access in accordance with Administrative Rule 9.
- (d) Definition of "Victim." In this rule, "victim" includes an alleged victim.

Rule 413. Medical Expenses

Statements of charges for medical, hospital or other health care expenses for diagnosis or treatment occasioned by an injury are admissible into evidence. Such statements are *prima facie* evidence that the charges are reasonable.

Rule 501. Privileges

- (a) **General Rule.** Except as provided by constitution, statute, any rules promulgated by the Indiana Supreme Court, or common law, no person has a privilege to:
 - (1) refuse to be a witness;
 - (2) refuse to disclose any matter;

- (3) refuse to produce any object or writing; or
 - (4) prevent another from being a witness or disclosing any matter or producing any object or writing.
- (b) **Waiver of Privilege by Voluntary Disclosure.** Subject to the provisions of Rule 502, a person with a privilege against disclosure waives the privilege if the person or person's predecessor while holder of the privilege voluntarily and intentionally discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.
- (c) **Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege.** A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.
- (d) **Comment Upon or Inference From Claim of Privilege; Instruction.** Except with respect to a claim of the privilege against self-incrimination in a civil case:
- (1) Neither the judge nor counsel may comment upon the claim of a privilege, whether in the present proceeding or on a prior occasion. No inference may be drawn from the claim of a privilege.

- (2) In jury cases, the judge, to the extent practicable, must conduct proceedings so as to allow parties and witnesses to claim privilege without the jury's knowledge.
- (3) If requested by a party against whom the jury might draw an adverse inference from a claim of privilege, the court must instruct the jury that the jury must not draw an adverse inference from the claim of privilege.

Rule 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) **Intentional disclosure; scope of a waiver.** When a disclosure is made in a court 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 proceeding, a 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 Indiana Rule of Trial Procedure 26(B)(5)(b).
- (c) **Controlling effect of a party agreement.** An agreement on the effect of disclosure in a proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.
- (d) **Controlling effect of a court order.** If a court incorporates into a court order an agreement between or among parties on the effect of disclosure in a proceeding, a disclosure that, pursuant to the order, does not constitute a waiver in connection with the proceeding in which the order is entered is also not a waiver in any other court proceeding.

Rule 601. General Rule of Competency

Every person is competent to be a witness except as otherwise provided in these rules or by statute.

Rule 602. Lack of 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. A witness does not have personal knowledge as to a matter recalled or remembered, if the recall or remembrance occurs only during or after hypnosis. 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. Interpreters

An interpreter must be qualified 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 at 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.
- (2) *Exceptions.* A juror may testify about whether:
 - (A) any juror's drug or alcohol use;
 - (B) extraneous prejudicial information was improperly brought to the jury's attention;
 - (C) an outside influence was improperly brought to bear on any juror; or
 - (D) a mistake was made in entering the verdict on the verdict form.

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 another witness whose character the witness being cross-examined has testified about.

Rule 609. Impeachment by Evidence of a Criminal Conviction

- (a) **General Rule.** For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime or an attempt of a crime must be admitted but only if the crime committed or attempted is (1) murder, treason, rape, robbery, kidnapping, burglary, arson, or criminal

confinement; or (2) a crime involving dishonesty or false statement, including perjury.

- (b) **Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than ten (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 Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

- (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one (1) year; or
- (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

- (d) **Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:
- (1) it is offered in a criminal case;
 - (2) the adjudication was of a witness other than the defendant;
 - (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
 - (4) admitting the evidence is necessary to fairly determine guilt or innocence.
- (e) **Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

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 Memory

- (a) **Right to Inspect**
 - (1) If, while testifying, a witness uses a writing or object to refresh the witness's memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.
 - (2) If, before testifying, a witness uses a writing or object to refresh the witness's memory for the purpose of testifying and the court in its discretion determines that the interests of

justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(b) **Terms and Conditions of Production and Use.**

- (1) A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.
- (2) If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection.
- (3) If it is claimed that the writing or object contains matters not related to the subject matter of the testimony, the court must examine the writing or object *in camera*, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections must be preserved and made available to the appellate court in the event of an appeal.

(c) **Failure to Produce or Deliver the Writing or Object.** If a writing or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court must make any order justice requires, but in criminal cases if the

prosecution elects not to comply, the order must be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring 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 content 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. Calling and Interrogation of Witnesses by Court and Jury

- (a) **Calling by Court.** The court may not call a witness except in extraordinary circumstances or as provided for court-appointed experts. All parties are entitled to cross-examine any witness called by the court.

- (b) **Questioning by Court.** The court may question a witness regardless of who calls the witness.
- (c) **Objections.** A party may object to the court's calling or questioning a witness either at that time or at the next opportunity when the jury is not present.
- (d) **Questioning by Juror.** A juror may be permitted to propound questions to a witness by submitting them in writing to the judge. The judge will decide whether to submit the questions to the witness for answer. The parties may object to the questions at the time proposed or at the next available opportunity when the jury is not present. Once the court has ruled upon the appropriateness of the written questions, it must then rule upon the objections, if any, of the parties prior to submission of the questions to the witness.

Rule 615. Excluding Witnesses

At a party's request, the court must 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:

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

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

Rule 616. Witness's Bias

Evidence that a witness has a bias, prejudice, or interest for or against any party may be used to attack the credibility of the witness.

Rule 617. Unrecorded Statements During Custodial Interrogation

- (a) In a felony criminal prosecution, evidence of a statement made by a person during a Custodial Interrogation in a Place of Detention shall not be admitted against the person unless an Electronic Recording of the statement was made, preserved, and is available at trial, except upon clear and convincing proof of any one of the following:
 - (1) The statement was part of a routine processing or “booking” of the person; or
 - (2) Before or during a Custodial Interrogation, the person agreed to respond to questions only if his or her Statements were not Electronically Recorded, provided that such agreement and its surrounding colloquy is Electronically Recorded or documented in writing; or
 - (3) The law enforcement officers conducting the Custodial Interrogation in good faith failed to make an Electronic Recording because the officers inadvertently failed to operate the

- recording equipment properly, or without the knowledge of any of said officers the recording equipment malfunctioned or stopped operating; or
- (4) The statement was made during a Custodial Interrogation that both occurred in, and was conducted by officers of, a jurisdiction outside Indiana; or
 - (5) The law enforcement officers conducting or observing the Custodial Interrogation reasonably believed that the crime for which the person was being investigated was not a felony under Indiana law; or
 - (6) The statement was spontaneous and not made in response to a question; or
 - (7) Substantial exigent circumstances existed which prevented the making of, or rendered it not feasible to make, an Electronic Recording of the Custodial Interrogation, or prevent its preservation and availability at trial.
- (b) For purposes of this rule, “Electronic Recording” means an audio-video recording that includes at least not only the visible images of the person being interviewed but also the voices of said person and the interrogating officers; “Custodial Interrogation” means an interview conducted by law enforcement during which a reasonable person would consider himself or herself to be in custody; and “Place of

Detention” means a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which persons are detained in connection with criminal investigations.

- (c) The Electronic Recording must be a complete, authentic, accurate, unaltered, and continuous record of a Custodial Interrogation.
- (d) This rule is in addition to, and does not diminish, any other requirement of law regarding the admissibility of a person’s statements.

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception; and
- (b) helpful to a clear understanding of the witness's testimony or to a determination of a fact in issue.

Rule 702. Testimony by Expert Witnesses

- (a) 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.

- (b) Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles.

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.

Experts may testify to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field.

Rule 704. Opinion on an Ultimate Issue

- (a) **In General—Not Automatically Objectionable.** Testimony in the form of an opinion or inference otherwise admissible is not objectionable just because it embraces an ultimate issue.
- (b) **Exception.** Witnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions.

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 first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross examination.

Rule 801. Definitions

The following definitions apply under this Article:

- (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) is not made by the declarant while testifying at the trial or hearing; and
 - (2) is offered in evidence to prove the truth of the matter asserted.
- (d) **Statements That Are Not Hearsay.**
Notwithstanding Rule 801(c), a statement is not hearsay if:
 - (1) *A Declarant-Witness’s Prior Statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
 - (A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
 - (B) is consistent with the declarant’s testimony, and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted

from a recent improper influence or motive in so testifying; or

- (C) is an identification of a person shortly after perceiving the person.
- (2) *An Opposing Party's Statement.* The statement is offered against an opposing party and:
- (A) was made by the party in an individual or representative capacity;
 - (B) is one the party manifested that it adopted or believed to be true;
 - (C) was made by a person whom the party authorized to make a statement on the subject;
 - (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
 - (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Rule 802. The Rule Against Hearsay

Hearsay is not admissible unless these rules or other law provides otherwise.

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, condition or transaction, 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, design, 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 execution, revocation, identification, or terms of the declarant's will.

(4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:

- (A) is made by a person seeking medical diagnosis or treatment;
- (B) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and
- (C) describes medical history; past or present symptoms, pain or sensations; their inception; or their general cause.

(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(9) or (10) or with a statute permitting certification; and
 - (E) neither the source of information nor 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) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) Public Records.

- (A) A record or statement of a public office if:

- (i) it sets out:

- (a) the office's regularly conducted and regularly recorded activities;

- (b) a matter observed while under a legal duty to [observe and] report; or

- (c) factual findings from a legally authorized investigation; and

- (ii) neither the source of information nor other circumstances indicate a lack of trustworthiness.

- (B) Notwithstanding subparagraph (A), the following are not excepted from the hearsay rule:

- (i) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case;

- (ii) investigative reports prepared by or for a public office, when offered by it in a case in which it is a party;
 - (iii) factual findings offered by the government in a criminal case; and
 - (iv) factual findings resulting from a special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.
- (9) **Public Records of Vital Statistics.** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.
- (10) **Absence of a Public Record.** Testimony or a certification under Rule 902 that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:
 - (A) the record or statement does not exist; or
 - (B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.
- (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, crypt, 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 thirty (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;
- (B) the statement contradicts the expert's testimony on a subject of history, medicine, or other science or art; and
- (C) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

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

- (19) **Reputation Concerning Personal or Family History.** A reputation among a person's family by blood, adoption, or marriage—or among a person's associates or in the community—concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.
- (20) **Reputation Concerning Boundaries or General History.** A reputation in a community—arising before the controversy—concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

- (21) **Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.
- (22) **Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:
- (A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
 - (B) the conviction was for a crime punishable by death or by imprisonment for more than a year;
 - (C) the evidence is admitted to prove any fact essential to the judgment; and
 - (D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

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

- (23) **Judgments Involving Personal, Family, or General History or a Boundary.** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:
- (A) was essential to the judgment; and

- (B) could be proved by evidence of reputation.

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 (5); 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) **Hearsay Exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness.

(1) *Former Testimony.* Testimony that:

- (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
- (B) is now offered against a party who had - or, in a civil case, whose predecessor in interest had - an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

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

(3) *Statement Against Interest.* A statement that that 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.

A statement or confession offered against the accused in a criminal case, made by a codefendant or other person implicating both the declarant and the accused, is not within this exception.

(4) *Statement of Personal or Family History.* A statement about:

- (A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood 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 has engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness for the purpose of preventing the declarant from attending or testifying.

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.

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, by a witness with knowledge.
- (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 thirty (30) years old when offered.
- (9) *Evidence About a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.
- (10) *Methods Provided by a Statute or Rule.* Any method of authentication or identification allowed by a statute, by the Supreme Court of this State, or by the Constitution of this State.

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 area of the United States; 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(l)(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), a federal 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 by a Federal or Indiana Statute.** A signature, document, or anything else that a federal or Indiana statute declares to be presumptively or prima facie genuine or authentic.
- (11) **Certified Domestic Records of a Regularly Conducted Activity.** Unless the source of information or the circumstances of preparation indicate a lack of trustworthiness, the original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification under oath of the custodian or another qualified person. 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:

(A) the certification must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed; and

(B) the signature must be certified by a government official in the manner provided in Rule 902(2).

The proponent must also meet the notice requirements of Rule 902(11).

Rule 903. Subscribing Witness' 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 1001. Definitions that Apply to this Article

In this article:

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

- (b) A "recording" consists of letters, words, numbers, sounds, 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. An electronic record of the Indiana Bureau of Motor Vehicles obtained from the Bureau that bears an electronic or digital signature, as defined by statute, is admissible in a court proceeding as if the signature were an original.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as an original unless a genuine question is raised about the original's

authenticity or the circumstances make it unfair to admit the duplicate.

Rule 1004. Admissibility of Other Evidence of Contents

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

- (a) all originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;
- (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- (d) the writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Copies of Public Records to Prove Content

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

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 or place. 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.

Rule 1101. Evidence Rules Review Committee

- (a) The Supreme Court Committee on Rules of Practice and Procedure, as constituted under Ind. Trial Rule 80, serves as the Evidence Rules Review Committee.
- (b) The Evidence Rules Review Committee shall conduct a continuous study of the Indiana Rules of Evidence and shall submit to the Supreme Court from time to time recommendations and proposed amendment to such rules. The Committee shall follow the procedure set forth in Ind. Trial Rule 80(D) in amending the Rules of Evidence. The Indiana Supreme Court may suggest amendments or additions in current case law, as may the Indiana General Assembly in legislation. Members of the bench, bar, or public may propose amendments and may comment on published amendments; any such proposals or comments must be submitted in writing to the Committee's Chair, 251 North Illinois Street, Suite 1600, Indianapolis, Indiana 46204.

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Summary of Selected Rules of Evidence

OBJECTIONS -- DISCOVERY

	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
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1	Prosecutor wants investigator's or counsel's notes or other documents	Work product privilege; attorney-client privilege (compelling disclosure of client confidences would violate right to counsel under 6 th Amdt and Ind. Const. Art. 1 § 13); privilege against self-incrimination under 5 th Amdt & Ind. Const. Art. 1 § 14; ask for protective order under T.R. 26 (c). See T.R. 26(B)(3), <i>Keaton v. Cir. Ct. of Rush Cnty</i> , 475/1146 (Ind. 1985)(work product protected verbatim police reports); <i>Goolsby v. State</i> , 517/54 (Ind. 1987)(work product); <i>Swidler & Berlin v. U.S.</i> , 524 U.S. 399 (1998)(atty-client priv.).
2	Denial of access to possible exculpatory	Specifically request records or documents; request limited participation <i>in</i>

OBJECTIONS -- DISCOVERY		
	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
	records or documents (showing guilt of another, misidentification, mitigation, false impressions)	<i>camera</i> hearing on whether evidence is exculpatory; move to dismiss. Cite 14th Amdt. (due process), 6 th Amdt., Ind. Const. Art. I § 13 (confrontation & cross-examination); <i>Brady v. Maryland</i> , 83 S.Ct. 1194 (1963); <i>Kyles v. Whitley</i> , 115 S.Ct. 1555 (1995) (duty to reveal material or exculpatory evidence, irrespective of good or bad faith of prosecutor).

3	<p>Failure to disclose impeaching evidence of State's witnesses (including rewards, offers of leniency, inducements to testify, favorable plea bargains or grants of immunity)</p>	<p>Specifically request disclosure of impeaching evidence; if after trial, State's witness' case is dismissed or sentence reduced, file motion to correct errors or PCR. Impeachment evidence is within the scope of <i>Brady v. Maryland</i>, 83 S.Ct. 1194 (1963). See <i>Rowe</i>, 704/1104 (Ind.Ct.App. 1999) (not informing D of witness' prior convictions required reversal); <i>Bowen</i>, 722/368 (Ind.Ct. App. 2000) (any understanding, whether in writing or not, between W and State must be disclosed); <i>Standifer</i>, 718/1107 (Ind. 1999) (reversible error when State did not disclose witness'</p>
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OBJECTIONS -- DISCOVERY		
	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
		parole and confidential informant status).
4	Denial of access to other records or documents	Violation of right to present a defense or cross-examine, Ind.Const., Art. 1, § 13; U.S. Const., 6th Amdt. Ask for motion to compel; if still no access, ask for exclusion of evidence; T.R. 37(A); T.R. 37 (B) (sanctions; exclusion of evidence); <i>Mauricio</i> , 476/88 (Ind.1985) (no poker game secrecy).

5	<p>Defense counsel or defendant not permitted to attend or notified of deposition</p>	<p>Violation of confrontation clause; hearsay; motion in limine to exclude all references to deposition. Testimonial hearsay inadmissible against a criminal D who has not had the opportunity to cross-examine the declarant. Cite Confrontation Clause, 6th Amdt; Ind.Const. Art. 1 § 13; Ind.R.Evid. 804(b)(1) (former testimony). Although D can be excluded from depo, depo could not then be used against him at trial. <i>Jones</i>, 445/98 (Ind. 1983); <i>Owings</i>, 622/948 (Ind. 1993); T.R. 32(A) (requires opposing party to be present); <i>Crawford v. Washington</i>, 124 S.Ct. 1354 (2004).</p>
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6	Prosecutor does not disclose confidential informant's identity or video of controlled buy	<p>The State's limited privilege against divulging the identity of a confidential informant must give way when disclosure of the informant's identity, or the content of his communication, is "relevant and helpful" to the defense of an accused, or is essential to a fair trial. <i>Roviaro v. U.S.</i>, 77 S.Ct. 623 (1957). Request deposition or <i>in camera</i> hearing. Ensure that the record shows why the informer's identity or testimony is important to the defense. 6th & 14th Amdts, Art. I § 13 (right to present a defense). <i>See Beville v. State</i>, 71 N.E.3d 13 (Ind. 2017) (erroneous denial of motion</p>
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OBJECTIONS -- DISCOVERY

	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
		to compel video of controlled buy).
7	Interfering with D's access to witness (telling witness to leave town or not to talk to defense)	Violation of right to effective counsel; possible <i>Brady</i> violation; prosecutorial misconduct; ask for motion to compel, if that does not work, ask for exclusion of witness or sanctions against prosecutor. Cite U.S.Const., 6th Amdt.; <i>Dorsey</i> , 260/800 (Ind. 1970); <i>Burst</i> , 499/1140 (Ind.Ct.App. 1986); Ind.R.Prof. Cond. 3.4(a) (obstruction of evid.); T.R. 37(A).

OBJECTIONS -- DISCOVERY

	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
8	Prosecutor attempting to obtain bodily samples, physical exams and mental exams from defendant	Unreasonable search and seizure prior to indictment; violation of privacy after indictment because intrusion is greater than need; need court order after indictment. Cite U.S.Const., 4th Amdt., Ind. Const. Art. 1 § 11; <i>Schmerber v. Calif.</i> , 384 U.S. 757 (1966) (drawing blood is search for purpose of 4th Amdt.).

OBJECTIONS -- DISCOVERY		
	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
9	Prosecutor attempting to obtain DNA from Defendant	Searches involving intrusions on the body, including blood draws, are seizures under the 4 th Amdt and must be reasonable. <i>Schmerber v. Calif.</i> , 384 U.S. 757 (1966). <i>See Patterson</i> , 742/4 (Ind.Ct.App.2000) <i>reh'g granted</i> 744/945. I.C. 10-13-6-18 (expungement upon acquittal or reversal); <i>but see Garcia-Torres</i> , 949/1229 (Ind. 2011) (implying that the taking of DNA through a cheek swab may not be a search).

OBJECTIONS -- DISCOVERY		
	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
10	Failure to list witnesses on information or on witness list	Violation of due process and I.C. 35-34-1-2; ask for exclusion of witness under T.R. 37(B); in alternative, ask for continuance with delay charged to state. Cite analysis in <i>Tyson</i> , 619/276 (Ind.Ct.App. 1993), <i>rev'd on other grounds</i> , 626/482; <i>Mauricio v. Duckworth</i> , 840 F.2d 454 (7th Cir. 1988) (failure to disclose violates reciprocity principles).

OBJECTIONS -- DISCOVERY		
	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
11	Failure to disclose rebuttal witness	Discovery obligations apply to witnesses a party anticipates calling at trial, even if only in rebuttal. <i>McCulloch v. Archbold Ladder</i> , 605/175 (Ind.1993).
12	Prosecutor's negligent destruction or failure to preserve evidence	Exclusion of evidence and/or motion to dismiss, <i>Roberson</i> , 766/1185 (Ind.Ct.App. 2002); argue that under Ind.Const, Art. 1, § 12, bad faith is not required for exclusion. Cite U.S. Const., 14th Amdt; <i>AZ v. Youngblood</i> , 109 S.Ct. 333 (1988); <i>Stoker</i> , 692/1386, n. 8 (Ind.Ct.App. 1998).

OBJECTIONS -- DISCOVERY

	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
13	Prosecutor's request for use immunity before filing charges	Denial of right against self-incrimination and improper use of I.C. § 33-9-1-4. Cite <i>In re S.H.</i> , 984/630 (Ind. 2013) (although prosecutor may subpoena witnesses if no charges have been filed, if those witnesses invoke the 5th, prosecutor cannot petition for use immunity and compel them to testify without first filing charges or convening a grand jury).
14	Prosecutor's use of investigatory subpoena after information is filed	Improper use of I.C. § 33-39-1-4(a) (subpoena before indictment). Cite <i>Oman</i> , 737/1131 (Ind. 2000).

15	Prosecutor is sandbagging, <i>i.e.</i> , failing to comply with discovery rules in timely fashion	Due process violation; placed in position where D made to choose between speedy trial rights and a fair trial because counsel does not have time to prepare based on late discovery. Cite <i>Simmons</i> , 88 S.Ct. 967 (1968); <i>Crosby</i> , 597/984 (Ind.Ct.App. 1992); <i>Biggs</i> , 546/1271 (Ind.Ct.App. 1989) (D should not be forced to choose between speedy trial and other constitutional rights). See <i>Goodner</i> , 714/638 (Ind. 1999)(Ind.R.Prof.Conduct 3.8(d) requires prosecutor to make timely disclosure of evidence that tends to negate guilt or mitigate punishment); <i>Beauchamp</i> , 788/881(Ind.Ct.App. 2003)(error to permit
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OBJECTIONS -- DISCOVERY		
	Issue	Suggested Objection (also look to TR 37 for possible sanctions) - Cite federal and state constitutional bases for objections where possible.
		<p>rebuttal testimony from an expert witness known to the State before trial but not disclosed). Move to dismiss. <i>See Montgomery</i>, 901/515 (Ind.Ct. App. 2009), <i>aff'd on reh'g</i>, 907/1057 and <i>Schmitt</i>, 915/520 (Ind.Ct.App. 2009).</p>

OBJECTIONS -- VOI		
	Issue	Suggested Objection objections where poss
16	Challenge to jury venire	Denial of fair cross, impartial jury, equal exclusion of group 439 U.S. 357 (1977) impartial jury); <i>Br</i> 778/1253 (Ind. 200
17	Discriminatory use of peremptory challenges	“Prosecutor has vi challenge to discrimi D & jurors & D’s jury; jurors have th the basis of race or (1986) (race, nation S.Ct. 1419 (1994) pretextual reason f 1203 (2008).

OBJECTIONS -- VOIR DIRE		
	Issue	Suggested Objections objections where possible
18	Prospective juror stricken from venire due to religious beliefs	Cite <i>Highler</i> , 854/ of the juror's religious beliefs and equal protection and striking because of constitutional). <i>Almen</i> (1986) and Ind. Co (freedom of thought (no religious test f
19	Judge prohibiting voir dire on D's defense	Object on due process whether jurors can (Ind.Ct.App. 2005
20	Indoctrinating jury	Denial of fair and commit to position <i>Hopkins</i> , 429/631 (1973); <i>Von Almen</i> seek to shape favor

OBJECTIONS -- VOI		
	Issue	Suggested Objection objections where poss
		substantive issues 830/1005 (Ind.Ct.A
21	Misstating elements of proof required of State	Denial of fair trial. 497/916 (Ind. 1980 13.
22	Repetitive or argumentative examination	Same as issue. Cit
23	Predetermining weight & credibility juror would give witness	Same as issue. Vic Amdt and Ind. Cor (Ind.Ct.App. 1991 (no vouching for c
24	Stating personal opinion on guilt or innocence of accused	Same as issue. Cit 553/456 (Ind. 1990

OBJECTIONS -- VOI		
	Issue	Suggested Objection objections where poss
25	Disparaging remarks about role of defense counsel	Same as issue. Cite <i>Bardonner</i> , 587/13 counsel under 6th 13.
26	Comment on defendant's right not to testify	Same as issue; den incrimination. Cite 1981); <i>Solomon</i> , 5

OBJECTIONS -- JURY INSTRUCTIONS		
	Issue	Suggested Objection - C objections where possible
27	Instructing or failing to instruct on lesser included offenses (LIO)	LIO is/is not inherent a serious evidentiary distinguishing greater dispute and explain b instruction should/sh 658/563 (Ind. 1995); to LIO instruction wh supports it); <i>Watts</i> , 8 over D's objection, o <i>Wright</i> factors).
28	Attempted murder instruction omits 'intent,' permits conviction of 'knowingly' causing death	Specific intent to kill attempted murder. Ci see <i>Richeson</i> , 700/10 apply to other attempt 2000) (specifying int murder); <i>Rosales</i> , 23 instruction required e

OBJECTIONS -- JURY INSTRUCTIONS		
	Issue	Suggested Objection - C objections where possible
		was convicted of atte liability or direct liab
29	State offers instruction that possession of large quantity of drugs is evidence of intent to deal	Shifts burden of proof proving elements of p <i>Chandler</i> , 581/1233 (
30	Instruction referencing D's failure to testify	U.S. Const. 5 th Amdt not to testify if D req giving one over D's c U.S. 288, 101 S.Ct. 1 1998).
31	Instruction that flight is "evidence of consciousness of guilt"	Court has disapproved 602/111 (Ind. 1992); attention on one item

OBJECTIONS -- JURY INST		
	Issue	Suggested Objection - C objections where possible
32	Instruction that uncorroborated testimony of a single witness is sufficient to convict (<i>or any jury instruction describing evidence as “sufficient to convict”</i>)	Ind. S. Ct. has disapp emphasizes one witne (Ind. 2001), (2) refers (sufficiency) that is in and (3) uses confusing (“uncorroborated”).
33	Instruction that jury “shall” or “must” find D an habitual offender if it finds three prior unrelated felonies	Violation of Art. 1 § provides that jury has <i>Seay</i> , 698/732 (Ind. 1 <i>Sample</i> , 932/1230 (In
34	Other instruction with mandatory language, e.g. “must convict” or “shall convict”	An instruction that co of certain facts invad jury. <i>Barker</i> , 440/66 Constitution provides

OBJECTIONS -- JURY INSTRUCTIONS		
	Issue	Suggested Objection - C objections where possible
		and facts. Use of the as jury is instructed th facts. <i>Madison</i> , 534/
35	Accomplice liability instruction that accomplice is responsible for acts of others as well as his own actions; any act of one is attributable to them all	Instruction is erroneous requires proof of volu relationship is insuffi (erroneous accomplice reversible error); <i>Kan</i> accomplice liability i rea).
36	Incomplete accomplice liability instruction which simply tracks statutory language	Instruction must focus informing jury that D affirmative conduct i <i>Peterson</i> , 699/701 (I simply tracked langu

OBJECTIONS -- JURY INST		
	Issue	Suggested Objection - C objections where possible
37	Refusing D's tendered instruction that because State failed to produce witness, jury could infer that testimony would have been unfavorable to State	Although "missing w may be used & is app be produced by one p 451/321 (Ind. 1983);
38	Failure to instruct jury on effect of taking judicial notice of breath test regulations	In jury trials, court m regulations & instruc to, accept as conclusi Ind.R.Evid. 201(g), <i>E</i>
39	Erroneous DWI instruction stating that .08% or more BAC is <i>prima facie</i> evidence of D's intoxication	Switches burden of p <i>Smith</i> , 681/687 (Ind.1 U.S. 510 (1979) (mar impermissibly relieve element of offense).

OBJECTIONS -- JURY INST		
	Issue	Suggested Objection - C objections where possible
40	Erroneous DWI instruction stating D's refusal to submit to a chemical test may be considered as evidence of intoxication	I.C. 9-30-6-3 only says evidence, not that it is instruction unnecessary. Cite <i>Ham v. State</i> , 82
41	Erroneous reasonable doubt instruction with "clearly convinced" language	Civil standard compared linguistic, conceptual "firmly convinced" standard. U evidence" standard. U instruction from <i>Smith</i> (1998); <i>but see Wineg</i> & recommending use "firmly convinced" la
42	Failure to instruct jury on use of polygraph	When polygraph results must be instructed that testimony tends only

OBJECTIONS -- JURY INSTRUCTIONS		
	Issue	Suggested Objection - C objections where possible
	evidence admitted by stipulation	at time of examination weight & effect to be 558/1077 (Ind. 1990) to give instruction is
43	Instructing on manner of jury deliberations after deliberations have begun	Jury Rule 28 governs impasse. Denial of right to procure verdict from 5th & 14th Amdt, Inc. pressures jurors hold their viewpoint in lig

OBJECTIONS -- JURY INST		
	Issue	Suggested Objection - C objections where possible
44	Erroneous presumption of innocence instruction, stating that object of presumption is “to protect the innocent,” not ‘to aid anyone who is actually guilty to escape from punishment’	Instruction is prejudicial for insidious interference likely to infer that pre innocent Ds & not th 682/491 (Ind. 1997) (waived error); <i>Sprad</i>
45	Inadequate instruction on presumption of innocence	Instruction advising j innocence continues should fit the evidence innocent if you can re (Ind. 2015) (stating u right of every criminal upon request).

OBJECTIONS -- JURY INST		
	Issue	Suggested Objection - C objections where possible
46	Instruction that intent can be inferred from evidence that victim's mortal wound resulted from D's use of a deadly weapon	Object on due process burden of proving intent
47	Rape instruction that concentrates on victim's perspective on forced intercourse	Instruction is based on sufficiency. Jury should be viewed from perspective of the victim (2008).
48	Instruction defining offense too broadly or allowing jury to convict D of element/offense not charged	D is entitled to notice allowing possible guilt prejudices this right; including element not charged. Ind. Const. Art I §13, 659/554 (Ind. 1995);

OBJECTIONS -- JURY INST		
	Issue	Suggested Objection - C objections where possible
		<i>see also Young, 30 N</i> elements of attempted included in murder, c shooting deprived the also defend against le attempted aggravated

OBJECTIONS -- OPENING STATEMENTS		
	Issue	Suggested Objection - Cite Authority objections where possible
49	Denying opportunity to include theory of defense in opening statement	Denial of right to present theory of defense; Amdt.; <i>McWherter</i> , 500/501.
50	Reference to prior crimes, wrongs, acts, or bad character of the accused	Irrelevant, prejudicial, and inflammatory; admonishment. Cite <i>Ind. 1993</i> ; <i>Oldham</i> , 500/501, to convict based on character.
51	Referring to unprovable evidence; matters not in evidence	Improper to allude to matters not in evidence; by evidence; prosecu- admonishment. Cite <i>Ind. 1993</i> ; <i>Goldsworthy</i> , 582/92.
52	Misstating facts	Prejudicial; denial of right to present theory of defense; 547/898 (Ind.Ct.App. 1992).

OBJECTIONS -- OPENING STATEMENT		
	Issue	Suggested Objection - Cite authority for objections where possible
53	Stating personal beliefs, opinions, or experience	Prejudicial, irrelevant, immaterial; prosecutorial misconduct. Cite CrP 3.4(e); <i>Lowery</i> , 640/1
54	Attacking character of defense counsel	Improper to attempt to impeach defense counsel. Violates right to effective counsel. I § 13. Cite <i>Splunge</i> , 640/1
55	Referring to evidence previously ruled inadmissible	Denial of right to fair trial & ruling to preserve error for appeal
56	Referring to evidence not yet admitted, or of which the admissibility is still under advisement	Denial of right to fair trial; prejudicial; not been admitted (or not yet admitted); admonish jury. Cite CrP 3.4(e)
57	State's opening statement contains argument	Argument not permitted in opening statement (Ind.1972).

OBJECTIONS -- OPENING STATEMENTS		
	Issue	Suggested Objection - Cite cases where possible
58	Judge makes unnecessary comments or remarks	Cite <i>Merritt v. State</i> , could easily have been an example of constriction (similar to D's case); see (2010).

OBJECTIONS -- CLOSING		
	Issue	Suggested Objection objections where possible
59	Invoking duty to society; characterization of prosecutor as “good guy”	Denial of fair trial; prosecutorial misconduct. <i>Craig</i> , 370/880 (1992); <i>Perryman</i> , 8 (to ask jurors to join (Ind.Ct.App. 2013) (prosecutor improper and defense).
60	Opinion on role of defense counsel	Irrelevant, prejudicial. <i>Johnson</i> , 453/365 (where prosecutor said his client off” by his “legal technicalities” (2009).
61	Using defendant’s “mugshots”	Irrelevant, prejudicial. <i>Brooks</i> , 560/49 (In

OBJECTIONS -- CLOSING		
	Issue	Suggested Objection objections where possible
62	Comment on defendant's failure to testify	Violates privilege against self-incrimination to infer guilt from D's silence. Ind.Const., Art. 1, Sec. 17; <i>Reynolds</i> , 797/864
63	Prosecutor comments on defendant's post arrest silence	Violates <i>Doyle v. Ohio</i> , 426 U.S. 581 (1975) against self-incrimination. Cite 5 th & 14 th Amendments
64	Comment on defendant's exercise of the right to counsel	Due process and State's obligation to provide counsel. <i>Johnson</i> , 901/1168
65	Comment on defendant's failure to present evidence	Negates presumption of innocence. Cite <i>Mitchell</i> , 455/1168 (1994); <i>Lainhart</i> , 83/1168
66	Blaming shortcoming in the State's evidence on D's invocation of a	Violates due process and right to a fair trial.

OBJECTIONS -- CLOSING		
	Issue	Suggested Objection objections where possible
	fundamental constitutional right	2015) (prosecutor l speedy trial).
67	Misstating law	State the nature of wrong, and where found. Ask the tria misstatement. Miss Conduct 3.3(a)(1) :
68	Prosecutor vouching for credibility of State's witness in argument	Prejudicial, inflame trial; prosecutorial 3.4(e); <i>Farmer</i> , 48 830/1005 (Ind.Ct.A officers); <u>Bean</u> , 15.
69	Appeal to prejudices & biases; arousing fear	Improperly appeal <i>Adler</i> , 225/171 (19

OBJECTIONS -- CLOSING		
	Issue	Suggested Objection objections where possible
		(Ind.Ct.App. 2015) to convict).
70	Referring to grand jury that indicted defendant	Highly improper to else thinks D is guilty responsibility. Cite
71	Denial of permission to argue theory of defense/restricting argument	Deprives D of right counsel. Cite 6th and <i>Herring v. New York</i> see <i>Dixey v. State</i> , (although D's tendencies were properly refused allow D to discuss argument).
72	Comment on duration of punishment	Irrelevant; prejudicial for the jury. Cite <i>A</i> (Ind. 1980); <i>Brown</i> (comparison of less

OBJECTIONS -- CLOSING		
	Issue	Suggested Objection objections where possible
		C felonies improper (Ind. Ct. App. 2005).
73	Arguing impeachment evidence as substantive evidence	Violation of limiting instruction. Ask for mistrial and new trial. Ind. Ct. App. 721/1275 (Ind. Ct. App. 2005). Witness only to impeach, not to introduce hearsay, hoping that jury will disregard hearsay, hoping that jury will disregard substantive and impeach. Ind. Ct. App. 306 (Fla. 1990).
74	Right to closing argument is absolute	A trial court is not required to give a closing argument. <u>Nickels v. State</u> , 81

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - c objections where possibl
75	Prosecutor seeking to admit prior consistent statement of witness	Improper bolstering; made before motive 801(d)(1)(B); <i>Modis</i> 903/463 (Ind. 2009) prejudicial); <i>Kindred</i>
76	Prosecutor asking witness if complaining witness in child molest case is prone to exaggerate or fantasize about sexual matters, or whether C.W. was coached	Indirect or direct vouching violates mandate of opinions concerning 962/1230 (Ind. 2012 2012); see also <i>Braaq</i> (testimony that CPS can be impermissibl
77	Judge asking questions of witness, assisting State w/ objections,	Improperly influencing challenging testimony 929/1281 (Ind. 2010 <i>Decker</i> , 515/1129 (I

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - c objections where possibl
	and/or making prejudicial comments	
78	Prosecutor trying to admit breathalyzer results	Unreliable; inadmiss in compliance with s <i>Johanson</i> , 695/965 (r requires protocol and Toxicology); <i>Hanno</i> probable cause, cons
79	Prosecutor trying to admit DNA test results	Scientific evidence i reliable under Ind.R outweighs probative 702/668, 673 (Ind. 1 inadmissibility).
80	Prosecutor offers testimony about the	Inadequate foundati reliable; after State r Cite <i>Wattley</i> , 721/35 offense is determin

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - (c) objections where possible
	weight of drugs in possession case	that scale used was t <i>Guadian</i> , 743/1251 (
81	Prosecutor attempting to qualify expert witness	Expert not qualified. will not assist jury; n unreliable. Cite I.R.L. (qualifying expert).
82	Prosecutor asking expert witness to give a conclusion of law	“Witnesses may not guilt or innocence in allegations; whether legal conclusions.” I (Ind.Ct.App. 1997) (was more likely drug transfer 701/847; bu 1999).

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - c objections where possible
83	Prosecutor admitting into evidence tape recordings or transcripts	Improper foundation right to cross; unfair <i>Lamar</i> , 282/795 (Ind. clear and intelligible I.R.E. 403. If tape re statements of others, cross-examine, cite c constitution and <i>Cra</i> (2004).
84	State asks victim or witness about prior act of D or prior threat made by D	Violation of 404(b); action in conformity in 404(b), must be e impact outweighs pr I.R.E. 403; <i>Thompson</i> reversed; details of p 677/1077 (Ind.Ct.Ap

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - c objections where possible
		excluded under 403 404(b)).
85	Prosecution tries to admit evidence of prior bad act without having provided notice under 404(b)	“State failed to prove 404(b).” (D must have notice to apply).
86	Attempting to admit Ind.R.Evid. 404(b) prior bad acts under intent, motive or mistake exceptions.	Intent exception to Fed. R. Evid. 404(b) can be affirmatively placed. Can be admitted to prove intent, motive, or mistake. 626/795 (Ind. 1993) <i>see Goodner</i> , 685/10 not have to be affirm

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - c objections where possibl
87	Prosecutor introducing photos solely to inflame the jury (gruesome photos)	Irrelevant; even if re outweighs probative <i>Parker</i> , 501/1311 (I victim's families are
88	Prosecutor introducing lab report without lab analyst	Violates the Sixth A must call lab analyst <i>Melendez-Diaz</i> , 129 <i>Mexico</i> , 131 S.Ct. 2 through a supervisor the testing, when D examine the analyst analyst is not shown confrontation); I.C. 1 notice); I.C. 35-36-1 cross-examination in

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - c objections where possibl
89	Prosecutor trying to admit CW's prior statements in case where CW testifies	Cite <i>Tyler</i> , 903/463 testimony via the pro testifies in open cou
90	State offers former testimony of unavailable witness into evidence	Admission of testim confrontation clause cross-examine the w S.Ct. 1354(2004). D 804(b)(1) and TR 32 witness required); if testimony which Sta (doctrine of complet has burden of provin given notice of inten
91	Prosecutor attempting to admit confession of co-	Violation of privileg <i>Bruton</i> , 391 U.S. 12 719/1184 (Ind. 1999

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - c objections where possibl
	D in joint trial in which co-D is not testifying	
92	Prosecutor attempting to admit confession of non-testifying accomplice	Violation of right to Cite U.S. Const., 6th 1887 (1999) (admitt inculcated D, under exception to hearsay
93	Prosecutor using videotape of unavailable child victim	-Violates 6 th Amend had the opportunity witness. <i>Crawford v</i> -Does not meet statu unavailability); viola Cite I.C. 35-37-4-6; (requires D's presen U.S.Const., 5th Amc

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - objections where possible
94	Prosecutor asks lay witness a question calling for an opinion	Speculation; lack of I.R.E. 701 (lay person on perception and he opinion on speed, sa identity, handwriting
95	Prosecutor responds to hearsay objection by claiming that the evidence is not being offered to prove truth of matter asserted / is being offered for a non-hearsay purpose	Ask for immediate l consider the hearsay that for which it was instruction. I.R.E. 10 that the evidence wa substantive evidence Trial Rule 50 if appr
96	Prosecutor claims statement falls under a hearsay exception	-Even if a hearsay ex clause bars use of te not had the opportu <i>Crawford v. Washing</i>

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - objections where possible
		<p>-The prejudicial impact outweighs probative value. IRE 404(b)(2)</p> <p>-State failed to prove the exception under IRE 404(b)(2)</p>
97	Prosecutor offers prejudicial evidence of defendant's legal status (prior conviction, driving suspension, etc.) to which defendant has offered to stipulate	<p>-Object under IRE 404(b)(2) as it outweighs probative value. IRE 404(b)(2) states that the sole issue is D's legal status (1997); <i>Sams</i>, 688/1000 (1997); <i>Sams</i>, 688/1000 (1997); <i>Sams</i>, 688/1000 (1997) (Ind.Ct.App. 1997)</p> <p>-Request limiting instruction</p>
98	Prosecutor making remarks or stating opinions about truthfulness of witnesses during their testimony	Ind. R. Prof. Conduct 3.5. It is improper for the prosecutor to make an opinion about the truthfulness of the evidence.

OBJECTIONS -- DIRECT EX		
	Issue	Suggested Objection - c objections where possible
	testified truthfully, or legal conclusions	was more likely drug <i>transfer</i> 701/847; bu 1999).
102	Vouching	It is impermissible f witness's credibility to the witness's cred N.E.3d 985 (Ind. 20

OBJECTIONS -- CROSS EXAMINATION		
	Issue	Suggested Objection - objections where possible
103	Prosecutor asking about subject not discussed on direct examination	Beyond scope of cross-examination; prejudicial impact on D (Ind. 510/676 (Ind. 1987))
104	Prosecutor repeating questions	Asked and answered (Ind. 1988). Repetitive questions deprive D of a fair trial
105	No good faith basis for question	No good faith basis for question (Ind. 2002); <i>Haynes</i>
106	Prosecutor attempting to introduce extrinsic evidence that witness made prior inconsistent statement; laying foundation	Improper if witness has opportunity to deny or explain concerns collateral matters; be afforded opportunity to explain either after or before cross-examination 45-4-2 (admissible if witness can remember statement)

OBJECTIONS -- CROSS EX		
	Issue	Suggested Objection - objections where possib
107	Prosecutor attempts to admit entire contents of prior inconsistent statement, after witness has been impeached	Once witness has ac she is impeached an <i>Pruitt</i> , 622/469 (Inc statement admissibl evidence. Ind.R.Evi to read prior statem impeachment. <i>Appl</i>
108	Impeaching with prior bad act, when prosecutor did not notify defense of its intent to use	Ind.R.Evid. 404(b) to use prior bad act, to present a defense under 6 th and 14th A
109	Attempting to admit I.R.E. 404(b) prior bad acts under intent, motive or mistake exceptions	Intent exception to : be affirmatively pla acts can be admitted (Ind. 1993) (intent).

OBJECTIONS -- CROSS EX		
	Issue	Suggested Objection - objections where possible
110	Trying to impeach with a crime which is not listed in I.R.E. 609	Improper impeachment <i>Brown</i> , 703/1010 (If conviction is not a crime).
111	Prosecutor asking detailed questions about past crimes for impeachment purposes	Details of prior offense prejudicial impact of <i>Bonner</i> , 650/1139 (to cure prejudice); more

OBJECTIONS -- CROSS EX		
	Issue	Suggested Objection - objections where possible
112	Prosecutor offering hearsay, and claims it is not being offered to prove truth of matter asserted	Matter for which ev mind or investigation 801(c)(definition of 1995) (investigation admonition that jury evidence for any pu admitted. Submit a close of evidence, r admitted for a limit evidence, and move appropriate.
113	Prosecutor argues that an out-of-court statement is admissible under an exception to the hearsay rule	Even if a statement federal confrontation hearsay in a crimina had the opportunity declarant. <i>Crawfor</i> (2004). The prejudi its probative value u

OBJECTIONS -- CROSS EX		
	Issue	Suggested Objection - objections where possible
		statement does not meet requirements under IRE 803 or 804
114	Prosecutor offers an exhibit as past recorded recollection	Foundation - witness has personal knowledge, can remember it, and the statement was made when the witness had fresh recollection and is accurate. <i>Ballard</i> , 801 S.Ct. 1354 (2000) would not vouch for the recording was taken by someone who did not have opportunity for cross-examination at the confrontation clause hearing. 124 S.Ct. 1354 (2000) into evidence, but not unless offered by an expert
115	Use of post-arrest silence to impeach	Violates <i>Doyle v. Ohio</i> against self-incrimination. Cite 5 th & 14 th Amendments

OBJECTIONS -- CROSS EX		
	Issue	Suggested Objection - objections where possible
116	State's witness invokes 5th Amendment privilege against self- incrimination while being cross-examined	Violation of D's rights 6 th and 14 th Amdt., if witness is evasive answer; then ask the question; if the witness in contempt testimony and admo mistrial. <i>Tucker</i> , 53 for prosecutor to ca claim 5 th).

CTIONS -- HEARSAY AND OTHER COMMON EVIDENTIARY IS

Issue	Suggested Objection - Cite federal and state constitutional objections where possible.
Question calls for evidence that is barred by attorney-client privilege	IRE 501; <i>Colman v. Heidenreich</i> , 269 Ind. 419, N.E.2d 866, 868-69 (1978); Ind. Rule of Professional Conduct 1.6.
The question has already been asked and answered	IRE 403 and 611; <i>Rondon v. State</i> , 711 N.E.2d 1 (Ind. 1999); <i>Galloway v. State</i> , 529 N.E.2d 325 (1988).
The question assumes the existence of essential facts not previously established or testified to by the witness. The question infers the truth of assumed facts and therefore is misleading.	IRE 403; <i>Hossman v. State</i> , 473 N.E.2d 1059 (Ind.Ct.App. 1985); see also ABA Standards for Criminal Justice 3-5.7(d) (3d ed. 1993) ("A prosecutor should not ask a question which implies the existence of a fact which is a predicate for which a good faith belief is lacking").

CTIONS -- HEARSAY AND OTHER COMMON EVIDENTIARY IS

Issue	Suggested Objection - Cite federal and state constitutional objections where possible.
e document has not been properly authenticated.	IRE 901(a); <i>In re A. C.</i> , 770/947, 951 (Ind. App. Authentication is a condition to the admissibility of documentary evidence. The proponent must introduce evidence that the document is what it purports to be).
e document is not the best evidence of the content of the writing, recording or photograph.	IRE 1002; <i>Pinkerton v. State</i> , 258 Ind. 610, 283 N.E.2d 376, 382 (1970). Best evidence exceptions include: original unavailable (IRE 1004(1)); original in possession of opponent (IRE 104(3)); original in public record (IRE 1005); testimony or written statement of a party (IRE 1007).
Question calls for evidence supporting the credibility of a witness whose believability has been impeached.	IRE 608(a). Introduction of evidence of the truth and honesty of a witness is irrelevant unless the witness's credibility has been impeached.

CTIONS -- HEARSAY AND OTHER COMMON EVIDENTIARY IS

Issue	Suggested Objection - Cite federal and state constitutional objections where possible.
e document offered is a business record because it was not made in the regular course of business, or it is unreliable because it contains other hearsay.	<i>Stahl v. State</i> , 686 N.E.2d 89, 92 (Ind. 1997). Records of conducted business records are admissible as an exception to the hearsay rule under IRE 803(6). This document contains opinions or statements from third persons prepared in anticipation of litigation.
Question seeks evidence which is neither habit nor routine practice	IRE 404(a), 607, 608 & 609; <i>Byrd v. State</i> , 593 N.E.2d 1183, 1185 (Ind. 1992). With limited exceptions, character evidence is generally not admissible to prove action and conformity therewith on a particular occasion.
The competence of the witness has not been established	IRE 601; witnesses may lack competence to testify because of a lack of capacity, prior conviction, infancy, or failure to meet common law competency requirements.

CTIONS -- HEARSAY AND OTHER COMMON EVIDENTIARY IS

Issue	Suggested Objection - Cite federal and state constitutional objections where possible.
The question is compound because it asks for two or more facts of the witness simultaneously	IRE 611(a). A question with too many predicates confuses the witness or calls for a conclusion, and creates a questionable response.
The question calls for evidence that is barred by physician-patient privilege	IRE 501; IC 35-46-3-1(1); <i>Terre Haute Regional Hospital, Inc. v. Trueblood</i> , 600 N.E.2d 1385, 1386 (Ind. Ct. App. 1992); <i>Canfield v. Sandock</i> , 563 N.E.2d 526, 527 (Ind. Ct. App. 1990).
The question calls for testimony that does not fall within the dying declaration exception to the hearsay rule.	Dying declarations are admitted on the assumption that someone who is about to die will speak truthfully about the physical condition of the speaker and the time between the statement and the injury or death is highly relevant. IRE 804(b)(2); argue dying declaration exception to hearsay runs afoul of D's right to confrontation under the Sixth Amendment and <i>Crawford v. Washington</i> , 124 S.Ct. 1334 (2004); <i>But see Wallace</i> , 836/985 (Ind.Ct.App. 2004); <i>Wright</i> , 916/269 (Ind. Ct. App. 2010).

CTIONS -- HEARSAY AND OTHER COMMON EVIDENTIARY I

Issue	Suggested Objection - Cite federal and state constitutional objections where possible.
Question calls for hearsay and does not qualify as an excited utterance	Three elements are necessary for admission: 1) the event; 2) the declarant made the statement while under the stress of excitement caused by the event; & 3) the statement relates to the event. IRE 803(2); <i>Yamaoka v. State</i> , 672 N.E.2d 1344 (Ind. 1996). Moreover, testimonial hearsay statements are inadmissible. <i>Crawford v. Washington</i> , 124 S.Ct. 1354 (2004); <i>Hammon v. Indiana & Davis v. Washington</i> , 128 S.Ct. 2266 (2006) (if a victim or witness gives a statement to a police officer or agent of the State after the emergency has ended, the statement is testimonial and inadmissible unless the defendant has had the opportunity to cross-examine the declarant).
Question (or document) seeks the admission of hearsay within hearsay	Hearsay included within hearsay is also excluded by the hearsay rule unless each part of the combined statement conforms with an exception to the hearsay rule. <i>Mayberry v. State</i> , 670 N.E.2d 1262 (Ind. 1996).

CTIONS -- HEARSAY AND OTHER COMMON EVIDENTIARY I

Issue	Suggested Objection - Cite federal and state constitution objections where possible.
Counsel is leading the witness	IRE 611(c); <i>Williams v. State</i> , 733 N.E.2d 919, 2000); leading questions on direct examination prohibited except where laying a foundation.
Question (document) is hearsay because it is not admissible under the medical diagnosis exception.	IRE 803(4); <i>McClain</i> , 675/329, 331 (Ind. 1996) reason for this hearsay exception is that statements of physical symptoms made to a physician arise from motivation to be cured and thus carry a great degree of trustworthiness; <i>VanPatten</i> , 986/255 (Ind. 2013); <i>Ward</i> , 50 N.E.3d 752 (Ind. 2016) (statements to paramedic and forensic nurse identifying D as a suspect was not testimonial hearsay because primary purpose of declarant's statements was to obtain appropriate medical and psychological treatment)..
Question calls for hearsay that is not admissible under the state of mind exception because it calls	IRE 803(3); the exception relies on the statement's spontaneity to guarantee its trustworthiness and only applies to prove declarant's conduct, not the

CTIONS -- HEARSAY AND OTHER COMMON EVIDENTIARY IS

Issue	Suggested Objection - Cite federal and state constitutional objections where possible.
a statement of memory belief	of a third party. <i>Camm v. State</i> , 908 N.E.2d 215 (2009).
question calls for a narrative response	IRE 611(a); <i>Hutcherson v. State</i> , 507 N.E.2d 96 (Ind. 1987).
Authentication of Electronic Evidence; Social Media Messaging	Must provide some evidence that describes distinctive characteristics that could connect the particular evidence to the defendant; others. <i>Richardson v. State</i> , 79 N.E.3d 958 (Ind. Ct. App. 2017).

CTIONS -- HEARSAY AND OTHER COMMON EVIDENTIARY IS

Issue	Suggested Objection - Cite federal and state constitutional objections where possible.
Right to Present a Defense; Hearsay	Due process requires the admission of critical evidence pursuant to the rule in <u>Chambers v. Mississippi</u> , 413 U.S. 284 (1973), which held that the hearsay rule may not be applied mechanistically to defeat the ends of justice. That exclusion of critical evidence under the hearsay rule may violate a defendant's right to present a defense. <u>Kubisch v. Neal, Superintendent, Indiana State Prison</u> , 753 F.3d 845 (7 th Cir. 2016).

SUMMARY OF SELECTED RULES OF INDIANA EVIDENCE

General Provisions

Scope	Rules apply except: (1) otherwise required by Court; (2) preliminary questions of fact; and (3) miscellaneous proceedings, such as sentencing, probation, parole, preliminary juvenile matters, search or arrest warrants. Rules concerning privileges apply at all stages of trial. When rules do not cover issue, common or statutory law applies.
Ruling	Requires timely objections and specific grounds, offer of proof when needed, keeping possible inadmissible statements or offers of proof from hearing of jury. Reversible error with fundamental error and effects of erroneous ruling.
Limited admissibility	Requires court to admonish jury as to admissibility of evidence for specific purpose only.
Remainder of or related writing	Permits introduction of evidence which in fairness requires to be admitted to complete story.
Judicial notice	Judge must take judicial notice of law or fact if readily ascertainable and meets requirements; requires instruction to jury.

SUMMARY OF SELECTED RULES OF INDIANA EVIDENCE

Relevance	
Definition	“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.”
Exclusion of relevant evidence	“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the risk of unfair prejudice, confusion of the issues, or misleading the jury, or by the considerations of undue delay, needless presentation of cumulative evidence.”
Character evidence	Rule: “not admissible for purpose of proving action in conformity therewith;” exceptions: character is admissible of accused when offered by accused or prosecution to rebut the same, victim when rebutting victim’s peacefulness or victim was first aggressor in homicide case and witness when admissible under 607-09.

SUMMARY OF SELECTED RULES OF INDIANA EVIDENCE

Prior bad acts	Rule: not admissible to “show action in conformity therewith;” exceptions: admissible for other purpose, motive, intent, preparation, plan, knowledge, identity, mistake or accident. Requires notice of intent to be requested.
Methods of proving character	Reputation and opinion always admissible. Specific instances admissible on cross of character witness if element is essential element of charge, claim or defense.
Withdrawn pleas and offers	Inadmissible except under doctrine of completeness in perjury prosecution
Past sexual conduct of victim or witness	Inadmissible in prosecution for sex crime; except past sex conduct (1) with D; (2) shows someone other than D committed crime; (3) shows pregnancy not caused by D; (4) admissible under 609. Procedure.
Privileges	
Privileges	No privilege exists except those given by other rules of evidence; const.; waiver of privilege; comments as to privilege not admissible; requires jury instruction.

SUMMARY OF SELECTED RULES OF INDIANA EVIDENCE

Competency/Impeachment	
General rule	Everyone, except as provided by General Assembly, is competent to be witness.
Lack of personal knowledge	Witness must have personal knowledge of evidence which she is to testify.
Interpreters	Requires interpreters to be qualified as experts under the rules and take oath.
Character/ conduct of witness	Opinion/reputation admissible if relates to truthfulness of witness and is admitted after character of witness is attacked; specific instances only admissible in cross-examination if witness testifying to character of another witness.
Evidence of prior crimes by witness	Admissible if crime is listed or involves dishonesty or false statement. Convictions over ten years old, judgments and pardoned convictions generally inadmissible.

SUMMARY OF SELECTED RULES OF INDIANA EVIDENCE

Refreshing memory	Provides procedure for using writing or object to witness' memory.
Prior statements of witnesses	Prior inconsistent statement admissible if witness opportunity to explain, and upon request, statement disclosed to opposing party.
Interrogation by judge or witness	Counsel may wait to object until jury is not present. Provides procedure.
Bias of witnesses	Evidence of bias, prejudice or interests is admissible attacking credibility of witness.
Unrecorded Statements During Custodial Interrogation	Prohibits admission of unrecorded statements in a detention during custodial interrogations.
Opinions and Expert Testimony	
Opinions by lay witness	Admissible only if rationally based on perception of witness and helpful to jury.

SUMMARY OF SELECTED RULES OF INDIANA EVIDENCE

Expert qualification	Admissible only if: (1) assist jury; (2) qualified by knowledge, skill, experience, training or education; (3) scientific principles upon which expert relies are n
Bases of opinion	Can be facts given before or during trial or inadmissible evidence, if it is reasonably relied upon by expert
Opinion on ultimate issue	Permissible if it embraces ultimate issue of fact, b law, i.e., guilt, innocence, truthfulness.
Hearsay	
Definition	“A statement, other than one made by the declarant testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Excludes definition certain prior statements of witness and opponent.

SUMMARY OF SELECTED RULES OF INDIANA EVIDENCE

Exceptions: declarant available

(Check foundations for each exception) (1) present sense impression; (2) excited utterance; (3) then existing physical condition; (4) statements for purposes of medical diagnosis or treatment; (5) recorded recollection; (6, 7) records of regularly conducted business; (8) public records; (9) records of vital statistics; (10) absence of public record; (11) records of religious, fraternal, or other organizations; (12) marriage, baptismal and similar certificates; (13) family records; (14, 15) records of statements in records affecting interest in property; (16) ancient documents; (17) market reports, commercial publications; (18) learned treatises; (19-21) reputation concerning personal or family history, boundaries, or character; (22, 23) judgment of previous conviction or to personal, family or general history, boundaries.

SUMMARY OF SELECTED RULES OF INDIANA EVIDENCE

Exceptions when declarant is unavailable	Unavailable if testimony is privileged, or if refuse testify, cannot remember, dies or is ill or cannot be located; Exceptions: (1) former testimony; (2) dying declaration; (3, 4) statement against interest or of family history; (5) forfeiture by wrongdoing.
Attacking/ supporting credibility of out-of-court declarant	Permits if evidence is otherwise admissible.
Authentication	
Requirement	Evidence must be authenticated prior to admission. Provides methods of authentication.
Self - authentication	Extrinsic evidence of authentication not required for domestic or foreign public documents, official publications, newspapers and periodicals, trade inscriptions, acknowledged document, commercial paper, prescription created by law, certified domestic records of regularly conducted activity.

SUMMARY OF SELECTED RULES OF INDIANA EVIDENCE

Contents of writings, recordings and photographs

Definitions	Defines writings and recordings, photographs, and originals and duplicates of each.
Requirement of original	Original of writing, recording or photograph is required to prove contents of each respectively.
Other evidence of contents	Other evidence is admissible if original is lost or destroyed, not obtainable, in possession of opponent. Writing, recording or photograph is not closely related to controlling issue.
Public records	Contents of public records may be proven by copy, multiple times, other evidence.