

WHAT'S NEW IN THE 2025–2026 Edition

In this seventeenth year as author of the Evidence volume of the Iowa Practice series, I continue to build upon the core work of its original co-authors, Professor Emeritus James A. Adams and Joseph P. Weeg. Like my predecessors, my goal with this book is to assist the Iowa practitioner in recognizing and assessing evidentiary issues that may arise in both civil and criminal litigation. Accordingly, the focus of the volume is on Iowa evidence rules and decisions. When helpful, however, I discuss analogous provisions of the Federal Rules of Evidence, upon which the Iowa Rules of Evidence were largely patterned. Federal precedent construing those provisions is also cited when helpful.

I. SCOPE AND COVERAGE

This volume updates its coverage with evidence decisions and developments in the year since the last edition—June 30, 2024 through June 30, 2025—a period that coincides with the Iowa Supreme Court's adjudicative term.

II. RULE AMENDMENTS

IOWA RULES OF EVIDENCE

The most recent amendments to the Iowa Rules of Evidence became effective on January 1, 2023. Those 2023 amendments conformed Iowa Rules of Evidence 5.404(a), 5.404(b), 5.408(a)(1), 5.412, 5.703, 5.706(a), 5.801(d)(2), 5.803(16), 5.804(b)(3), 5.807, 5.901(b)(8), 5.902(13), and 5.902(14) to their federal counterparts. No further amendments to the Iowa Rules of Evidence have since occurred. The Iowa Supreme Court Order adopting the 2023 amendments, the track-changes version of those amendments, and the Final Task Force Report explaining the changes, can be found in Appendix C [2023 Amendments] to this volume.

FEDERAL RULES OF EVIDENCE

2024 Amendments. Amendments to four federal rules became effective on December 1, 2024. The 2024 amendments concern:

Fed. R. Evid. 107 (illustrative aids). This new rule provides standards that regulate the use of illustrative aids at trial. See *infra* § 5.401:2(B);

Fed. R. Evid. 801(d)(2) (predecessor-in-interest statements of a party-opponent). This 2024 amendment makes statements by the predecessor-in-interest of a party-opponent admissible against the declarant's successor-in-interest. See *infra* § 5.801:11;

Fed. R. Evid. 804(b)(3) (statements against penal interest). The 2024 amendment directs a trial court to consider evidence that supports or undermines a statement against penal interest, in addition to the totality of the circumstances surrounding the making of that statement, in assessing whether corroborating circumstances clearly indicate the statement's trustworthiness. See *infra* § 5.804:3(A), (D)(3); and

Fed. R. Evid. 1006 (summary evidence). The 2024 amendment clarifies that summaries of voluminous evidence are admissible whether or not the underlying evidence has been admitted. See *infra* § 5.1006:2.

Pending 2026 Amendments.

Fed. R. Evid. 801(d)(1)(A) (prior inconsistent statements). Under a pending proposal to significantly expand Fed. R. Evid. 801(d)(1)(A), all prior inconsistent statements of a testifying witness (not just those made under oath) could be admitted as substantive evidence, rather than solely for impeachment, and thus without the need for a limiting instruction. The public comment period for this federal proposal expired in February of 2025. If ultimately approved, this amendment would become effective December 1, 2026. See *infra* § 5.801:6.

III. OVERVIEW OF IOWA SUPREME COURT EVIDENCE DECISIONS

Since the last edition, the Iowa Supreme Court has rendered several decisions addressing evidentiary issues. Those decisions, which are discussed more fully in the following pages, concern topics such as:

Motions in Limine under Rule 5.103: In *State v. Kiefer*, 17 N.W.3d 651, 658–660 (Iowa 2025), the Court discussed what the trial court should do when evidence is introduced contrary to an order in limine, including promptly striking the evidence and instructing the jury to disregard the evidence or requiring further questioning of a witness to clarify testimony. See *infra* §§ 5.103:7, 5.103:14.

Judicial Notice under Rule 5.201: The Court decided three cases that concern judicial notice under Iowa R. Evid. 5.201.

In *State v. Gale*, 21 N.W.3d 151, 156 (Iowa 2025), the Court held that a trial court can take judicial notice of the records of another court in another proceeding at the parties' joint request.

See *infra* § 5.201:5.

In *1000 Friends of Iowa v. Polk County Bd. of Supervisors*, 19 N.W.3d 290, 298 (Iowa 2025), the Court recognized that maps are a source whose accuracy cannot be reasonably questioned and thus held that the mapping of landowners' addresses that were listed in their petition demonstrated that plaintiffs resided sufficiently close to the subject property to have standing to challenge a rezoning decision. See *infra* § 5.201:4.

In *Miller v Iowa Voter Registration Comm'n*, 13 N.W.3d 1 (Iowa 2024), a suit by the county auditor against the Iowa Secretary of State that questioned the security of the statewide voter registration database, the Court held that the trial court erred in taking judicial notice of the steps being taken to ensure the security and integrity of Iowa's voter registration system, as well as whether funds allocated by the legislature were being utilized for that purpose. See *infra* § 5.201:4.

Statements Made During Plea Discussions under Rule 5.410: In *State v. Staton*, 13 N.W.3d 795, 799–800 (Iowa 2024), the Iowa Supreme Court held that Iowa R. of Crim. P. 2.10(5) [now 2.10(4)] permits the sentencing court to cut off discussion of rejected plea offers during allocution because allowing discussion of inadmissible rejected plea offers to support a lighter sentence would have a chilling effect on plea offers. See *infra* § 5.410:1.

The Patient-Litigant Exception to the Physician-Patient Privilege: In *Burton v. West Bend Ins. Co.*, 17 N.W.3d 340, 344–347 (Iowa 2025), the Iowa Supreme Court held that even though the plaintiff put her mental condition in issue under the patient-litigant exception to the doctor-patient privilege, the more specific protections in Iowa Code § 228.9 pertaining to psychological test material, test data, and related documents prohibited the compelled production of the plaintiff's neuropsychological test results and related data directly to the defendant insurance company and its attorneys. See *infra* § 5.501:6(D).

Leading Questions under Rule 5.611: In *Belhak v. Smith*, 21 N.W.3d 535, 548 (Iowa 2025), the Court noted the trial court's "considerable discretion" to exclude or admit answers to leading questions. See *infra* § 611:6.

Expert Testimony under Rule 5.702: Expert testimony was briefly discussed in both *Belhak v. Smith*, 21 N.W.3d 535 (Iowa 2025) and *Wilson v. Shenandoah Medical Center*, 21 N.W.3d 398 (Iowa 2025). In *Belhak*, the Court confirmed that expert testimony is required to establish medical negligence and in *Wilson*, the Court again discussed the ramifications of missing the statutory deadline for expert certification under Iowa Code

§ 668.11. See *infra* § 5.702:1.

Hearsay

Indirect/Backdoor Hearsay under Rule 5.801(c): In *State v. Pirie*, 18 N.W.3d 238 (Iowa 2025), the Court held that testimony about information that a witness received from another party during the course of an investigation constitutes indirect hearsay when offered for the truth of the facts asserted by the non-testifying third-party. See *infra* § 5.802:1.

Iowa’s “Outcry” Hearsay Statute: In *State v. Sievers*, 20 N.W.3d 203, 208–211 (Iowa 2025), the Court interpreted Iowa’s “outcry” statute, Iowa Code § 622.31, that creates a hearsay exception in child abuse prosecutions for a victim’s out-of-court “initial disclosure[s]” of the charged abuse to another person. In a case of first impression, the *Sievers* Court held that “an initial disclosure” under the statute is limited to the child’s first disclosure of the offense and thus did not allow “outcry” testimony from persons other than the first person the child told. See *infra* §§ 5.802:1, 5.802:2.

Market Reports Exception in Rule 5.803(17): In *S.K. v. Obstetric & Gynecologic Assocs.*, 13 N.W.3d 546, 559–561 (Iowa 2024), the Court held that a package insert that accompanied an obstetrical vacuum delivery system and that discussed both contraindications and adverse events regarding use of the device should not have been admitted under the market reports hearsay exception in Rule 5.803(17) because the insert contained evaluative conclusions reached through subjective analysis or assessment of facts, instead of verifiable objective facts. See *infra* § 5.803:17.

Residual Hearsay Exception in Rule 5.807: The Court in *S.K. v. Obstetric & Gynecologic Assocs.*, 13 N.W.3d 546 (Iowa 2024) also held that the package insert that accompanied an obstetrical vacuum delivery system should not have been admitted under the residual hearsay exception in rule 5.807 because the insert only provided general guidance divorced from the facts of the specific case and the plaintiffs’ experts had already testified about the contraindications and adverse events discussed in the insert. See *infra* § 5.807(C).

IV. UNITED STATES SUPREME COURT EVIDENCE DECISIONS

Mental State of the Accused under Federal Rule 704(b): In *United States v. Diaz*, 144 S.Ct. 1727, 602 U.S. 526 (2024), the United States Supreme Court held that an expert’s opinion regarding the mental state of “most people” in a particular group is not an opinion about the defendant’s mental state and thus

does not violate Fed. R. Evid. 704(b). See *infra* § 5.704:2.

Confrontation Clause Limits on Expert Testimony: In *Smith v. Arizona*, 144 S.Ct. 1785, 602 U.S. 779 (2024), the United States Supreme Court held that an expert who conveys the conclusions and findings in a testimonial forensic report prepared by an absent laboratory analyst in support of the expert's opinion violates an accused's right of confrontation if the underlying basis evidence only supports the expert's opinion if true. See *infra* § 5.802:2.

V. IOWA COURT OF APPEALS EVIDENCE DECISIONS

The Iowa Court of Appeals also issued several opinions, published and unpublished, that address evidentiary issues. Under IOWA R. APP. PROC. 6.904(2)(c), an unpublished opinion does not constitute controlling legal authority. However, it may be cited in a brief. Thus, as in prior editions, I have included selected Iowa Court of Appeals decisions decided since the last edition to provide information and guidance to the practitioner.

VI. FEDERAL EVIDENCE DECISIONS

The federal courts have issued many evidence decisions construing the Federal Rules of Evidence. Because many of the Iowa Rules are patterned on the Federal Rules, I have continued to update the treatise with this federal authority when appropriate. Again, because my focus is on Iowa judges and practitioners, I emphasize cases from the U.S. Court of Appeals for the Eighth Circuit. Amendments to the Federal Rules of Evidence are also discussed further in the sections dealing with the rules' Iowa counterparts.