

**IDAHO
RULES OF EVIDENCE**

TITLE 9

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**TITLE 9
EVIDENCE
CHAPTER 1
JUDICIAL KNOWLEDGE**

9-101. FACTS JUDICIALLY NOTICED.

Courts take judicial notice of the following facts:

1. The true signification of all English words and phrases, and of legal expressions.
 2. Whatever is established by law.
 3. Public and private official acts of the legislative, executive and judicial departments of this state and of the United States.
 4. The seals of all the courts of this state and of the United States.
 5. The accession to office and the official signatures and seals of office of the principal officers of government in the legislative, executive and judicial departments of this state and of the United States.
 6. The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States.
 7. The seals of courts of admiralty and maritime jurisdiction, and of notaries public.
 8. The laws of nature, the measure of time, and the geographical divisions and political history of the world.
- In all these cases the court may resort for its aid to appropriate books or documents of reference.

History:

[(9-101) C.C.P. 1881, sec. 896; R.S., R.C., & C.L., sec. 5950; C.S., sec. 7933; I.C.A., sec. 16-101.]

9-102. QUESTIONS OF LAW ADDRESSED TO COURT.

All questions of law arising upon the trial, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court when submitted and before the trial proceeds, and all discussions of law are to be addressed to the court. Whenever the knowledge of the court is by this chapter made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.

History:

[(9-102) R.S., R.C., & C.L., sec. 5951; C.S., sec. 7934; I.C.A., sec. 16-102.]

**CHAPTER 2
WITNESSES**

9-201. WHO MAY BE WITNESSES -- CREDIBILITY OF WITNESSES.

All persons, without exception, otherwise than is specified in the next two (2) sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

History:

[(9-201) C.C.P. 1881, sec. 897; R.S., R.C., & C.L., sec. 5956; C.S., sec. 7935; I.C.A., sec. 16-201.]

9-202. WHO MAY NOT TESTIFY.

The following persons cannot be witnesses:

1. Those who are of unsound mind at the time of their production for examination.

2. Children under ten (10) years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. At the time a child under the age of ten (10) years of age is called to testify in any court proceeding, the court shall conduct a hearing in chambers to determine whether the child qualifies as a witness under this section. In conducting such hearing the court shall take every reasonable means necessary to prevent intimidation or harassment of the child by the parties or their attorneys. The judge, rather than the parties, shall examine the child but he shall do so in the presence of the parties and he shall pose to the child any reasonable questions requested by the parties and previously submitted to the court. The judge may rephrase any questions so that the child is not intimidated.

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted against an executor or administrator, upon a claim or demand against the estate of a deceased person, as to any communication or agreement, not in writing, occurring before the death of such deceased person.

History:

[(9-202) C.C.P. 1881, sec. 898; R.S., R.C., & C.L., sec. 5957; C.S., sec. 7936; am. 1927, ch. 51, sec. 1, p. 67; I.C.A., sec. 16-202; am. 1947, ch. 12, sec. 1, p. 12; 1965, ch. 113, sec. 1, p. 219; am. 1985, ch. 215, sec. 1, p. 524.]

9-203. CONFIDENTIAL RELATIONS AND COMMUNICATIONS.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this exception apply to any case of physical injury to a child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, nor does this exception apply to any case of lewd and lascivious conduct or attempted lewd and lascivious conduct where either party would otherwise be protected by this privilege.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment. The word client used herein shall be deemed to include a person, a corporation or an association.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, provided, however, that:

(A) Nothing herein contained shall be deemed to preclude physicians from reporting of and testifying at all cases of physical injury to children, where it appears the injury has been caused as a result of physical abuse or neglect by a parent, guardian or legal custodian of the child.

(B) Nothing herein contained shall be deemed to preclude physicians from testifying at all cases of physical injury to a person where it appears the injury has been caused as a result of domestic violence.

(C) After the death of a patient, in any action involving the validity of any will or other instrument executed, or claimed to have been executed, by him, conveying or transferring any real or personal property or incurring any financial obligation, such physician or surgeon may testify to the mental or physical condition of such patient and in so testifying may disclose information acquired by him concerning such patient which was necessary to enable him to prescribe or act for such deceased.

(D) That where any person or his heirs or representatives brings an action to recover damages for personal injuries or death, such action shall be deemed to constitute a consent by the person bringing such action that any physician who has prescribed for or treated said injured or deceased person and whose testimony is material in the action may testify.

(E) That if the patient be dead and during his lifetime had not given such consent, the bringing of an action by a beneficiary, assignee or payee or by the legal representative of the insured, to recover on any life, health or accident

insurance policy, shall constitute a consent by such beneficiary, assignee, payee or legal representative to the testimony of any physician who attended the deceased.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by disclosure.

6. Any certificated counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any public or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.

7. Any parent, guardian or legal custodian shall not be forced to disclose any communication made by their minor child or ward to them concerning matters in any civil or criminal action to which such child or ward is a party. Such matters so communicated shall be privileged and protected against disclosure; excepting, this section does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this section apply to any case of physical injury to a minor child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, guardian or legal custodian.

History:

[(9-203) C.C.P. 1881, sec. 899; R.S., R.C., & C.L., sec. 5958; C.S., sec. 7937; I.C.A., sec. 16-203; am. 1963, ch. 104, sec. 1, p. 324; am. 1963, ch. 122, sec. 1, p. 351; am. 1967, ch. 121, sec. 1, p. 265; am. 1971, ch. 36, sec. 1, p. 81; am. 1972, ch. 29, sec. 1, p. 42; am. 1979, ch. 151, sec. 1, p. 465; am. 1996, ch. 302, sec. 1, p. 994.]

9-203A. CONFIDENTIAL COMMUNICATIONS WITH ACCOUNTANTS.

1. Any licensed public accountant, or certified public accountant, cannot, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

2. Notwithstanding the provisions of subsection 1 of this section, as part of a proceeding or investigation conducted by the board of accountancy or quality review program required, implemented, conducted or approved by the board of accountancy, a certified public accountant or a licensed public accountant may be examined and may disclose any communication made by a client to the certified public accountant or licensed public accountant, or any advice given by that accountant in the course of his professional employment.

3. Any person participating in a proceeding or investigation by the board of accountancy or in the conduct of a quality review program required, implemented, conducted or approved by the board of accountancy shall only be entitled to use the information disclosed by the certified public accountant or licensed public accountant for purposes related to the proceeding, investigation or quality review program and otherwise cannot, without the consent of the accountant's client disclose or be examined regarding the information obtained from the accountant in the course of the proceeding, investigation or quality review program except in connection with the proceeding, investigation or quality review program. In addition, any person participating in the proceeding, investigation or quality review program cannot, without the consent of the accountant's client, disclose or be examined regarding their analysis of the information provided by the accountant pursuant to the proceeding, investigation or quality review program, except in connection with the proceeding, investigation or quality review program.

4. The word "client" used herein shall be deemed to include a person, a corporation or an association. The word "communication" as used herein shall be deemed to include but shall not be limited to, reports, financial statements, tax returns, or other documents relating to the client's personal and/or business financial status, whether or not said reports or documents were prepared by the client, the licensed public accountant or certified public accountant, or other person who prepared said documents at the direction of and under the supervision of said accountants.

History:

[9-203A, added 1978, ch. 262, sec. 1, p. 570; am. 1989, ch. 149, sec. 1, p. 359.]

9-204. JUDGE OR JUROR MAY TESTIFY.

The judge himself, or any juror, may be called as a witness by either party, but in such case it is in the discretion of the court to order the trial to be postponed or suspended, and to take place before another judge or jury.

History:

[(9-204) C.C.P. 1881, sec. 900; R.S., R.C., & C.L., sec. 5959; C.S., sec. 7938; I.C.A., sec. 16-204.]

9-205. INTERPRETERS.

In any civil or criminal action in which any witness or a party does not understand or speak the English language, or who has a physical disability which prevents him from fully hearing or speaking the English language, then the court shall appoint a qualified interpreter to interpret the proceedings to and the testimony of such witness or party. Upon appointment of such interpreter, the court shall cause to have the interpreter served with a subpoena as other witnesses, and such interpreter shall be sworn to accurately and fully interpret the testimony given at the hearing or trial to the best of his ability before assuming his duties as an interpreter. The court shall determine a reasonable fee for all such interpreter services which shall be paid out of the district court fund.

History:

[9-205, added 1975, ch. 64, sec. 2, p. 130; am. 1994, ch. 215, sec. 1, p. 673; am. 2010, ch. 235, sec. 2, p. 542.]

9-206. DECEASED OR ABSENT WITNESSES -- TRANSCRIBED TESTIMONY ADMISSIBLE.

The testimony of a witness who testified at the trial in an action or proceeding in any district court of the State of Idaho, when transcribed and certified to be true or correct by the court reporter reporting such testimony at such trial or proceeding, shall be admissible at any subsequent trial between the same parties and relating to the same subject matter, when such witness is deceased, absent from the state or otherwise unavailable or unable to testify as a witness.

History:

[9-206, added 1945, ch. 16, sec. 1, p. 25.]

9-207. ADMISSIBILITY OF EXPRESSIONS OF APOLOGY, CONDOLENCE AND SYMPATHY.

(1) In any civil action brought by or on behalf of a patient who experiences an unanticipated outcome of medical care, or in any arbitration proceeding related to, or in lieu of, such civil action, all statements and affirmations, whether in writing or oral, and all gestures or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence, including any accompanying explanation, made by a health care professional or an employee of a health care professional to a patient or family member or friend of a patient, which relate to the care provided to the patient, or which relate to the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible as evidence for any reason including, but not limited to, as an admission of liability or as evidence of an admission against interest.

(2) A statement of fault which is otherwise admissible and is part of or in addition to a statement identified in subsection (1) of this section shall be admissible.

(3) For the purposes of this section, unless the context otherwise requires:

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

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

History:

[9-207, added 2006, ch. 204, sec. 1, p. 624.]

CHAPTER 3 PUBLIC WRITINGS

9-303. STATUTES -- CLASSIFICATION -- PUBLIC OR PRIVATE.

Statutes are public or private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

History:

[(9-303) C.C.P. 1881, sec. 904; R.S., R.C., & C.L., sec. 5967; C.S., sec. 7942; I.C.A., sec. 16-303.]

9-304. PROOF OF STATUTES ACT -- PUBLICATIONS COVERED.

Printed books or pamphlets purporting on their face to be the session or other statutes of any of the United States, or the territories thereof, or of any foreign jurisdiction, and to have been printed and published by the authority of any such state, territory or foreign jurisdiction or proved to be commonly recognized in its courts, shall be received in the courts of this state as prima facie evidence of such statutes.

History:

[9-304, added 1935, ch. 149, sec. 1, p. 367.]

9-305. PROOF OF STATUTES ACT -- UNIFORMITY OF INTERPRETATION.

This act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

History:

[9-305, added 1935, ch. 149, sec. 2, p. 367.]

9-306. PROOF OF STATUTES ACT -- SHORT TITLE.

This act may be cited as the Uniform Proof of Statutes Act.

History:

[9-306, added 1935, ch. 149, sec. 3, p. 367.]

9-307. CERTIFIED COPIES OF FOREIGN LAWS AND WRITINGS -- ADMISSIBILITY.

A copy of the written law, or other public writing, of any state, territory or country, attested by the certificate of the officer having charge of the original, under the public seal of the state, territory or country, is admissible as evidence of such law or writing.

History:

[(9-307) C.C.P. 1881, sec. 907; R.S., R.C., & C.L., sec. 5970; C.S., sec. 7945; I.C.A., sec. 16-305.]

9-308. ORAL EVIDENCE OF COMMON LAW -- REPORTS OF DECISIONS.

The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of another state, territory or foreign country, as are also printed and published books of reports of decisions of the courts of such state, territory or country, commonly admitted in such courts.

History:

[(9-308) C.C.P. 1881, sec. 908; R.S., R.C., & C.L., sec. 5971; C.S., sec. 7946; I.C.A., sec. 16-306.]

9-309. RECITALS IN STATUTES -- CONCLUSIVENESS.

The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

History:

[(9-309) C.C.P. 1881, sec. 909; R.S., R.C., & C.L., sec. 5972; C.S., sec. 7947; I.C.A., sec. 16-307.]

9-310. JUDICIAL RECORD DEFINED.

A judicial record is the record or official entry of the proceedings in a court of justice, or of the official act of a judicial officer, in an action or special proceeding.

History:

[(9-310) C.C.P. 1881, sec. 910; R.S., R.C., & C.L., sec. 5973; C.S., sec. 7948; I.C.A., sec. 16-308.]

9-311. PUBLIC WRITINGS -- CLASSIFICATION.

Public writings are divided into four classes:

1. Laws.
2. Judicial records.
3. Other official documents.
4. Public records kept in this state of private writings.

History:

[(9-311) C.C.P. 1881, sec. 905; R.S., R.C., & C.L., sec. 5968; C.S., sec. 7943; I.C.A., sec. 16-309.]

9-312. AUTHENTICATION OF JUDICIAL RECORD.

A judicial record of this state, or of the United States, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof. That of another state or territory may be proved by the attestation of the clerk and the seal of the court annexed, if there be a clerk and seal, together with a certificate of the chief judge or presiding magistrate, that the attestation is in due form.

History:

[(9-312) C.C.P. 1881, sec. 911; R.S., R.C., & C.L., sec. 5974; C.S., sec. 7949; I.C.A., sec. 16-310.]

9-313. AUTHENTICATION OF JUDICIAL RECORD OF FOREIGN COUNTRY.

A judicial record of a foreign country may be proved by the attestation of the clerk, with the seal of the court annexed, if there be a clerk and seal, or of the legal keeper of the record, with the seal of his office annexed, if there be a seal, together with a certificate of the chief judge, or presiding magistrate, that the person making the attestation is the clerk of the court or the legal keeper of the record, and in either case that the signature of such person is genuine, and that the attestation is in due form. The signature of the chief judge, or presiding magistrate, must be authenticated by the certificate of the minister or ambassador, or a consul, vice consul, or consular agent of the United States in such foreign country.

History:

[(9-313) C.C.P. 1881, sec. 912; R.S., R.C., & C.L., sec. 5975; C.S., sec. 7950; I.C.A., sec. 16-311.]

9-314. COMPARED COPY OF FOREIGN RECORD -- ADMISSIBILITY IN EVIDENCE.

A copy of the judicial record of a foreign country is also admissible in evidence, upon proof:

1. That the copy offered has been compared by the witness with the original and is an exact transcript of the whole of it.
2. That such original was in the custody of the clerk of the court, or other legal keeper of the same; and
3. That the copy is duly attested by a seal which is proved to be the seal of the court where the record remains, if it be the record of a court, or if there be no such seal, or if it be not the record of a court, by the signature of the legal keeper of the original.

History:

[(9-314) C.C.P. 1881, sec. 913; R.S., R.C., & C.L., sec. 5976; C.S., sec. 7951; I.C.A., sec. 16-312.]

9-315. PROOF OF OTHER OFFICIAL DOCUMENTS.

Other official documents may be proved as follows:

1. Acts of the executive of this state, by the records; and of the United States, by the records of the departments of the United States, certified by an officer or employee of those departments, showing that the document is a true and correct copy of the original held by that department. They may also be proved by public documents, printed by the order of the legislature or congress, or either house thereof.

2. The proceedings of the legislature of this state, or of congress, by the journals of those bodies respectively, or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk, or printed by their order.

3. The acts of the executive, or the proceedings of the legislature, of another state or territory in the same manner.

4. The acts of the executive, or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof, in some public act of the executive of the United States.

5. Acts of a municipal corporation of this state, or of a board or department thereof, by a copy, certified by the legal keeper thereof, or by a printed book, published by the authority of such corporation.

6. Documents of any other class in this state, by the original, or by a copy, certified by the legal keeper thereof.

7. Documents of any other class from another state or territory, by the original, or by a copy, certified by the legal keeper thereof, in such a manner that the court is satisfied that the document is, in all likelihood, a copy of an official document from another state or territory.

8. Documents of any other class in a foreign country, by the original, or by a copy, certified by the legal keeper thereof, with a certificate under seal, of the country or sovereign, that the document is a valid and subsisting document of such country, and that the copy is duly certified by the officer having the legal custody of the original.

9. Documents in the departments of the United States government, by the certificate of the legal custodian thereof.

10. The above requirements notwithstanding, if in the discretion of the court the document, or copy thereof, whichever is being submitted for admission into evidence, is an unaltered official document of any agency or department of the state of Idaho or of any other state, then such document may be admitted into evidence.

History:

[9-315] C.C.P. 1881, sec. 914; R.S., R.C., & C.L., sec. 5977; C.S., sec. 7952; I.C.A., sec. 16-313; am. 1980, ch. 294, sec. 1, p. 765.]

9-316. OFFICIAL REPORTS AS EVIDENCE ACT.

Written reports or findings of fact made by officers of this state, on a matter within the scope of their duty as defined by statute, shall, insofar as relevant, be admitted as evidence of the matters stated therein.

History:

[9-316, added 1939, ch. 105, sec. 1, p. 174.]

9-317. OFFICIAL REPORTS AS EVIDENCE -- NOTICE BEFORE TRIAL.

Such report or finding shall be admissible only if the party offering it has delivered a copy of it, or so much thereof as may relate to the controversy, to the adverse party a reasonable time before trial, unless in the opinion of the trial court the adverse party has not been unfairly surprised by the failure to deliver such copy.

History:

[9-317, added 1939, ch. 105, sec. 2, p. 174.]

9-318. OFFICIAL REPORTS AS EVIDENCE -- CROSS-EXAMINATION.

Any adverse party may cross-examine any person making such reports or findings or any person furnishing information used therein; but the fact that such testimony may not be obtainable shall not affect the admissibility of the report or finding, unless, in the opinion of the court, the adverse party is unfairly prejudiced thereby.

History:

[9-318, added 1939, ch. 105, sec. 3, p. 174.]

9-319. OFFICIAL REPORTS AS EVIDENCE -- UNIFORMITY OF INTERPRETATION OF ACT.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History:

[9-319, added 1939, ch. 105, sec. 4, p. 174.]

9-320. OFFICIAL REPORTS AS EVIDENCE -- SHORT TITLE OF ACT.

This act may be cited as the Uniform Official Reports as Evidence Act.

History:

[9-320, added 1939, ch. 105, sec. 5, p. 174.]

9-321. PUBLIC RECORD OF PRIVATE WRITING -- HOW PROVED.

A public record of a private writing may be proved by the original record, or by a copy thereof, certified by the legal keeper of the record.

History:

[(9-321) C.C.P. 1881, sec. 915; R.S., R.C., & C.L., sec. 5978; C.S., sec. 7953; I.C.A., sec. 16-314.]

9-322. ENTRIES IN PUBLIC AND OFFICIAL BOOKS -- EFFECT AS PRIMA FACIE EVIDENCE.

Entries in public or other official books or records, made in the performance of his duty by a public officer of this state, or by another person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein.

History:

[(9-322) C.C.P. 1881, sec. 916; R.S., R.C., & C.L., sec. 5979; C.S., sec. 7954; I.C.A., sec. 16-315.]

9-323. TRANSCRIPT OF DOCKET OF JUSTICE OF ANOTHER STATE -- ADMISSIBILITY.

A transcript from the record or docket of a justice of the peace of another state or territory of a judgment rendered by him, of the proceedings in the action before the judgment, of the execution and return, if any, subscribed by the justice and verified in the manner prescribed in the next section, is admissible evidence of the facts stated therein.

History:

[(9-323) C.C.P. 1881, sec. 917; R.S., R.C., & C.L., sec. 5980; C.S., sec. 7955; I.C.A., sec. 16-316.]

9-324. PROOF OF TRANSCRIPT -- CERTIFICATE OF JUSTICE AND CLERK -- PROOF OF JUDGMENT BY JUSTICE IN PERSON.

There must be attached to the transcript a certificate of the justice that the transcript is in all respects correct, and that he had jurisdiction of the action, and also a further certificate of the clerk or prothonotary of the county in which the justice resided at the time of rendering the judgment, under seal of the county, or the seal of the court of common pleas, or county court, or court of general jurisdiction thereof, certifying that the person subscribing the transcript was, at the date of the judgment, a justice of the peace in the county, and that the signature is genuine. Such judgment, proceedings and jurisdiction may also be proved by the justice himself, on the production of his docket, or by a copy of the judgment, and his oral examination as a witness.

History:

[(9-324) C.C.P. 1881, sec. 918; R.S., R.C., & C.L., sec. 5981; C.S., sec. 7956; I.C.A., sec. 16-317.]

9-325. CERTIFIED COPIES OF WRITINGS.

Whenever a copy of a writing is certified for the purposes of evidence, the certificate must state in substance, that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be a clerk of a court having a seal, under the seal of such court.

History:

[(9-325) C.C.P. 1881, sec. 919; R.S., R.C., & C.L., sec. 5982; C.S., sec. 7957; I.C.A., sec. 16-318.]

9-326. CERTIFICATE OF PURCHASE OR LOCATION OF LANDS -- EFFECT AS EVIDENCE.

A certificate of purchase, or of location, of any lands in this state, issued or made in pursuance of any law of the United States, is primary evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing a preemption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes.

History:

[(9-326) C.C.P. 1881, sec. 920; R.S., R.C., & C.L., sec. 5983; C.S., sec. 7958; I.C.A., sec. 16-319.]

9-327. ENTRIES BY OFFICERS -- EFFECT AS EVIDENCE.

An entry made by an officer, or board of officers, or under the direction and in the presence of either, in the course of official duty, is prima facie evidence of the facts stated in such entry.

History:

[(9-327) C.C.P. 1881, sec. 921; R.S., R.C., & C.L., sec. 5984; C.S., sec. 7959; I.C.A., sec. 16-320.]

9-328. PHOTOGRAPHIC OR DIGITAL RETENTION OF RECORDS -- DISPOSITION OF ORIGINALS.

Any state officer may receive or retain documents filed or recorded in his office on media other than paper, provided that the media comply with the standards set forth in this section. The originals of paper documents may be disposed of in accordance with the provisions of this section.

(1) A state officer may receive, file or record documents in his office in paper form. When permitted by law or administrative rule, a state officer may alternatively receive, file or record documents which are transmitted on other media or by electronic means, provided that the medium or means of transmittal is secure against undetected additions, deletions or alterations of documents during transmittal. Such media and electronic means include, but are not limited to, facsimile transmissions (FAX), magnetic tape or disk, photographic film, optical disk and an electronically transmitted data stream.

(2) A state officer may retain a document in a different form or medium from that in which it is received, provided that the form or medium in which the document is retained results in a permanent record which may be accurately reproduced during the period for which the document must be retained.

(3) If a document is received in paper form or as an image of a paper document, e.g. film, FAX or other digitized image, it must be retained in a form or medium which permits accurate reproduction of the document in paper form. If the medium chosen for retention is photographic, all film used for capture or retention of images must meet the quality standards of the American national standards institute (ANSI). If the medium chosen for retention is digital, it must be secure against unauthorized or undetected alteration or deletion. If the medium itself does not preclude alteration or deletion, the custodial state officer must insure that a document can be restored from a backup medium which may or may not be digital.

(4) If a document is received as a data stream, it must be retained in a system which is secure against unauthorized or undetected alteration or deletion of data, and which provides for periodic backup of data for off-site storage. The system must permit the document to be readily and intelligibly reproduced on paper.

(5) If a document is received in paper form or as an image of a paper document, and if the receiving state officer retains it in another form or medium as permitted in subsection (3) of this section, then the original of the document may be disposed of or returned to the sender, provided that such disposition or return is done pursuant to statute or an administrative rule promulgated under section 67-5751, Idaho Code.

(6) A document retained by a state officer in any form or medium permitted under this section shall be deemed to be an original public record for all purposes. A reproduction or copy of such a document, certified by the state officer, shall be deemed to be a transcript or certified copy of the original, and shall be admissible before any court or administrative hearing.

History:

[9-328, added 1992, ch. 165, sec. 2, p. 529; am. 1997, ch. 74, sec. 1, p. 154.]

9-333. ADMISSIBILITY IN EVIDENCE OF COPIES OF DESTROYED RECORDS.

The photostatic, photographic, microphotographic or microfilmed copy of any such record destroyed or disposed of as herein authorized, or a certified copy thereof, shall be admissible in evidence in any court or proceeding, and shall have the same force and effect as though the original record had been produced and proved. It shall be the duty of the custodian of such records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History:

[9-333, added 1957, ch. 206, sec. 3, p. 433.]

9-334. COPIES OF RECORDS TO BE IN DUPLICATE -- ONE COPY FOR DISPLAY PURPOSES, THE OTHER PLACED IN FIREPROOF VAULT.

Whenever any record or document is copied or reproduced by microphotographic or microfilm, or other mechanical process as herein provided it shall be made in duplicate, and the custodian thereof shall place one copy in a fireproof vault or fireproof storage place, and he shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size or for preparing, for persons entitled thereto, to copies of the record.

History:

[9-334, added 1957, ch. 206, sec. 4, p. 433.]

**CHAPTER 4
PRIVATE WRITINGS**

9-401. PUBLIC AND PRIVATE SEALS.

A public seal in this state is a stamp or impression, made by a public officer with an instrument provided by law, to attest the execution of an official or public document, upon the paper or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign made in another state or territory or foreign country, and there recognized as a seal, must be so regarded in this state.

History:

[(9-401) C.C.P. 1881, sec. 922; R.S., R.C., & C.L., sec. 5989; C.S., sec. 7960; I.C.A., sec. 16-401.]

9-402. HISTORICAL WORKS -- BOOKS OF SCIENCE OR ART -- PUBLISHED MAPS OR CHARTS -- EFFECT AS EVIDENCE.

Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are prima facie evidence of facts of general notoriety and interest.

History:

[(9-402) C.C.P. 1881, sec. 923; R.S., R.C., & C.L., sec. 5990; C.S., sec. 7961; I.C.A., sec. 16-402.]

9-403. NOTICE TO PRODUCE WRITING -- PROOF UPON FAILURE TO PRODUCE -- WHEN NOTICE NOT NECESSARY.

If the writing be in the custody of the adverse party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

History:

[(9-403) C.C.P. 1881, sec. 924; R.S., R.C., & C.L., sec. 5991; C.S., sec. 7962; I.C.A., sec. 16-403.]

9-404. WRITING NEED NOT BE INTRODUCED.

Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

History:

[(9-404) C.C.P. 1881, sec. 925; R.S., R.C., & C.L., sec. 5992; C.S., sec. 7963; I.C.A., sec. 16-404.]

9-405. PROOF OF WRITINGS.

Any writing may be proved either:

1. By any one who saw the writing executed; or
2. By evidence of the genuineness of the handwriting of the maker; or
3. By a subscribing witness.

History:

[(9-405) C.C.P. 1881, sec. 926; R.S., R.C., & C.L., sec. 5993; C.S., sec. 7964; I.C.A., sec. 16-405.]

9-406. DENIAL BY SUBSCRIBING WITNESS -- PROOF BY OTHER EVIDENCE.

If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

History:

[(9-406) C.C.P. 1881, sec. 927; R.S., R.C., & C.L., sec. 5994; C.S., sec. 7965; I.C.A., sec. 16-406.]

9-407. EVIDENCE OF ADMISSION OF EXECUTION.

Where, however, evidence is given that the party against whom the writing is offered, has at any time admitted its execution, no other evidence of the execution need be given, when the instrument is one produced from the custody of the adverse party, and has been acted upon by him as genuine.

History:

[(9-407) C.C.P. 1881, sec. 928; R.S., R.C., & C.L., sec. 5995; C.S., sec. 7966; I.C.A., sec. 16-407.]

9-408. ENTRIES MADE BY DECEDENT -- WHEN ADMISSIBLE.

The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as prima facie evidence of the facts stated therein, in the following cases:

1. When the entry was made against the interest of the person making it.
2. When it was made in the professional capacity, and in the ordinary course of professional conduct.
3. When it was made in the performance of a duty specially enjoined by law.

History:

[(9-408) C.C.P. 1881, sec. 929; R.S., R.C., & C.L., sec. 5996; C.S., sec. 7967; I.C.A., sec. 16-408.]

9-409. ACKNOWLEDGMENT OF PRIVATE WRITINGS.

Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances of real property, and the certificate of such acknowledgment or proof is prima facie evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

History:

[(9-409) C.C.P. 1881, sec. 930; R.S., R.C., & C.L., sec. 5997; C.S., sec. 7968; I.C.A., sec. 16-409.]

9-410. INSTRUMENTS AFFECTING REALTY -- CERTIFIED COPIES OF RECORD -- ADMISSIBILITY.

Every instrument conveying or affecting real property, acknowledged or proved, and certified, as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence in an action or proceeding, without further proof; and a certified copy of the record of such conveyance or instrument thus acknowledged or

proved, may also be read in evidence, with the like effect as the original, on proof, by affidavit or otherwise, that the original is not in the possession or under the control of the party producing the certified copy.

History:

[(9-410) C.C.P. 1881, sec. 931; R.S., R.C., & C.L., sec. 5998; C.S., sec. 7969; I.C.A., sec. 16-410.]

9-411. SECONDARY EVIDENCE OF WRITINGS -- WHEN ADMISSIBLE.

There can be no evidence of the contents of a writing other than the writing itself, except in the following cases:

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made.
2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.
3. When the original is a record or other document in the custody of a public officer.
4. When the original has been recorded, and a certified copy of the record is made evidence by this code or other statutes.
5. When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.
6. When the original consists of medical charts or records of hospitals licensed in this state, and the provisions of section 9-420, Idaho Code, have been followed.

In the cases mentioned in subdivisions 3, 4 and 6, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions 1 and 2, either a copy or oral evidence of the contents.

History:

[(9-411) C.C.P. 1881, sec. 932; R.S., R.C., & C.L., sec. 5999; C.S., sec. 7970; I.C.A., sec. 16-411; am. 1971, ch. 47, sec. 1, p. 100.]

9-412. EXEMPLAR.

Whenever the genuineness of a writing is at issue, any writing admitted or proved to be genuine is competent evidence as an exemplar for the purpose of comparison with the disputed writing: provided, that such writing so admitted or proved to be genuine shall in no way refer or relate to any matter then in issue.

History:

[(9-412) R.C., sec. 6000, as added by 1915, ch. 154, sec. 1, p. 335; reen. C.L., sec. 6000; C.S., sec. 7971; I.C.A., sec. 16-412.]

9-413. BUSINESS RECORDS AS EVIDENCE ACT -- TERM DEFINED.

The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

History:

[9-413, added 1939, ch. 106, sec. 1, p. 175.]

9-414. BUSINESS RECORDS -- WHEN COMPETENT EVIDENCE.

A record of an act, condition or event, shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to the identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

History:

[9-414, added 1939, ch. 106, sec. 2, p. 175.]

9-415. BUSINESS RECORDS -- UNIFORMITY OF INTERPRETATION OF ACT.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History:

[9-415, added 1939, ch. 106, sec. 3, p. 175.]

9-416. BUSINESS RECORDS -- SHORT TITLE OF ACT.

This act may be cited as the Uniform Business Records as Evidence Act.

History:

[9-416, added 1939, ch. 106, sec. 4, p. 175.]

9-417. ADMISSIBILITY OF REPRODUCED RECORDS IN EVIDENCE.

If any business, institution, or member of a profession or calling, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, optical imaging, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity and the principal or true owner has not authorized destruction or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

History:

[9-417, added 1951, ch. 173, sec. 1, p. 368; am. 1995, ch. 39, sec. 1, p. 59.]

9-418. INTERPRETATION.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History:

[9-418, added 1951, ch. 173, sec. 2, p. 368.]

9-419. SHORT TITLE.

This law may be cited as the Uniform Photographic Copies of Business Records as Evidence Act.

History:

[9-419, added 1951, ch. 173, sec. 3, p. 368.]

9-420. PROOF OF HOSPITAL MEDICAL CHARTS OR RECORDS BY CERTIFIED COPY AND COMPLIANCE WITH SUBPOENA DUCES TECUM FOR PRODUCTION THEREOF.

1. Medical charts or records of hospitals licensed in this state may be proved as to foundation, identity and authenticity by use of a legible and durable copy, certified upon verification by an employee of the hospital charged with the responsibility of being custodian of the originals thereof and empowered by said hospital to make such verified certifications. Said copy may be used in any proceeding in lieu of the original which, however, the hospital shall hold available during the pendency of the cause or proceeding for inspection and comparison by the court, tribunal or hearing officer and by the parties and their attorneys of record. A hospital wishing to avail itself of this section shall at any time prior to the time for proof of said charts and records, place on file with the clerk of the court or with the other body or agency conducting the proceeding a certified copy of a resolution of the governing board of such hospital, authorizing and identifying such employee.

2. When a subpoena duces tecum is served upon any employee of such a hospital, and requires the production of any such medical charts or records at trial, deposition or any other proceeding, it is sufficient compliance therewith if a hospital employee charged with the responsibility of being custodian of the originals thereof promptly notifies the party causing service of the subpoena, or his attorney of record, together with all other parties to the proceeding in which the subpoena was issued and of which parties he has reasonable notice, or their attorneys of record, of the hospital's election to proceed under the provisions hereof and of the estimated actual and reasonable expenses of reproducing such charts or records. Following such notification, the hospital employee

charged with custodian responsibility for the original charts or records specified in the subpoena shall hold the same available at the hospital, and upon payment to the hospital of said estimated reproduction expenses shall promptly deliver, by mail or otherwise, a true, legible and durable copy of all medical charts or records specified in such subpoena, certified upon his verification, to the clerk of the court before which said proceeding is pending, or to the officer, body or tribunal before which said proceeding is pending if it be not before a court of this state. Such copies shall be delivered after being separately enclosed and sealed in an inner envelope or wrapper, with the title and number of the action, cause or proceeding, the name of such hospital, the name of the hospital employee making such certification and verification and the date of the subpoena clearly inscribed thereon, and the sealed envelope or wrapper shall then be enclosed and sealed in an outer envelope or wrapper, and delivered as aforesaid.

If the hospital has none of the charts or records specified in the subpoena, or only part thereof, an employee having custodial responsibility for original hospital charts or records shall so state in an affidavit and following notice and payment of expenses as hereinabove provided shall hold available such original charts or records as are in the hospital's custody and specified in the subpoena and shall deliver copies thereof certified upon his verification together with said affidavit, in the manner hereinabove provided.

3. The personal attendance of the hospital employee having custodial responsibility for the original charts or records specified in the subpoena is required if the subpoena contains a clause providing substantially as follows: "The personal attendance of a hospital employee having custodial responsibility for the original charts or records specified herein is required by this subpoena. The procedure outlined in section 9-420, Idaho Code, shall not be sufficient compliance herewith." If the subpoena duces tecum requires the attendance of a hospital employee in the above manner, said requirement shall be deemed satisfied by the personal attendance of any hospital employee whose name has been lodged with the court or other body as provided in subsection 1 of this section. If personal attendance of a witness is required in the manner herein provided, the hospital may nevertheless elect to substitute true, legible and durable copies of the charts or records specified in the subpoena duces tecum by the giving of a notice of such election in the manner hereinabove set forth, in which case payment to the hospital of the actual and reasonable expenses of duplication of such charts or records by any party to the proceeding in which the subpoena was issued, or such party's attorney of record, shall be a condition precedent to the personal attendance of any person pursuant to said subpoena, unless otherwise ordered by the court or other body before which said proceeding is pending.

4. Any patient whose medical records or charts are thus copied and delivered, any person acting on his behalf, the hospital having custody of such records, or any physician, nurse or other person responsible for entries on such charts or records shall have standing to apply to the court or other body before which the cause or proceeding is pending for a protective order denying, restricting or otherwise limiting access and use of such copies or original charts and records. Such patients, persons, hospitals, physicians or nurses who are not parties to the cause or proceeding and who wish to apply for a protective order may petition to intervene in the cause or proceeding and simultaneously apply for such a protective order.

History:

[I.C., sec. 9-420, as added by 1971, ch. 47, sec. 2, p. 100.]

9-421. TAKEN OR CONVERTED MERCHANDISE -- EVIDENCE.

In any civil action for a violation of the shoplifting laws of Idaho, photographs of the goods or merchandise alleged to have been taken or converted shall be deemed competent evidence of such goods or merchandise and shall be admissible in any proceeding, hearing or trial to the same extent as if such goods and merchandise had been introduced as evidence. Such photographs shall bear a written description of the goods or merchandise alleged to have been taken or converted, the name of the owner of such goods or merchandise, or the store or establishment wherein the alleged violation occurred, the name of the accused, the name of a peace officer, the date of the photograph and the name of the photographer. Such writing shall be made under oath by a peace officer, and the photographs identified by the signature of the photographer. Upon the filing of such photograph and writing with the authority or court holding such goods and merchandise as evidence, such goods or merchandise shall be returned to their owner, or the proprietor or manager of the store or establishment wherein the alleged violation occurred.

History:

[9-421, added 1980, ch. 244, sec. 1, p. 564.]

CHAPTER 5 INDISPENSABLE EVIDENCE -- STATUTE OF FRAUDS

9-501. PERJURY AND TREASON.

Perjury and treason must be proved by testimony of more than one (1) witness. Treason by the testimony of two witnesses to the same overt act; and perjury by the testimony of two (2) witnesses, or one (1) witness and corroborating circumstances.

History:

[(9-501) C.C.P. 1881, sec. 933; R.S., R.C., & C.L., sec. 6005; C.S., sec. 7972; I.C.A., sec. 16-501.]

9-502. WILLS TO BE IN WRITING.

A last will and testament, except a nuncupative will, is invalid unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

History:

[(9-502) C.C.P. 1881, sec. 934; R.S., R.C., & C.L., sec. 6006; C.S., sec. 7973; I.C.A., sec. 16-502.]

9-503. TRANSFERS OF REAL PROPERTY TO BE IN WRITING.

No estate or interest in real property, other than for leases for a term not exceeding one (1) year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

History:

[(9-503) C.C.P. 1881, sec. 935; R.S., R.C., & C.L., sec. 6007; C.S., sec. 7974; I.C.A., sec. 16-503.]

9-504. EXCEPTIONS TO PRECEDING SECTION.

The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

History:

[(9-504) C.C.P. 1881, sec. 936; R.S., R.C., & C.L., sec. 6008; C.S., sec. 7975; I.C.A., sec. 16-504.]

9-505. CERTAIN AGREEMENTS TO BE IN WRITING.

In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof.
2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in section 9-506, Idaho Code.
3. An agreement made upon consideration of marriage, other than a mutual promise to marry.
4. An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

5. A promise or commitment to lend money or to grant or extend credit in an original principal amount of fifty thousand dollars (\$50,000) or more, made by a person or entity engaged in the business of lending money or extending credit.

History:

[(9-505) C.C.P. 1881, sec. 937; R.S., R.C., & C.L., sec. 6009; am. 1919, ch. 149, sec. 79a, p. 472; C.S. sec. 7976; I.C.A., sec. 9-505; am. 1993, ch. 397, sec. 1, p. 1460; am. 1996, ch. 177, sec. 1, p. 566.]

9-506. ORIGINAL OBLIGATIONS -- WRITING NOT NEEDED.

A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise.

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligations in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety.

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person.

4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale.

5. Where the holder of an instrument for the payment of money, upon which a third person is, or may become, liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration and in connection with such transfer, enters into a promise respecting such instrument.

History:

[(9-506) C.C.P. 1881, sec. 938; R.S., R.C., & C.L., sec. 6010; C.S., sec. 7977; I.C.A., sec. 16-506.]

9-507. REPRESENTATIONS OF CREDIT TO BE IN WRITING.

No evidence is admissible to charge a person upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by, or in the handwriting of, the party to be charged.

History:

[(9-507) C.C.P. 1881, sec. 939; R.S., R.C., & C.L., sec. 6011; C.S., sec. 7978; I.C.A., sec. 16-507.]

9-508. REAL ESTATE COMMISSION CONTRACTS TO BE IN WRITING.

No contract for the payment of any sum of money or thing of value, as and for a commission or reward for the finding or procuring by one person of a purchaser of real estate of another shall be valid unless the same shall be in writing, signed by the owner of such real estate, or his legal, appointed and duly qualified representative.

History:

[(9-508) 1915, ch. 131, sec. 1, p. 287; compiled and reen. C.L., sec. 6012; C.S., sec. 7979; I.C.A., sec. 16-508.]

CHAPTER 6 PRODUCTION OF ALTERED WRITINGS

9-601. EXPLANATION OF ALTERATIONS.

The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by

it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he do [does] that he may give the writing in evidence, but not otherwise.

History:

[(9-601) C.C.P. 1881, sec. 940; R.S., R.C., & C.L., sec. 6030; C.S., sec. 7980; I.C.A., sec. 16-601.]

CHAPTER 7 MEANS OF PRODUCTION OF EVIDENCE

9-706. SUBPOENAS UNNECESSARY WHEN PERSON IS PRESENT.

A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

History:

[(9-706) C.C.P. 1881, sec. 946; R.S., R.C., & C.L., sec. 6040; C.S., sec. 7986; I.C.A., sec. 16-706.]

9-708. DISOBEDIENCE OF SUBPOENA -- PENALTY TO AGGRIEVED PARTY.

A witness disobeying a subpoena also forfeits to the party aggrieved the sum of \$100, and all damages which he may sustain by the failure of a witness to attend, which forfeiture and damages may be recovered in a civil action.

History:

[(9-708) C.C.P. 1881, sec. 948; R.S., R.C., & C.L., sec. 6042; C.S., sec. 7988; I.C.A., sec. 16-708.]

9-709. ATTACHMENT OF WITNESS.

In case of failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

History:

[(9-709) C.C.P. 1881, sec. 949; R.S., R.C., & C.L., sec. 6043; C.S., sec. 7989; I.C.A., sec. 16-709.]

9-710. WARRANT OF COMMITMENT -- CONTENTS, DIRECTION AND EXECUTION.

Every warrant of commitment, issued by a court or officer pursuant to this chapter, must specify therein particularly, the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness pursuant to this chapter, must be directed to the sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the district court.

History:

[(9-710) C.C.P. 1881, sec. 950; R.S., R.C., & C.L., sec. 6044; C.S., sec. 7990; I.C.A., sec. 16-710.]

9-711. PRISONERS CONFINED WITHIN STATE -- EXAMINATION IN PRISON -- PRODUCTION IN COURT.

If the witness be a prisoner, confined in a jail or prison within this state, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made by any justice of the supreme court or judge or magistrate of the district court.

History:

[(9-711) C.C.P. 1881, sec. 951; R.S., R.C., & C.L., sec. 6045; C.S., sec. 7991; I.C.A., sec. 16-711; am. 1969, ch. 126, sec. 2, p. 388.]

9-712. EXAMINATION OR PRODUCTION OF PRISONERS -- MOTION, AFFIDAVIT, AND ORDER.

Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness and its materiality.

History:

[(9-712) C.C.P. 1881, sec. 952; R.S., R.C., & C.L., sec. 6046; C.S., sec. 7992; I.C.A., sec. 16-712.]

9-713. PRISONERS -- EXAMINATION IN PERSON OR BY DEPOSITION.

If the witness be imprisoned in the county where the action or proceeding is pending his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

History:

[(9-713) C.C.P. 1881, sec. 953; R.S., R.C., & C.L., sec. 6047; C.S., sec. 7993; I.C.A., sec. 16-713.]

**CHAPTER 8
UNIFORM MEDIATION ACT**

9-801. SHORT TITLE.

This chapter may be cited as the "Uniform Mediation Act."

History:

[9-801, added 2008, ch. 35, sec. 1, p. 67.] 34

9-802. DEFINITIONS.

In this chapter:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing or reconvening a mediation or retaining a mediator.

(3) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(4) "Mediator" means an individual who conducts a mediation.

(5) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) "Proceeding" means:

(a) A judicial, administrative, arbitral or other adjudicative process, including related prehearing and posthearing motions, conferences and discovery; or

(b) A legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

(a) To execute or adopt a tangible symbol with the present intent to authenticate a record;

(b) To attach or logically associate an electronic symbol, sound or process to or with a record with the present intent to authenticate a record; or

(c) To assent on a stenographic record with the present intent to authenticate a record.

History:

[9-802, added 2008, ch. 35, sec. 1, p. 67.]

9-803. SCOPE.

(1) Except as otherwise provided in subsection (2) or (3) of this section, this chapter applies to a mediation in which:

(a) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency or arbitrator;

- (b) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
- (c) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(2) This chapter does not apply to a mediation:

- (a) Relating to the establishment, negotiation, administration or termination of a collective bargaining relationship;
- (b) Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;
- (c) Conducted by a judge who might make a ruling on the case; or
- (d) Conducted under the auspices of:
 - (i) A primary or secondary school if all the parties are students, or
 - (ii) A correctional institution for youth if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections 9-804 through 9-806, Idaho Code, do not apply to the mediation or part agreed upon. However, sections 9-804 through 9-806, Idaho Code, apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

History:

[9-803, added 2008, ch. 35, sec. 1, p. 68.]

9-804. PRIVILEGE AGAINST DISCLOSURE -- ADMISSIBILITY -- DISCOVERY.

(1) Except as otherwise provided in section 9-806, Idaho Code, a mediation communication is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 9-805, Idaho Code.

(2) In a proceeding, the following privileges apply:

- (a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.
- (b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.
- (c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

History:

[9-804, added 2008, ch. 35, sec. 1, p. 68.]

9-805. WAIVER AND PRECLUSION OF PRIVILEGE.

(1) A privilege under section 9-804, Idaho Code, may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

- (a) In the case of the privilege of a mediator, it is expressly waived by the mediator; and
- (b) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(2) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 9-804, Idaho Code, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(3) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 9-804, Idaho Code.

History:

[9-805, added 2008, ch. 35, sec. 1, p. 69.]

9-806. EXCEPTIONS TO PRIVILEGE.

(1) There is no privilege under section 9-804, Idaho Code, for a mediation communication that is:

- (a) In an agreement evidenced by a record signed by all parties to the agreement;
- (b) Available to the public under chapter 1, title 74, Idaho Code, or made during a session of a mediation which is open, or is required by law to be open, to the public;
- (c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (d) Intentionally used to plan a crime, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity;
- (e) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;
- (f) Except as otherwise provided in subsection (3) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant or representative of a party based on conduct occurring during a mediation; or
- (g) Sought or offered to prove or disprove abuse, neglect, abandonment or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the mediation.

(2) There is no privilege under section 9-804, Idaho Code, if a court, administrative agency or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

- (a) A court proceeding involving a felony or misdemeanor; or
- (b) Except as otherwise provided in subsection (3) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (1)(f) or (2)(b) of this section.

(4) If a mediation communication is not privileged under subsection (1) or (2) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (1) or (2) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

History:

[9-806, added 2008, ch. 35, sec. 1, p. 69; am. 2015, ch. 141, sec. 9, p. 381.]

9-807. PROHIBITED MEDIATOR REPORTS.

(1) Except as otherwise provided in subsection (2) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding or other communication regarding a mediation to a court, administrative agency or other authority that may make a ruling on the dispute that is the subject of the mediation.

(2) A mediator may disclose:

- (a) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;
- (b) A mediation communication as permitted under section 9-806, Idaho Code;
- (c) A mediation communication evidencing abuse, neglect, abandonment or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment; or
- (d) In mediation governed by Idaho rule of civil procedure 16(j), information permitted under Idaho rule of civil procedure 16(j).

(3) A communication made in violation of subsection (1) of this section may not be considered by a court, administrative agency or arbitrator.

History:

[9-807, added 2008, ch. 35, sec. 1, p. 70.]

9-808. CONFIDENTIALITY.

Unless subject to chapter 1 or 2, title 74, Idaho Code, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

History:

[9-808, added 2008, ch. 35, sec. 1, p. 70; am. 2015, ch. 141, sec. 10, p. 382.]

9-809. MEDIATOR'S DISCLOSURE OF CONFLICTS OF INTEREST -- BACKGROUND.

(1) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(a) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect or create the appearance of affecting the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(b) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(2) If a mediator learns any fact described in subsection (1)(a) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(3) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(4) A person that violates subsection (1) or (2) of this section is precluded by the violation from asserting a privilege under section 9-804, Idaho Code.

(5) Subsections (1), (2) and (3) of this section do not apply to an individual acting as a judge.

(6) This chapter does not require that a mediator have a special qualification by background or profession.

(7) A mediator must be impartial unless, after disclosure of the facts required in subsections (1) and (2) of this section to be disclosed, the parties agree otherwise.

History:

[9-809, added 2008, ch. 35, sec. 1, p. 70.]

9-810. PARTICIPATION IN MEDIATION.

Unless otherwise provided by court rule or order, an attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

History:

[9-810, added 2008, ch. 35, sec. 1, p. 71.]

9-811. INTERNATIONAL COMMERCIAL MEDIATION.

(1) In this section, "model law" means the model law on international commercial conciliation adopted by the United Nations commission on international trade law on June 28, 2002, and recommended by the United Nations general assembly in a resolution (A/RES/57/18) dated November 19, 2002, and "international commercial mediation" means an international commercial conciliation as defined in article 1 of the model law.

(2) Except as otherwise provided in subsections (3) and (4) of this section, if a mediation is an international commercial mediation, the mediation is governed by the model law.

(3) Unless the parties agree in accordance with section 9-803(3), Idaho Code, that all or part of an international commercial mediation is not privileged, sections 9-804, 9-805 and 9-806, Idaho Code, and any applicable definitions in section 9-802, Idaho Code, also apply to the mediation and nothing in article 10 of the model law derogates from sections 9-804, 9-805 and 9-806, Idaho Code.

(4) If the parties to an international commercial mediation agree under article 1, subsection 7., of the model law that the model law does not apply, this chapter applies.

History:

[9-811, added 2008, ch. 35, sec. 1, p. 71.]

9-812. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits or supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but this chapter does not modify, limit or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

History:

[9-812, added 2008, ch. 35, sec. 1, p. 71.]

9-813. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History:

[9-813, added 2008, ch. 35, sec. 1, p. 71.]

9-814. APPLICATION TO EXISTING AGREEMENTS OR REFERRALS.

This chapter governs a mediation occurring after the effective date of this chapter pursuant to a referral or an agreement to mediate, whenever made.

History:

[9-814, added 2008, ch. 35, sec. 1, p. 71.]

**CHAPTER 13
RIGHTS AND DUTIES OF WITNESSES**

9-1301. ATTENDANCE OF WITNESSES.

A witness, served with a subpoena, must attend at the time appointed, with any papers under his control, required by the subpoena, and answer all pertinent and legal questions, and, unless sooner discharged, must remain until the testimony is closed.

History:

[(9-1301) C.C.P. 1881, sec. 977; R.S., R.C., & C.L., sec. 6090; C.S., sec. 8043; I.C.A., sec. 16-1301.]

9-1302. PRIVILEGE OF WITNESSES -- QUESTIONS REQUIRED TO BE ANSWERED.

A witness must answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony; nor need he give an answer which will have a direct tendency to degrade his character, unless it be the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony.

History:

[(9-1302) C.C.P. 1881, sec. 978; R.S., R.C., & C.L., sec. 6091; C.S., sec. 8044; I.C.A., sec. 16-1302.]

9-1303. PRIVILEGE FROM ARREST.

Every person who has been, in good faith, served with a subpoena to attend as a witness before a court, judge, commissioner, referee or other person in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

History:

[(9-1303) C.C.P. 1881, sec. 797; R.S., R.C., & C.L., sec. 6092; C.S., sec. 8045; I.C.A., sec. 16-1303.]

9-1304. ARREST IN VIOLATION OF PRECEDING SECTION -- CONTEMPT -- CIVIL LIABILITY.

The arrest of a witness contrary to the preceding section is void, and, when wilfully made, is a contempt of the court; and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with the subpoena, for the damages sustained by him in consequence of the arrest.

History:

[(9-1304) C.C.P. 1881, sec. 980; R.S., R.C., & C.L., sec. 6093; C.S., sec. 8046; I.C.A., sec. 16-1304.]

9-1305. LIABILITY OF OFFICER MAKING ARREST.

An officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating:

1. That he has been served with a subpoena to attend as a witness before a court, officer or other person, specifying the same, the place of attendance and the action or proceeding in which the subpoena was issued; and,
2. That he has not thus been served by his own procurement, with the intention of avoiding an arrest.
3. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena.

The affidavit may be taken by the officer and exonerates him from liability for discharging the witness when arrested.

History:

[(9-1305) C.C.P. 1881, sec. 981; R.S., R.C., & C.L., sec. 6094; C.S., sec. 8047; I.C.A., sec. 16-1305.]

9-1306. DISCHARGE FROM ARREST -- WHO MAY GRANT.

The court or officer issuing the subpoena, and the court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of the provisions of this chapter. If the court has adjourned before the arrest, or before application for the discharge, a judge of the court may grant the discharge.

History:

[(9-1306) C.C.P. 1881, sec. 982; R.S., R.C., & C.L., sec. 6095; C.S., sec. 8048; I.C.A., sec. 16-1306; am. 1969, ch. 126, sec. 10, p. 388.]

**CHAPTER 14
ADMINISTRATION OF OATHS AND AFFIRMATIONS**

9-1401. WHO MAY ADMINISTER OATHS.

Every court, every judge or clerk of any court, every justice and every notary public, the secretary of state, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has power to administer oaths or affirmations.

History:

[(9-1401) C.C.P. 1881, sec. 992; R.S., R.C., & C.L., sec. 6127; C.S., sec. 8064; I.C.A., sec. 16-1401.]

9-1402. FORM OF OATH.

An oath or affirmation in an action or proceeding, may be administered as follows, the person who swears or affirms, expressing his assent when addressed, in the following form:

You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in the issue (or matter), pending between and, shall be the truth, the whole truth, and nothing but the truth, so help you God.

History:

[(9-1402) C.C.P. 1881, sec. 993; R.S., R.C., & C.L., sec. 6128; C.S., sec. 8065; I.C.A., sec. 16-1402.]

9-1403. PECULIAR FORMS OF OATHS.

Whenever the court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with, or in addition to, the usual form of administration, which, in his opinion, is more solemn or obligatory, the court may, in its discretion, adopt that mode.

History:

[(9-1403) C.C.P. 1881, sec. 994; R.S., R.C., & C.L., sec. 6129; C.S., sec. 8066; I.C.A., sec. 16-1403.]

9-1404. PECULIAR FORMS OF OATH -- RELIGIONS OTHER THAN CHRISTIAN.

When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

History:

[(9-1404) C.C.P. 1881, sec. 995; R.S., R.C., & C.L., sec. 6130; C.S., sec. 8067; I.C.A., sec. 16-1404.]

9-1405. AFFIRMATION IN PLACE OF OATH.

Any person who desires it, may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting when addressed, in the following form: "You do solemnly affirm (or declare), that," etc., as above provided.

History:

[(9-1405) C.C.P. 1881, sec. 996; R.S., R.C., & C.L., sec. 6131; C.S., sec. 8068; I.C.A., sec. 16-1405.]

9-1406. CERTIFICATION OR DECLARATION UNDER PENALTY OF PERJURY.

(1) Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to a law of this state, any matter is required or permitted to be supported, evidenced, established or proved by the sworn statement, declaration, verification, certificate, oath, affirmation or affidavit, in writing, of the person making the same, other than a deposition, an oath of office or an oath required to be taken before a specified official other than a notary public, such matter may with like force and effect be supported, evidenced, established or proven by the unsworn certification or declaration, in writing, which is subscribed by such person and is in substantially the following form:

"I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct."

.....

(Date)

.....

(Signature)

(2) This section shall not apply to acknowledgments.

History:

[9-1406, added 2013, ch. 259, sec. 1, p. 636.]

**CHAPTER 15
TENDER AND RECEIPT**

9-1501. WRITTEN OFFER EQUIVALENT TO TENDER.

An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument or property.

History:

[(9-1501) C.C.P. 1881, sec. 983; R.S., R.C., & C.L., sec. 6110; C.S., sec. 8049; I.C.A., sec. 16-1501.]

9-1502. DEBTOR MAY DEMAND RECEIPT.

Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

History:

[(9-1502) C.C.P. 1881, sec. 984; R.S., R.C., & C.L., sec. 6111; C.S., sec. 8050; I.C.A., sec. 16-1502.]

CHAPTER 16 FEES AND MILEAGE OF WITNESSES

9-1601. WITNESSES' FEES IN DISTRICT COURT.

Witnesses in civil actions in district court or magistrates division thereof, or before any referee, master or commissioner thereof, are entitled to receive such witness fees and travel expenses as determined by the trial court pursuant to the Idaho Rules of Civil Procedure.

History:

[(9-1601) R.S., R.C., & C.L., sec. 6139; C.S., sec. 8069; I.C.A., sec. 16-1601; am. 1957, ch. 140, sec. 1, p. 232; am. 1977, ch. 5, sec. 1, p. 10.]

9-1603. INTERPRETERS' FEES.

The interpreters are entitled to receive such fee for their services as set and determined by the court together with the same rate per mile as the state of Idaho pays for state employees pursuant to section 67-2008, Idaho Code, to be paid out of the county treasury by order of the court in both civil and criminal actions.

History:

[(9-1603) R.S., R.C., & C.L., sec. 6141; C.S., sec. 8071; I.C.A., sec. 16-1603; am. 1959, ch. 65, sec. 1, p. 137; am. 1975, ch. 64, sec. 3, p. 130; am. 1982, ch. 213, sec. 2, p. 587.]

9-1604. ATTORNEYS NOT ENTITLED TO WITNESS' FEES.

No counselor or attorney at law in any case shall be allowed any fees for attendance as a witness in any such cause.

History:

[(9-1604) R.S., R.C., & C.L., sec. 6142; C.S., sec. 8072; I.C.A., sec. 16-1604.]

9-1605. STATE NEED NOT PREPAY FEES.

The attorney-general or any prosecuting attorney is authorized to cause subpoenas to be issued, and to compel the attendance of witnesses on behalf of the state, without paying or tendering fees in advance to any witnesses; and any witness failing or neglecting to attend after being served with a subpoena, may be proceeded against and shall be liable in the same manner as provided by law in other cases when fees have been tendered or paid.

History:

[(9-1605) R.S., R.C., & C.L., sec. 6143; C.S., sec. 8073; I.C.A., sec. 16-1605.]

CHAPTER 17 PROOF OF FACTS CONTAINED IN PUBLIC RECORDS

9-1701. LICENSURE OR NONLICENSURE.

(1) The existence or nonexistence of licensure by any public authority in this state, the United States, or any state of the United States may be proved, prima facie, in any criminal or civil action, by the affidavit of the custodian of the records of the licensing authority, or one acting with the authorization of the custodian, stating that the conclusion given was based on a diligent search of the records, and accompanied by a certificate that such person has the custody.

(2) In cases where public licensing functions performed by more than one licensing authority in this state relate to the same subject matter, the bureau of occupational licenses may, by regulation, designate a single custodian to maintain a master list of licensees, and the affidavit of such person, or one acting with his authority, may be used as evidence in the manner and with the effect set forth in subsection (1) of this section.

(3) This section does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute, rule of criminal or civil procedure or rule of evidence recognized by the courts of this state.

History:

[9-1701, added 1979, ch. 131, sec. 4, p. 425.]

9-1702. PROOF OF PRESCRIPTION DRUG STATUS.

Proof that a drug is a prescription or legend drug may be made as provided by section 54-1738, Idaho Code.

History:

[9-1702, added 1979, ch. 131, sec. 4, p. 426.]

CHAPTER 18
UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT

9-1801. SHORT TITLE.

This chapter may be cited as the "Uniform Child Witness Testimony by Alternative Methods Act."

History:

[9-1801, added 2003, ch. 152, sec. 2, p. 438.]

9-1802. DEFINITIONS.

In this chapter:

(1) "Alternative method" means a method by which a child witness testifies which does not include all of the following:

- (a) Having the child present in person in an open forum;
- (b) Having the child testify in the presence and full view of the finder of fact and presiding officer; and
- (c) Allowing all of the parties to be present, to participate and to view and be viewed by the child.

(2) "Child witness" means an individual under the age of thirteen (13) years who has been or will be called to testify in a proceeding.

(3) "Criminal proceeding" means a trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state and a juvenile delinquency proceeding involving conduct that if engaged in by an adult would constitute a violation of the criminal law of this state.

(4) "Noncriminal proceeding" means a trial or hearing before a court or an administrative agency of this state having judicial or quasi-judicial powers, other than a criminal proceeding.

History:

[9-1802, added 2003, ch. 152, sec. 2, p. 438.]

9-1803. APPLICABILITY.

This chapter applies to the testimony of child witnesses in all criminal or noncriminal proceedings. However, this chapter does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify, or in a juvenile courtroom proceeding involving conduct that if engaged in by an adult would constitute a violation of a criminal law of this state, testimony by a child witness in a closed forum as may be authorized or required by law.

History:

[9-1803, added 2003, ch. 152, sec. 2, p. 438.]

9-1804. HEARING WHETHER TO ALLOW TESTIMONY BY ALTERNATIVE METHOD.

(1) The presiding officer of a criminal or noncriminal proceeding may order a hearing to determine whether to allow presentation of the testimony of a child witness by an alternative method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

(2) A hearing to determine whether to allow presentation of the testimony of a child witness by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant,

and any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer. In conducting the hearing, the presiding officer is not bound by rules of evidence, except for the rules of privilege.

History:

[9-1804, added 2003, ch. 152, sec. 2, p. 438.]

9-1805. STANDARDS FOR DETERMINING WHETHER CHILD WITNESS' TESTIMONY MAY BE PRESENTED BY ALTERNATIVE METHOD.

(1) In a criminal proceeding, the presiding officer may order the presentation of the testimony of a child witness by an alternative method only in the following situations:

(a) A child witness' testimony may be taken otherwise than in an open forum in the presence and full view of the finder of fact if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum.

(b) A child witness' testimony may be taken other than in a face-to-face confrontation between the child and a defendant if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

(2) In a noncriminal proceeding, the presiding officer may order the presentation of the testimony of a child witness by an alternative method if the presiding officer finds by a preponderance of the evidence that presenting the testimony of the child by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

(a) The nature of the proceeding;

(b) The age and maturity of the child;

(c) The relationship of the child to the parties in the proceeding;

(d) The nature and degree of emotional trauma that the child may suffer in testifying; and

(e) Any other relevant factor.

History:

[9-1805, added 2003, ch. 152, sec. 2, p. 438.]

9-1806. FACTORS FOR DETERMINING WHETHER TO PERMIT ALTERNATIVE METHOD.

If the presiding officer determines that a standard under section 9-1805, Idaho Code, has been met, the presiding officer shall determine whether to allow the presentation of the testimony of a child witness by an alternative method and in doing so shall consider:

(1) Alternative methods reasonably available;

(2) Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;

(3) The nature of the case;

(4) The relative rights of the parties;

(5) The importance of the proposed testimony of the child;

(6) The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and

(7) Any other relevant factor.

History:

[9-1806, added 2003, ch. 152, sec. 2, p. 439.]

9-1807. ORDER REGARDING TESTIMONY BY ALTERNATIVE METHOD.

(1) An order allowing or disallowing the presentation of the testimony of a child witness by an alternative method must state the findings of fact and conclusions of law that support the presiding officer's determination.

(2) An order allowing the presentation of the testimony of a child witness by an alternative method must state:

- (a) The method by which the testimony is to be presented;
- (b) A list, individually or by category, of the persons either allowed to be present or required to be excluded during the taking of the testimony of the child;
- (c) Any special conditions necessary to facilitate a party's right to examine or cross-examine the child;
- (d) Any condition or limitation upon the participation of persons present during the taking of the testimony of the child; and
- (e) Any other condition necessary for taking or presenting the testimony.

(3) The alternative method ordered by the presiding officer must be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order.

History:

[9-1807, added 2003, ch. 152, sec. 2, p. 439.]

9-1808. RIGHT OF PARTIES TO EXAMINE CHILD WITNESS.

An alternative method ordered by the presiding officer must permit a full and fair opportunity for examination and cross-examination of the child witness.

History:

[9-1808, added 2003, ch. 152, sec. 2, p. 440.]