

PREFACE TO THE FOURTH EDITION

When I wrote the first edition of the *Indiana Evidence* volumes of the Indiana Practice Series (in 1984), Indiana's law of evidence was based entirely on common law. I was a superior court judge in St. Joseph County, plainly on the wrong end of the organizational chart to offer many ideas about what the law should be. My contribution was to pack Indiana's existing common law of evidence into the framework of the Federal Rules of Evidence so we judges and lawyers could find it more quickly.

Effective January 1, 1994, the Supreme Court of Indiana adopted the Indiana Evidence Rules. Those rules were based on the federal rules, but retained much of law that had been applied in Indiana trial courts for decades. The second edition was a very extensive revision. So large a segment of the rules was new to Indiana law that I turned to federal cases to offer interpretations and examples of how those rules could play out.

By the time of the third edition (2007), I was no longer in the Indiana judiciary, but as a federal district judge, it would be even more presumptuous for me to criticize how Indiana courts decided questions of Indiana evidence law. But after working on Indiana evidence treatises for a quarter of a century, I had gained enough confidence to venture opinions about how issues hidden in the rules should be decided—if the decision was based on federal courts' interpretation of similar federal rules.

With the fourth edition, the surrounding circumstances differ in two ways that have shaped this work. First, the Indiana courts have not looked even primarily to the federal rules and the federal courts for guidance when new issues arise. Decisions from other states that have similar rules (and most states now have sets of rules similar to Indiana and the federal courts) often provide better guidance for the sort of evidence issues that tend to arise more frequently in state courts. Just in the past few years, Indiana courts have sought guidance from cases decided by courts in Illinois, *Walnut Creek Nursery, Inc. v. Banske*, 26 N.E.3d 648, 653-654 (Ind. Ct. App. 2015); Louisiana and New Jersey, *Bogner v. Bogner*, 29 N.E.3d 733, 739-741 (Ind. 2015); Mississippi, *Weishelt v. State*, 26 N.E.3d 3, 10 (Ind. 2015); Arkansas, Connecticut, Kansas, Georgia, Wisconsin, Montana and North Carolina, *Sampson v. State*, 38 N.E.3d 985, 990-991 (Ind. 2015); Illinois, *Harrison v. State*, 32 N.E.3d 240, 257 (Ind. Ct. App. 2015); Texas, Massachusetts, Pennsylvania, *Pavlovich v.*

State, 6 N.E.3d 969, 979 (Ind. Ct. App. 2014); the Seventh Circuit Court of Appeals, *Lewis v. State*, 34 N.E.3d 240, 248 (Ind. 2015); a variety of federal circuits, *Griffith v. State*, 31 N.E.3d 965, 972 (Ind. 2015); *Ferguson v. State*, 40 N.E.3d 954, 958 (Ind. Ct. App. 2015).

Second, the Indiana Evidence Rules have been in place for more than twenty years, and have undergone an extensive revision that, if anything, made them less distinct from the federal rules. An illustrative federal case now serves little purpose. Accordingly, this fourth edition makes no use of intermediate or lower federal court opinions (other occasionally than for particularly helpful language). The case authorities are almost exclusively Indiana. This has led to an increased use of citations to treatises, but in light of the development already discussed, treatises are likely of greater use than a few federal court of appeals citations for an Indiana court struggling with an issue to which the rules themselves give no clear answer.

It is my deep hope that this version—more concise than the second and third editions—will prove helpful to the bench and bar of Indiana during their searches for justice through trials. It has been a profound privilege to serve the judges and lawyers of my state in this way.

ROBERT L. MILLER, JR.