

Table of Contents

ARTICLE I GENERAL PROVISIONS

Rule 101	Scope	2
1	Scope of Evidence Rules, Generally	3
2	Rules of Privilege.....	3
3	Preliminary Questions of Fact	4
4	Miscellaneous Proceedings	4
5	Summary of Issues Affecting Admissibility	5
6	Other Rules to Consider.....	5
7	Comparison with Federal Rule	5
Rule 102	Purpose	6
1	Purpose and Construction.....	6
2	Trial Court Discretion	7
3	Summary of Issues Affecting Admissibility	7
4	Other Rules to Consider.....	7
5	Comparison with Federal Rule	7
Rule 103	Rulings on evidence	8
1	Preserving Error for Appeal	9
2	Requirement of Objection.....	9
3	Specificity of Objection	10
4	Timeliness of Objection	11
5	Continuing Objections.....	11
6	Motions to Strike	12
7	Offers to Prove	12
8	Objections in Non-evidentiary Phases of the Trial.....	13
9	Requirement of Prejudice	14
10	Motions in Limine	15
11	Fundamental Error.....	17
12	Standard of Proof for Admission of Evidence	17
13	Summary of Issues Affecting Admissibility	17
14	Other Rules to Consider	18
15	Comparison with Federal Rule.....	18
Rule 104	Preliminary questions.....	19
1	Questions of Admissibility Generally	20
2	Relevancy That Depends on a Fact	20
3	Connecting Up.....	21
4	Hearing of Jury.....	21
5	Testimony by Accused.....	22
6	Weight and Credibility	22
7	Summary of Issues Affecting Admissibility	22
8	Other Rules to Consider.....	23
9	Comparison with Federal Rule	23
Rule 105	Limiting evidence that is not admissible against other parties or for other purposes	24
1	Multiple Admissibility, Generally	24

COURTROOM HANDBOOK ON INDIANA EVIDENCE

2	Request Required	25
3	Right to Immediate Admonition	25
4	Form of Limiting Instruction	26
5	The <i>Bruton</i> Rule.....	26
6	Summary of Issues Affecting Admissibility	26
7	Other Rules to Consider.....	27
8	Comparison with Federal Rule	27
Rule 106	Remainder of or related writing or recorded statements.....	28
1	Immediate Completeness.....	28
2	Trial Court Discretion	29
3	Evidence Otherwise Inadmissible	29
4	The Principle of Completeness; Conversations.....	30
5	Depositions.....	32
6	Summary of Issues Affecting Admissibility	32
7	Other Rules to Consider.....	32
8	Comparison with Federal Rule	33

ARTICLE II JUDICIAL NOTICE

Rule 201	Judicial notice.....	34
1	Judicial Notice, Generally	35
2	Generally Known Facts	36
3	Facts Capable of Accurate and Ready Determination	36
4	Court Records	37
5	Attorney Fees	38
6	Judicial Notice of the Law	38
7	When Judicial Notice is Discretionary	40
8	When Judicial Notice is Mandatory	40
9	Opportunity to Be Heard	40
10	Effect of Taking Judicial Notice; Instructing the Jury ...	41
11	Summary of Issues Affecting Admissibility	41
12	Other Rules to Consider	42
13	Comparison with Federal Rule.....	42

ARTICLE III PRESUMPTIONS

Rule 301	Presumptions in civil cases, generally	43
1	Presumption Defined	43
2	Effect of a Presumption	44
3	Res Ipsa Loquitur	46
4	Presumptions in Criminal Cases	46
5	Cross-References	47
6	Summary of Issues Affecting Admissibility	47
7	Other Rules to Consider.....	47
8	Comparison with Federal Rule	47

ARTICLE IV RELEVANCY AND ITS LIMITS

Rule 401	Test for relevant evidence	51
1	Definition of Relevancy	51

TABLE OF CONTENTS

2	Opening the Door to Irrelevant Evidence	51
3	Rebuttal Evidence.....	52
4	Credibility Evidence; Background Evidence; Stipulated Facts	52
5	Punitive Damages; Collateral Source Evidence; Similar Accidents	53
6	Criminal Cases; Other Actor Responsible; Flight.....	54
7	Summary of Issues Affecting Admissibility	55
8	Other Rules to Consider.....	56
9	Comparison with Federal Rule	56
Rule 402	General admissibility of relevant evidence	57
1	Inadmissibility of Irrelevant Evidence.....	57
2	Specificity of Objection to Irrelevant Evidence.....	57
3	Summary of Issues Affecting Admissibility	57
4	Other Rules to Consider.....	58
5	Comparison with Federal Rule	58
Rule 403	Excluding relevant evidence for prejudice, confusion, or other reasons	59
1	Balancing Against Probative Value	59
2	Unfair Prejudice	60
3	Gruesome Photographs.....	61
4	Mug Shots	61
5	Undue Delay; Cumulative Evidence.....	62
6	Confusion of the Issues; Misleading the Jury	62
7	Tapes and Transcripts.....	63
8	Surprise.....	65
9	Remoteness.....	66
10	Summary of Issues Affecting Admissibility	66
11	Other Rules to Consider	66
12	Comparison with Federal Rule.....	66
Rule 404	Character evidence; crimes or other acts	68
1	Character Evidence to Prove Conduct; General Rule.....	69
2	Character of Accused	69
3	Character of Victim.....	70
4	Character of Witness	71
5	Character in Issue	71
6	Other Crimes, Wrongs, or Acts: Rule and Rationale.....	72
7	Test for Admissibility.....	73
8	Sufficiency of Proof of Extrinsic Act	75
9	Notice	75
10	Inseparable Crimes.....	75
11	Intent	76
12	Identity	77
13	Plan	78
14	Motive.....	79
15	Knowledge	80
16	Absence of Mistake or Accident	80
17	Non-propensity Purposes Not Listed in Rule	80

COURTROOM HANDBOOK ON INDIANA EVIDENCE

18	Summary of Issues Affecting Admissibility	81
19	Other Rules to Consider	82
20	Comparison with Federal Rule.....	83
Rule 405	Methods of proving character	84
1	Methods of Proving Character	84
2	Reputation	84
3	Opinion Testimony	85
4	Cross Examination of the Character Witness.....	85
5	Notice Requirements in Criminal Cases.....	86
6	Specific Instances of Conduct	87
7	Summary of Issues Affecting Admissibility	87
8	Other Rules to Consider.....	87
9	Comparison with Federal Rule	88
Rule 406	Habit; routine practice	89
1	Habit of an Individual	89
2	Routine Practice, or Custom, of a Business or Group.....	90
3	Method of Proof of Habit or Routine Practice.....	90
4	Similar Acts or Occurrences	91
5	Summary of Issues Affecting Admissibility	91
6	Other Rules to Consider.....	92
7	Comparison with Federal Rule	92
Rule 407	Subsequent remedial measures	93
1	Inadmissibility to Show Consciousness of Negligence	93
2	Purposes Other Than Proof of Fault	94
3	Product Liability Suits	94
4	Summary of Issues Affecting Admissibility	94
5	Other Rules to Consider.....	94
6	Comparison with Federal Rule	95
Rule 408	Compromise offers and negotiations.....	96
1	Compromise Offers Generally Inadmissible	96
2	Admissibility for Other Purposes	97
3	Punitive Damages	97
4	Suit on Completed Compromise.....	98
5	Alternate Dispute Resolution.....	98
6	Statements of Fact Inadmissible.....	98
7	Preliminary Fact Questions	98
8	Offers to Non-parties	98
9	Summary of Issues Affecting Admissibility	98
10	Other Rules to Consider	99
11	Comparison with Federal Rule.....	99
Rule 409	Payment or offer to pay medical or other expenses..	100
1	The Rule and Its Rationale	100
2	Comparison with Rule 408.....	100
3	Statutory Provisions on Advance Payments by Defendant or Insurer, Statements of Sympathy.....	101
4	Summary of Issues Affecting Admissibility	101
5	Other Rules to Consider.....	101
6	Comparison with Federal Rule	102

TABLE OF CONTENTS

Rule 410	Withdrawn pleas and offers	103
1	Inadmissibility of Statement in Connection With Plea or Offer to Plead.....	103
2	Change From Earlier Indiana Law	104
3	Statements Made by Others	105
4	“In Connection With” a Plea Offer	105
5	By Whom Offered.....	106
6	Guilty Pleas Not Withdrawn	106
7	Traffic Offenses	106
8	Summary of Issues Affecting Admissibility	107
9	Other Rules to Consider	107
10	Comparison with Federal Rule.....	107
Rule 411	Liability insurance.....	108
1	Rule of Inadmissibility and Its Rationale	108
2	Permissible Purposes of Insurance Evidence	108
3	Summary of Issues Affecting Admissibility	109
4	Other Rules to Consider.....	109
5	Comparison with Federal Rule	110
Rule 412	Sex-Offense cases: the victim’s or witness’s sexual behavior or predisposition	111
1	Evidence of Conduct Excluded.....	112
2	Exceptions: Criminal Cases.	113
3	Exceptions: Civil Cases.	114
4	Procedure to Determine Admissibility	115
5	Summary of Issues Affecting Admissibility	115
6	Other Rules to Consider.....	116
7	Comparison with Federal Rule	116
Rule 413	Medical expenses	117
1	Admissibility of Statements of Charges for Medical Expenses.....	117
2	Prima Facie Evidence of Reasonableness.....	117
3	Summary of Issues Affecting Admissibility	118
4	Other Rules to Consider.....	118
5	Comparison with Federal Rule	118
 ARTICLE V PRIVILEGES		
Rule 501	Privileges	119
1	Privileges, Generally	121
2	Waiver of Privilege by Voluntary Disclosure.....	121
3	Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege.....	123
4	Comment Upon or Inference From Claim of Privilege; Instruction	124
5	Summary of Issues Affecting Admissibility, Generally ...	125
6	Attorney-Client Privilege	125
7	Physician-Patient Privilege.....	130
8	Husband-Wife Privilege	138
9	Clergy Privilege	140

COURTROOM HANDBOOK ON INDIANA EVIDENCE

10	Informant's Privilege	141
11	Accountant-Client Privilege	143
12	Psychologist-Patient Privilege.....	143
13	Social Workers; Marriage and Family Therapists; Mental Health Counselors	144
14	Crime Victim Advocates and Service Providers	145
15	No Parent-Child Privilege	146
16	Cross-Reference for Other Privileges	146
17	Other Rules to Consider	146
18	Comparison with Federal Rule.....	146
Rule 502	Attorney-Client privilege and work product; limitations on waiver.....	147
1	Waiver of Attorney-Client Privilege and Work Product by Intentional Disclosure.....	148
2	Waiver of Attorney-Client Privilege and Work Product by Inadvertent Disclosure	149
3	Effect of Parties' Agreement Without Court Order	150
4	Effect of Court Order Incorporating Parties' Agreement ..	150
5	Summary of Issues of Admissibility	150
6	Other Rules to Consider.....	151
7	Comparison with Federal Rule	151

ARTICLE VI WITNESSES

Rule 601	General rule of competency.....	155
1	Rule 601 and Its Rationale.....	155
2	Age.....	156
3	Insanity	157
4	Intoxication	157
5	The "Dead Man's Statutes"	158
6	Summary of Issues Affecting Admissibility	162
7	Other Rules to Consider.....	162
8	Comparison with Federal Rule	163
Rule 602	Lack of personal knowledge	164
1	Requirement of Personal Knowledge.....	164
2	Testimony Induced by Hypnosis	165
3	Opinion Testimony	165
4	Summary of Issues Affecting Admissibility	166
5	Other Rules to Consider.....	166
6	Comparison with Federal Rule	166
Rule 603	Oath or affirmation to testify truthfully	167
1	Requirement of Oath or Affirmation	167
2	Summary of Issues Affecting Admissibility	167
3	Other Rules to Consider.....	167
4	Comparison with Federal Rule	167
Rule 604	Interpreters	168
1	The Rule and Its Reach	168
2	The Right to an Interpreter	168
3	Summary of Issues Affecting Admissibility	169

TABLE OF CONTENTS

4	Other Rules to Consider	169
5	Comparison with Federal Rule	169
Rule 605	Judge's competency as a witness	170
1	The Rule and Its Reach	170
2	Attorneys	170
3	Summary of Issues Affecting Admissibility	171
4	Other Rules to Consider	171
5	Comparison with Federal Rule	171
Rule 606	Juror's competency as a witness	172
1	Juror's Testimony at Trial	172
2	Inquiry Into Validity of Verdict Prohibited	173
3	Exceptions to Prohibition Against Postverdict Juror Testimony	174
4	Inaccurate Voir Dire Responses	175
5	Summary of Issues Affecting Admissibility	175
6	Other Rules to Consider	176
7	Comparison with Federal Rule	176
Rule 607	Who may impeach a witness	177
1	Impeaching Own Witness	177
2	Limitation on Evidence That Cannot Be Used Substantively	177
3	Anticipatory Impeachment	178
4	Impeachment and the Effect of Rule 607	178
5	Mental Condition	178
6	Impeachment on Collateral Matters	179
7	Summary of Issues Affecting Admissibility	179
8	Other Rules to Consider	179
9	Comparison with Federal Rule	180
Rule 608	A witness's character for truthfulness or untruthfulness	181
1	Character for Truthfulness	181
2	Reputation Evidence	182
3	Opinion Evidence	183
4	Rehabilitation	183
5	Specific Acts Inadmissible for Impeachment	183
6	Bias	184
7	Substance Abuse	184
8	Cross Examination of the Character Witness	184
9	Prior Sexual Allegations	185
10	Opening the Door	186
11	Summary of Issues Affecting Admissibility	186
12	Other Rules to Consider	187
13	Comparison with Federal Rule	187
Rule 609	Impeachment by evidence of a criminal conviction ..	188
1	General Rule	189
2	Specific Crimes Admissible	190
3	Crimes Not Admissible	190
4	Effect of Pardon, Annulment, or Certificate of	

COURTROOM HANDBOOK ON INDIANA EVIDENCE

	Rehabilitation.....	191
5	Juvenile Adjudications	191
6	Pendency of Appeal.....	192
7	Extent of Questioning.....	192
8	Limiting Instruction.....	193
9	Opening the Door.....	193
10	Convictions More Than Ten Years Old	193
11	Summary of Issues Affecting Admissibility	194
12	Other Rules to Consider	195
13	Comparison with Federal Rule.....	195
Rule 610	Religious beliefs or opinions.....	196
1	Religious Beliefs Inadmissible	196
2	Summary of Issues Affecting Admissibility	196
3	Other Rules to Consider.....	196
4	Comparison with Federal Rule	196
Rule 611	Mode and order of examining witnesses and presenting evidence	197
1	Control by Court, General Rule	198
2	Witnesses: Number; Time.....	198
3	Repetitive or Cumulative Testimony	198
4	Narrative Answers; Written Direct Testimony	199
5	Order of Proof; Re-opening	199
6	Demonstrations and Experiments	199
7	Cross Examination	200
8	Redirect and Recross Examinations	201
9	Constitutional Provisions in Criminal Cases	202
10	Leading Questions	202
11	Summary of Issues Affecting Admissibility	203
12	Other Rules to Consider	204
13	Comparison with Federal Rule.....	204
Rule 612	Writing or object used to refresh memory	205
1	Refreshing Recollection.....	206
2	Production of Writing or Object	207
3	Terms and Conditions of Production and Use.....	207
4	Summary of Issues Affecting Production and Admissibility	208
5	Other Rules to Consider.....	208
6	Comparison with Federal Rule	209
Rule 613	Witness's prior statement.....	210
1	Impeachment by Prior Inconsistent Statement.....	210
2	Questioning the Witness Being Impeached	211
3	Extrinsic Evidence of Prior Inconsistent Statement	212
4	Rehabilitation and Rebuttal	213
5	Limiting Instruction	214
6	Summary of Issues Affecting Admissibility	214
7	Other Rules to Consider.....	215
8	Comparison with Federal Rule	216
Rule 614	Calling or questioning a witness.....	217

TABLE OF CONTENTS

1	Calling of Witnesses by Court, Generally	217
2	Questions by the Court	218
3	Objections to the Court's Questioning	218
4	Questioning by Juror	219
5	Summary of Issues Affecting Admissibility	219
6	Other Rules to Consider	220
7	Comparison with Federal Rule	220
Rule 615	Excluding witnesses	221
1	The Rule and Its Rationale	221
2	Persons to Whom Order May Apply	222
3	Remedies for Violation	223
4	Summary of Issues Affecting Admissibility	224
5	Other Rules to Consider	225
6	Comparison with Federal Rule	225
Rule 616	Witness's bias	226
1	Bias, Prejudice or Interest of Witness, Generally	226
2	Agreement With Prosecution	227
3	Compensation by Adverse Party	228
4	Interest in Related Litigation	228
5	Partial Settlement Agreements	228
6	Bribery or Threats	229
7	Relationship With a Party	229
8	Ulterior Motives	229
9	Summary of Issues Affecting Admissibility	230
10	Other Rules to Consider	230
11	Comparison with Federal Rule	230
Rule 617	Unrecorded statements during custodial interrogation	231
1	Requirement of Recording of Custodial Statement	232
2	Exceptions to Recording Requirement	234
3	Authentication of the Recording	234
4	Other Evidence of Statement and Portions Offered By Accused	235
5	Summary of Issues Affecting Admissibility	236
6	Other Rules to Consider	237
7	Comparison with Federal Rule	237

ARTICLE VII OPINIONS AND EXPERT OPINIONS

Rule 701	Opinion testimony by lay witnesses	239
1	Opinion Testimony and Article VII	239
2	The Opinion Rule	240
3	Personal Perception	240
4	Helpfulness	241
5	Skilled Witnesses	242
6	Examples of Topics for Opinion Testimony	242
7	Summary of Issues Affecting Admissibility	245
8	Other Rules to Consider	245
9	Comparison with Federal Rule	246

COURTROOM HANDBOOK ON INDIANA EVIDENCE

Rule 702	Testimony by expert witnesses.....	247
1	Expert Opinion Testimony, Generally	247
2	Helpfulness	248
3	Qualifications of Experts.....	249
4	Degree of Witness's Certainty; Probabilities.....	251
5	Expert Testimony Without Opinion.....	251
6	Medical Malpractice Review Cases	252
7	Expert Scientific Testimony.....	252
8	Scientific Evidence, Helpfulness	257
9	Breath/Alcohol Tests.....	257
10	Polygraphs.....	258
11	Summary of Issues Affecting Admissibility	259
12	Other Rules to Consider	260
13	Comparison with Federal Rule.....	261
Rule 703	Bases of an expert's opinion testimony.....	262
1	Bases of Opinion Testimony by Experts	262
2	Facts Perceived by the Expert.....	262
3	Facts Made Known at Trial; Hypothetical Questions	263
4	Listening to the Evidence	264
5	Opinions Based on Reports of Others.....	264
6	Disclosure of Facts Not Admitted in Evidence	265
7	Summary of Issues Affecting Admissibility	266
8	Other Rules to Consider.....	267
9	Comparison with Federal Rule	268
Rule 704	Opinion on an ultimate issue	269
1	Opinion on Ultimate Issue.....	269
2	Impermissible Topics for Opinions, Generally	270
3	Intent in a Criminal Case	270
4	Guilt or Innocence in a Criminal Case	271
5	Whether a Witness Has Testified Truthfully	272
6	Truth or Falsity of Allegations	273
7	Legal Conclusions.....	274
8	Summary of Issues Affecting Admissibility	275
9	Other Rules to Consider	276
10	Comparison with Federal Rule.....	276
Rule 705	Disclosing the facts or data underlying an expert's opinion.....	277
1	Basis Need Not Be Disclosed Before Opinion Is Stated ...	277
2	Discretion to Require Disclosure of Basis Before Stating Opinion	278
3	Cross Examining the Expert.....	279
4	Summary of Issues Affecting Admissibility	281
5	Other Rules to Consider.....	281
6	Comparison with Federal Rule	281

ARTICLE VIII HEARSAY

Rule 801	Definitions.....	284
1	Definition of Hearsay.....	285

TABLE OF CONTENTS

2	Offered as Proof of Matters Asserted	287
3	Verbal Parts of Acts; Verbal Acts.....	289
4	Statements That Are Not Hearsay.....	289
5	Prior Statement by Witness—General Requirements	289
6	Inconsistent Sworn Statements	290
7	Prior Consistent Statements	291
8	Prior Identification of a Person	293
9	Party-Opponent’s Statement: Rule and Rationale	294
10	Party’s Own Statement	295
11	Statement Adopted by a Party	296
12	Statement by Party’s Agent or Servant	297
13	Judicial Admissions	299
14	Statement of Party’s Co-Conspirator	300
15	Co-party’s Admissions	302
16	Summary of Issues Affecting Admissibility	302
17	Other Rules to Consider	304
18	Comparison with Federal Rule.....	305
Rule 802	The rule against hearsay	306
1	The Hearsay Rule and its Rationale	306
2	Confrontation and the Hearsay Rule	307
3	Summary of Issues Affecting Admissibility	309
4	Other Rules to Consider.....	309
5	Comparison with Federal Rule	310
Rule 803	Exceptions to the rule against hearsay—regardless of whether the declarant is available as a witness .	311
0.50	Hearsay Exceptions Regardless of Declarant’s Availability.....	316
1	Present Sense Impression	317
2	Excited Utterance	318
3	Then Existing Mental, Emotional or Physical Condition.....	320
4	Statements for Purposes of Medical Diagnosis or Treatment.....	323
5	Recorded Recollection	325
6	Records of Regularly Conducted Business Activity	326
7	Absence of Entry in Records of Regularly Conducted Business Activity	330
8	Public Records and Reports	330
9	Records of Vital Statistics	335
10	Absence of Public Record or Entry	336
11	Records of Religious Organizations.....	337
12	Marriage, Baptismal and Similar Certificates.....	337
13	Family Records	337
14	Records of Documents Affecting an Interest in Property.....	338
15	Statements in Documents Affecting an Interest in Property.....	338
16	Statements in Ancient Documents.....	339

COURTROOM HANDBOOK ON INDIANA EVIDENCE

17	Market Reports, Commercial Publications.....	340
18	Learned Treatises.....	341
19	Reputation Concerning Personal or Family History....	342
20	Reputation Concerning Boundaries or General History	343
21	Reputation as to Character.....	343
22	Judgment of Previous Conviction.....	343
23	Judgment as to Personal, Family or General History, or Boundaries.....	345
24	Other Exceptions	346
25	Medical Review Panel Opinions.....	346
26	“Self-Serving”; “Res Gestae”.....	346
27	Other Rules to Consider	347
28	Comparison with Federal Rule.....	347
Rule 804	Exceptions to the rule against hearsay – when the declarant is unavailable as a witness	349
1	Requirement of Unavailability	351
2	Former Testimony	354
3	Dying Declarations	358
4	Declarations Against Interest	359
5	Statement of Personal or Family History; “Pedigree”	362
6	No Residual Hearsay Exception; Forfeiture by Wrongdoing	363
7	Statements by Protected Persons in Certain Criminal and Juvenile Cases.....	365
8	Presentation of Testimony by Prerecorded Videotape or Closed-Circuit Television	369
9	Other Rules to Consider	371
10	Comparison with Federal Rule.....	371
Rule 805	Hearsay within hearsay	372
1	Hearsay Within Hearsay	372
2	Summary of Issues Affecting Admissibility	372
3	Other Rules to Consider.....	372
4	Comparison with Federal Rule	373
Rule 806	Attacking and supporting the declarant’s credibility.....	374
1	Attacking and Supporting Declarant’s Credibility	374
2	Prior Inconsistent Statements	375
3	Summary of Issues Affecting Admissibility	376
4	Other Rules to Consider.....	376
5	Comparison with Federal Rule	376
Rule 807	Residual Exception	377
1	No Residual Hearsay Exception	377

ARTICLE IX AUTHENTICATION AND IDENTIFICATION

Rule 901	Authenticating or identifying evidence.....	378
1	Authentication and Identification.....	380
2	Illustrations of Methods of Authentication.....	381

TABLE OF CONTENTS

3	Chain of Custody	381
4	Computer—Based Evidence	383
5	Testimony of Witness With Knowledge.....	384
6	Nonexpert Opinion on Handwriting	385
7	Comparison by Trier or Expert Witness.....	386
8	Distinctive Characteristics and the Like.....	387
9	Opinion about a Voice	388
10	Telephone Conversations.....	389
11	Public Records or Reports	390
12	Ancient Documents or Data Compilation	390
13	Process or System	392
14	Methods Provided by Statute or Rule	395
15	Summary of Issues Affecting Admissibility	396
16	Other Rules to Consider	397
17	Comparison with Federal Rule.....	397
Rule 902	Evidence that is self-authenticating.....	398
1	Self-Authentication, Generally	400
2	Domestic Public Documents	401
3	Foreign Public Documents	403
4	Official Publications	403
5	Newspapers and Periodicals.....	404
6	Trade Inscriptions and the Like.....	405
7	Acknowledged Documents	405
8	Commercial Paper and Related Documents	405
9	Presumptions Created by Law	406
10	Certified Domestic Records of Regularly Conducted Activity	406
11	Certified Foreign Records of Regularly Conducted Activity	408
12	Other Rules to Consider	409
13	Comparison with Federal Rule.....	410
Rule 903	Subscribing witness' testimony	411
1	Testimony of Subscribing Witness.....	411
2	Wills	411
3	Other Rules to Consider.....	412
4	Comparison with Federal Rule	412

ARTICLE X CONTENTS OF WRITINGS AND RECORDINGS

Rule 1001	Definitions that apply to this article	414
1	Requirement of the Original	415
2	Writings and Recordings	415
3	Photographs	415
4	Original	415
5	Duplicate	416
6	Summary of Issues Affecting Admissibility	416
7	Other Rules to Consider.....	416
8	Comparison with Federal Rule	416
Rule 1002	Requirement of the original.....	417

COURTROOM HANDBOOK ON INDIANA EVIDENCE

1	Requirement of Original, or Best Evidence Rule	417
2	Proof of Fact vs. Proof of Content	418
3	X-Rays; Photographs.....	418
4	Bureau of Motor Vehicles Records with Electronic or Digital Signature	419
5	Summary of Issues Affecting Admissibility	419
6	Other Rules to Consider.....	419
7	Comparison with Federal Rule	420
Rule 1003	Admissibility of duplicates	421
1	Admissibility of Duplicates.....	421
2	Summary of Issues Affecting Admissibility	421
3	Other Rules to Consider.....	421
4	Comparison with Federal Rule	422
Rule 1004	Admissibility of other evidence of contents.....	423
1	Secondary Evidence	423
2	Original Lost or Destroyed.....	424
3	Original Not Obtainable.....	425
4	Original in Opponent's Possession	425
5	Collateral Matters.....	426
6	Summary of Issues Affecting Admissibility	426
7	Other Rules to Consider.....	426
8	Comparison with Federal Rule	427
Rule 1005	Copies of public records to prove content.....	428
1	The Next Best Evidence Rule for Public Records.....	428
2	Summary of Issues Affecting Admissibility	429
3	Other Rules to Consider.....	429
4	Comparison with Federal Rule	430
Rule 1006	Summaries to prove content	431
1	Summaries	431
2	Demonstrative, or "Pedagogical," Summaries.....	433
3	Summary of Issues Affecting Admissibility	433
4	Other Rules to Consider.....	434
5	Comparison with Federal Rule	434
Rule 1007	Testimony or statement of a party to prove content	435
1	Testimony or Written Admission of Party	435
2	Summary of Issues Affecting Admissibility	435
3	Other Rules to Consider.....	436
4	Comparison with Federal Rule	436
Rule 1008	Function of the court and jury.....	437
1	Functions of Court and Jury.....	437
2	Summary of Issues Affecting Admissibility	438
3	Other Rules to Consider.....	438
4	Comparison with Federal Rule	439

ARTICLE XI EVIDENCE RULES; REVIEW COMMITTEE

Rule 1101	Evidence rules review committee.....	440
1	Comparison with Federal Rule	440

TABLE OF CONTENTS

Appendices

APPENDIX I SELECTED INDIANA STATUTES

SELECTED STATUTES

§ 9-30-3-15	Proof of prior conviction; evidence....	445
§ 9-30-6-5	Breath test operators, equipment, and chemicals; certification; rules; certificates as prima facie evidence.....	445
§ 9-30-6-6	Samples of, or chemical tests on, blood, urine, or other bodily substance; liability; admissibility .	446
§ 9-30-6-15	Evidence of blood alcohol content shown by chemical tests admissible	449
§ 16-39-2-6	Disclosure without patient's consent; interpretation of records; immunities; individualized mental health safety plans	451
§ 20-1-1.9-1 to 20-1-1.9-6	Repealed by P.L.1-2005, SEC.240 ..	454
§ 25-2.1-14-1	Confidentiality preserved.....	454
§ 25-2.1-14-2	Disclosures required by standards of profession	454
§ 25-23.6-6-1	Matters related in official capacity; exceptions to privilege.....	455
§ 25-33-1-17	Privileged communications; exceptions.....	455
§ 25-40-1-5	"Employee assistance professional" ..	456
§ 25-40-2-2	Privileged information disclosed to employee assistance professional ..	456
§ 26-2-8-102	Definitions	457
§ 26-2-8-112	Admissibility of electronic record or signature.....	459
§ 31-14-6-1	Blood or genetic testing.....	459
§ 31-14-6-2	Objections and admissibility	459
§ 31-14-6-3	Test results; effect; admissibility	460
§ 31-14-6-4	Cost of blood or genetic testing	460
§ 31-14-6-5	Chain of custody of blood or genetic specimens taken for testing	460
§ 31-32-11-1	Admissibility of privileged communications.....	460
§ 31-34-12-6	Admissibility of privileged communications.....	461
§ 31-34-13-1	Application of chapter	461
§ 31-34-13-2	Admissibility of statements or videotapes	461
§ 31-34-13-3	Requirements for admissibility of	

COURTROOM HANDBOOK ON INDIANA EVIDENCE

	statements or videotapes.....	462
§ 31-34-13-4	Informing parties of intention to introduce and contents of statements and videotapes.....	463
§ 31-34-14-1	Application of chapter	463
§ 31-34-14-2	Court order for use of closed circuit television.....	463
§ 31-34-14-3	Court order for use of videotapes.....	463
§ 31-34-14-4	Children may testify outside court proceeding; informing parties of intention to testify	463
§ 31-34-14-5	Persons who may be present during child's testimony; closed circuit television.....	464
§ 31-34-14-6	Persons who may be present during child's testimony; videotapes	465
§ 31-34-14-7	Persons who may question child.....	465
§ 31-35-4-1	Application of chapter	465
§ 31-35-4-2	Admissibility of statements or videotapes	466
§ 31-35-4-3	Requirements for admissibility of statements or videotapes.....	466
§ 31-35-4-4	Informing parties of intention to introduce and contents of statements and videotapes.....	467
§ 31-35-5-1	Application of chapter	467
§ 31-35-5-2	Court order for use of closed circuit television.....	467
§ 31-35-5-3	Court orders for use of videotapes....	467
§ 31-35-5-4	Children who may testify outside courtroom; informing parties of intention to testify	468
§ 31-35-5-5	Persons who may be present during child's testimony; closed circuit television.....	469
§ 31-35-5-6	Persons who may be present during child's testimony; videotapes	469
§ 31-35-5-7	Persons who may question child testifying by closed circuit television or videotape	469
§ 34-6-2-3	"Advance payment"	470
§ 34-6-2-17	"Business"	470
§ 34-18-10-22	Expert opinions.....	470
§ 34-18-10-23	Report as evidence at trial; members as witnesses	471
§ 34-23-1-2	Maintenance of action by personal representative; damages	471
§ 34-37-1-5	Notary public; certificates or instruments	472

TABLE OF CONTENTS

§ 34-37-3-1	Proof of genuineness	472
§ 34-38-3-3	Short title	472
§ 34-38-4-1	Common law and statutes.....	473
§ 34-38-4-2	Information to court	473
§ 34-38-4-3	Court determination; review	473
§ 34-38-4-4	Presentation of admissible evidence; notice to adverse parties	473
§ 34-38-4-5	Other law as issue for court.....	473
§ 34-38-4-6	Interpretation and construction of chapter	473
§ 34-42-1-1	Recordation, copying, or reproduction; destruction of original.....	473
§ 34-42-1-2	Admissibility of copy as original.....	474
§ 34-43-1-2	Authentication of entries	474
§ 34-43.5-1-1	Applicability to proceedings	474
§ 34-43.5-1-2	Applicability to tort actions	474
§ 34-43.5-1-3	“Communication of sympathy”.....	474
§ 34-43.5-1-4	Admissibility of communication	475
§ 34-43.5-1-5	Admissibility of statement of fault ...	475
§ 34-44-1-2	Admissibility in personal injury or wrongful death action	475
§ 34-44-2-1	Applicability	476
§ 34-44-2-2	No admission of liability; admissibility of evidence	476
§ 34-45-1-2	Oath	476
§ 34-45-1-3	Interpreter; entitlement	476
§ 34-45-1-4	Interpreter; retention or appointment; fee; qualifications	476
§ 34-45-1-5	Interpreter; oath.....	477
§ 34-45-2-2	Insane persons.....	477
§ 34-45-2-4	Proceedings involving executor or administrator.....	477
§ 34-45-2-5	Suits by or against heirs or devisees founded on contract with or demand against ancestor	478
§ 34-45-2-6	Transaction, conversation, or admission in absence of deceased ..	478
§ 34-45-2-7	Agent of decedent; making or continuing contract	479
§ 34-45-2-8	Unlawfully taking or damaging personal property	479
§ 34-45-2-9	Husband or wife.....	479
§ 34-45-2-10	Adverse party.....	479
§ 34-45-2-11	Actions by executor or administrator on contracts assigned to decedent .	480
§ 34-46-3-1	Persons not required to testify.....	480
§ 35-34-1-11	Severance of offenses or separate trial of defendants joined	481

COURTROOM HANDBOOK ON INDIANA EVIDENCE

§ 35-36-2-2	Admissibility of evidence; psychiatrists, psychologists or physicians	481
§ 35-36-3-1	Hearing; psychiatric examination; delay or continuance of trial; confinement in psychiatric institution; competency restoration services; transmittal of information to NICS.....	483
§ 35-37-2-3	Preliminary instructions; personal knowledge of material fact by juror; disclosure; examination; excuse of juror or panel	485
§ 35-37-4-1	Competency of witness	485
§ 35-37-4-4	Sex crimes; admissibility of evidence of past sexual conduct; procedure..	485
§ 35-37-4-6	Application of section; “protected person”; applicable offenses; admissibility of statement or videotape; notice to defendant; jury instructions; hearing as evidence.....	487
§ 35-37-4-8	Application of section; testimony of protected person; closed circuit television; videotape; notice to defendant	490
§ 35-37-4-13	“Forensic DNA analysis”; admissibility.....	492
§ 35-37-4-14	Evidence of a previous battery.....	493
§ 35-37-4-15	Child molestation; evidence of prior acts	494
§ 35-37-6-9	Confidential communications; compelling testimony; records; temporary emergency shelters; consent to disclosure	495
§ 35-37-6-10	Waiver by victim of protections of chapter	496
§ 35-37-6-11	Waiver by victim advocate of protections of chapter; disclosure of confidential information.....	496
§ 36-1-5-5	Printed code as presumptive evidence in legal proceedings.....	496
§ 36-2-11-19	Affidavit; recording in miscellaneous records; record as prima facie evidence.....	497

TABLE OF CONTENTS

APPENDIX II SELECTED INDIANA RULES

TRIAL RULES

Trial Rule 9.1	Pleading and Proof of Contributory Negligence, Assumed Risk, Res Ipsa Loquitur, Consideration, Bona Fide Purchaser, Matters of Judicial Notice—Answer of Distraint	499
Trial Rule 9.2	Pleading and Proof of Written Instruments....	499
Trial Rule 32	Use of Depositions in Court Proceedings	502
Trial Rule 34	Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes	505
Trial Rule 43	Evidence	507
Trial Rule 44	Proof of Official Record	508
Trial Rule 44.1	Determination of Foreign Law	508
Trial Rule 74	Recording Proceedings; Transcripts; Audio Recordings.....	508
Jury Rule 17	Challenge for Cause	509
Jury Rule 20	Preliminary Instructions	510
Jury Rule 24	Procedure for Juror with Personal Knowledge in Criminal Cases	511

JURY RULES

Jury Rule 17(a)(9)	Challenge for cause	513
Jury Rule 20(a)(7)	Preliminary instructions.....	513
Jury Rule 24	Procedure for juror with personal knowledge in criminal cases	513

Table of Laws and Rules

Index