

**IDAHO  
RULES OF EVIDENCE**

**IDAHO  
SUPREME COURT**

**Effective July 2015**

**TABLE OF CONTENTS**  
**Idaho Rules of Evidence**

**Article I. General Provisions .....5**  
101. Title and scope.  
102. Purpose and construction.  
103. Rulings on evidence.  
104. Preliminary questions.  
105. Limited admissibility.  
106. Remainder of or related writings or recorded statements.

**Article II. Judicial Notice .....7**  
201. Judicial notice of adjudicative facts.

**Article III. Presumptions .....7**  
301. Presumptions in general in civil actions and proceedings.  
302. Applicability of Federal law in civil cases.  
303. Presumptions in criminal cases.

**Article IV. Relevancy and its Limits .....8**  
401. Definition of relevant evidence.  
402. Relevant evidence generally admissible; irrelevant evidence inadmissible.  
403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.  
404. Character evidence not admissible to prove conduct; exceptions; other crimes.  
405. Methods of proving character.  
406. Habit; routine practice.  
407. Subsequent remedial measures.  
408. Compromise and offers to compromise.  
409. Payment of medical and similar expenses.  
410. Inadmissibility of pleas, plea discussions, and related statements.  
411. Liability insurance.  
412. Sex crime cases; relevance of victim's past behavior.  
413. Proceedings of medical malpractice screening panels.  
414. Inadmissibility of expressions of condolence or sympathy.

**Article V. Privileges .....12**  
501. Privileges recognized only as provided.  
502. Lawyer-client privilege.  
503. Physician and psychotherapist-patient privilege.  
504. Husband-wife privilege.  
505. Religious privilege.  
506. Political vote.  
507. Mediator Privilege.  
508. Secrets of State and other official information; governmental privileges.  
509. Identity of informer.  
510. Waiver of privilege by voluntary disclosure.  
511. Privileged matter disclosed under compulsion or without opportunity to claim privilege.  
512. Comment upon or inference from claim of privilege; instruction.  
513. Lawyer may exercise claim of privilege.

- 514. Parent-child; guardian or legal custodian-ward privilege.
- 515. Accountant-client privilege.
- 516. School counselor-student privilege.
- 517. Licensed counselor-client privilege.
- 518. Licensed social worker-client privilege.
- 519. Hospital, in-hospital medical staff committee and medical society privilege.
- 520. Medical malpractice screening panel privilege.

**Article VI. Witnesses .....25**

- 601. General rule of competency.
- 602. Lack of personal knowledge.
- 603. Oath or affirmation.
- 604. Interpreters.
- 605. Competency of judge as witness.
- 606. Competency of juror as witness.
- 607. Who may impeach.
- 608. Evidence of character and conduct of witness.
- 609. Impeachment by evidence of conviction of crime.
- 610. Religious beliefs or opinions.
- 611. Mode and order of interrogation and presentation.
- 612. Writing or object used to refresh memory.
- 613. Prior statements of witnesses.
- 614. Calling and interrogation of witnesses by court.
- 615. Exclusion of witnesses.

**Article VII. Opinions and Expert Testimony .....29**

- 701. Opinion testimony by lay witness.
- 702. Testimony by experts.
- 703. Basis of opinion testimony by experts.
- 704. Opinion on ultimate issue.
- 705. Disclosure of facts or data underlying expert opinion.
- 706. Court appointed experts.

**Article VIII. Hearsay .....30**

- 801. Definitions.
- 802. Hearsay rule.
- 803. Hearsay exceptions; availability of declarant immaterial.
- 804. Hearsay exceptions; declarant unavailable.
- 805. Hearsay within hearsay.
- 806. Attacking and supporting credibility of declarant.

**Article IX. Authentication and Identification .....34**

- 901. Requirement of authentication or identification.
- 902. Self-authentication.
- 903. Subscribing witness' testimony unnecessary.
- 904. Authentication of medical or dental tests and test results for diagnostic or treatment purposes.

**Article X. Contents of Writings, Recordings, and Photographs .....37**

- 1001. Definitions.
- 1002. Requirement of original.
- 1003. Admissibility of duplicates.

- 1004. Admissibility of other evidence of contents.
- 1005. Public records.
- 1006. Summaries.
- 1007. Testimony or written admission of party.
- 1008. Functions of court and jury.

**Article XI. Miscellaneous Rules .....38**

- 1101. Adoption and amendments.
- 1102. Effect on evidentiary statutes and rules.
- 1103. Application.

## Article I. General Provisions

### I.R.E 101. Title and Scope.

- (a) Title. These rules shall be known and cited as the Idaho Rules of Evidence, or abbreviated I.R.E.
- (b) Scope. These rules govern all actions, cases and proceedings in the courts of the State of Idaho and all actions, cases and proceedings to which rules of evidence are applicable, except as hereinafter provided.
- (c) Rules of privilege. The rules with respect to privileges apply at all stages of all actions, cases and proceedings.
- (d) Rules inapplicable in part. These rules apply in the following proceedings subject to the enumerated exceptions:
- (1) Preliminary hearings. Preliminary hearings except as modified by Rule 5.1(b) of the Idaho Criminal Rules.
  - (2) Juvenile Corrections Act. Proceedings under the Juvenile Corrections Act except as modified by the Idaho Juvenile Rules.
  - (3) Masters proceedings. Masters proceedings unless the appointing court directs otherwise in the order of appointment pursuant to Rule 53 of the Idaho Rules of Civil Procedure.
  - (4) Uniform Post-Conviction Act. Proceedings under the Uniform Post-Conviction Procedure Act except as modified by Idaho Code Section 19-4907.
  - (5) Driver's license suspension. Proceedings for suspension of driver's license for failure to take an evidentiary test for alcohol concentration except as modified by Rule 9.2(b) of the Idaho Misdemeanor Criminal Rules.
  - (6) Paternity Act. Proceedings under the Paternity Act except as modified by Rule 6(c)(7) of the Idaho Rules of Civil Procedure.
  - (7) Restitution hearings. Restitution hearings except as modified by I.C. § 19-5304(6).
- (e) Rules inapplicable. These rules, other than those with respect to privileges, do not apply in the following situations:
- (1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).
  - (2) Special Inquiry Judge. Special Inquiry Judge proceedings.
  - (3) Miscellaneous proceedings. Proceedings for extradition or rendition; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.
  - (4) Contempt proceedings. Contempt proceedings in which the court may act summarily.
  - (5) Small claims. Proceedings in the small claims department of the district court.
  - (6) All hearings conducted pursuant to the provisions of the Child Protective Act, I.C. 16-1601 et.seq., except that the Rules of Evidence shall apply at adjudicatory hearings conducted pursuant to I.C. Section 16-1619 and termination of parental rights proceedings pursuant to I.C. Section 16-1624.
  - (7) Informal hearings for emergency medical treatment pursuant to I.C. Section 16-1627.
  - (8) Judicial Authorization for Abortion. All hearings conducted pursuant to I.C. Section 18-609A regarding a request for judicial authorization for performance of an abortion on a minor.

(Adopted January 8, 1985, effective July 1, 1985; amended June 7, 1993, effective July 1, 1993; amended March 1, 2000, effective July 1, 2000; amended December 26, 2002, effective February 1, 2003; amended March 21, 2007; effective July 1, 2007; amended April 4, 2008, effective July 1, 2008; amended February 9, 2012, effective July 1, 2012.)

### I.R.E 102. Purpose and Construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence, to the end that the truth may be ascertained and proceedings justly determined.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987.)

### **I.R.E. 103. Rulings on Evidence.**

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The Court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(c) Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Errors affecting substantial rights. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 104. Preliminary Questions.**

(a) Questions of admissibility generally. Preliminary questions concerning the qualifications of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy conditioned on fact. Whenever the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or in the court's discretion subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of jury. Hearings on the admissibility of confessions in criminal cases shall be conducted out of the hearing of a jury. Hearings on other preliminary matters in all cases shall be so conducted whenever the interests of justice require or, in criminal cases, whenever an accused is a witness, if the accused so requests.

(d) Testimony by accused. The accused does not, by testifying upon a preliminary matter, subject the accused to cross-examination as to other issues in the case.

(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 105. Limited Admissibility.**

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 106. Remainder of or Related Writings or Recorded Statements.**

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require that party at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

(Adopted January 8, 1985, effective July 1, 1985.)

**Article II. Judicial Notice**

**I.R.E. 201. Judicial Notice of Adjudicative Facts.**

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not. When a court takes judicial notice of records, exhibits, or transcripts from the court file in the same or a separate case, the court shall identify the specific documents or items that were so noticed.

(d) When mandatory. When a party makes an oral or written request that a court take judicial notice of records, exhibits or transcripts from the court file in the same or a separate case, the party shall identify the specific documents or items for which the judicial notice is requested or shall proffer to the court and serve on all parties copies of such documents or items. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

(Adopted January 8, 1985, effective July 1, 1985; amended March 21, 2007, effective July 1, 2007.)

**Article III. Presumptions**

**I.R.E. 301. Presumption in General in Civil Actions and Proceedings.**

(a) Effect. In all civil actions and proceedings, when not unless otherwise provided for by statute, by Idaho appellate decisions or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. The burden of going forward is satisfied by the introduction of evidence sufficient to permit reasonable minds to conclude that the presumed fact does not exist. If the party against whom a presumption operates fails to meet the burden of going forward, the presumed fact shall be deemed proved. If the party meets the burden of going

forward, no instruction on the presumption shall be given, and the trier of fact shall determine the existence or nonexistence of the presumed fact without regard to the presumption.

(b) Jury Instructions. When any presumption operates, the court shall instruct the jury that the fact has been proved without using the term "presumption".

(Adopted January 8, 1985, effective July 1, 1985; amended March 18, 1998, effective July 1, 1998.)

### **I.R.E. 302. Applicability of Federal Law in Civil Cases.**

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which Federal law supplies the rule of decision is determined in accordance with Federal law.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 303. Presumptions in Criminal Cases.**

(a) Scope. Except as otherwise provided by statute, in criminal cases presumptions against an accused, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.

(b) Submission to jury. The court shall not direct the jury to find a presumed fact against the accused. The court may submit the question of guilt or of the existence of the presumed fact to the jury, if, but only if, a reasonable juror on the evidence as a whole, including the evidence of the basic facts, could find guilt on the presumed fact beyond a reasonable doubt.

(c) Instructing the jury. Whenever the existence of a presumed fact against the accused is submitted to the jury, the court in instructing the jury shall not charge in terms of a presumption. The charge shall include an instruction to the effect that the jurors have a right to draw reasonable inferences from facts proved beyond a reasonable doubt and may convict the accused in reliance upon an inference of fact if they conclude that such inference is valid and if the inference convinces them of guilt beyond a reasonable doubt and not otherwise.

(Adopted January 8, 1985, effective July 1, 1985.)

## **Article IV. Relevancy and its Limits**

### **I.R.E. 401. Definition of Relevant Evidence.**

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.**

All relevant evidence is admissible except as otherwise provided by these rules or by other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.**

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes.**

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of the accused's character offered by an accused, or by the prosecution to rebut the same;

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. Evidence of the character of a witness, as provided in Rules 607, 608 and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that the prosecution in a criminal case shall file and serve notice reasonably in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

(Adopted January 8, 1985, effective July 1, 1985; amended March 18, 1998, effective July 1, 1998.)

**I.R.E. 405. Methods of Proving Character.**

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of the person's conduct.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 406. Habit; Routine Practice.**

Evidence of a habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 407. Subsequent Remedial Measures.**

When, after an injury or harm allegedly caused by an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct, or a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures if offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

(Adopted January 8, 1985, effective July 1, 1985; amended March 5, 2002, effective July 1, 2002.)

**I.R.E. 408. Compromise and Offers to Compromise.**

Evidence of (1) furnishing, offering, or promising to furnish, or (2) accepting, offering, or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either

validity or amount, is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule does not require exclusion if the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass mediation.

(Adopted January 8, 1985, effective July 1, 1985; amended March 23, 1990, effective July 1, 1990.)

**I.R.E. 409. Payment of Medical and Similar Expenses.**

Evidence of furnishing or offering or promising to pay medical, hospital, funeral, or similar expenses occasioned by an injury or death, or damage to or loss of property of another, is not admissible to prove liability for the injury, death or damage.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements.**

(a) Inadmissibility. Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of nolo contendere;
- (3) any statement made in the course of any proceedings under Rule 11 of the Idaho Rules of Criminal Procedure or comparable Federal or state procedure regarding either of the foregoing pleas; or
- (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

(b) Exceptions. Notwithstanding the foregoing, such a statement is admissible:

- (1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it; or
- (2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel; or
- (3) under subsection (a)(3) above, in the same criminal action or proceeding for impeachment purposes.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 411. Liability Insurance.**

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 412. Sex Crime Cases; Relevance of Victim's Past Behavior.**

(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sex crime, reputation or opinion evidence of the past sexual behavior of an alleged victim of such sex crime is not admissible.

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sex crime, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is -

(1) admitted in accordance with subdivisions (c)(1) and (c)(2) and is constitutionally required to be admitted; or

(2) admitted in accordance with subdivision (c) and is evidence of -

(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which the sex crime is alleged; or

(C) false allegations of sex crimes made at an earlier time; or

(D) sexual behavior with parties other than the accused which occurred at the time of the event giving rise to the sex crime charged.

(c) (1) If the person accused of committing a sex crime intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than five days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties.

(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision (b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of Rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which the sex crime is alleged.

(e) For purposes of this rule, the term "sex crime" means --

(1) rape, the infamous crime against nature, forcible penetration with a foreign object; sexual abuse of a child under age sixteen years, sexual exploitation of a child, lewd conduct with a minor child under sixteen, or sexual battery of a minor child sixteen or seventeen years of age;

(2) any other crime under the law of the state of Idaho that involved: contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person; or contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

(3) assault with intent to commit any of the crimes included in subsections (1) and (2);

(4) battery with intent to commit any of the crimes included in subsections (1) and (2);

(5) kidnaping for the purpose of committing any of the crimes included in subsections (1) and (2); or

(6) any attempt or conspiracy to commit any of the crimes included in subsections (1) and (2).

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended February 26, 1997, effective July 1, 1997.)

### **I.R.E. 413. Proceedings of Medical Malpractice Screening Panels.**

Evidence of the proceedings or of conduct or statements made in proceedings before a hearing panel for prelitigation consideration of medical malpractice claims, or the results, findings or determinations thereof is inadmissible in a civil action or proceeding by, against or between the parties thereto or any witness therein.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 414. Inadmissibility of Expressions of Condolence or 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 sympathy, commiseration, condolence, or compassion, 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 of an admission of liability or on the issue of damages.

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

(3) For purposes of this rule:

(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.

(Adopted March 21, 2007, effective July 1, 2007.)

**Article V. Privileges**

**I.R.E. 501. Privileges Recognized only as Provided.**

Except as otherwise provided by constitution, or by statute implementing a constitutional right, or by these or other rules promulgated by the Supreme Court of this State, no person has a privilege to:

- (1) Refuse to be a witness;
- (2) Refuse to disclose any matter;
- (3) Refuse to produce any object or writing; or
- (4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 502. Lawyer-Client Privilege.**

(a) Definitions. As used in this rule:

(1) Client. A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) Representative of the client. A "representative of the client" is one having authority to obtain professional legal services, or an employee of the client who is authorized to communicate information obtained in the course of employment to the attorney of the client.

(3) Lawyer. A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation.

(4) Representative of the lawyer. A "representative of the lawyer" is one employed by the lawyer to assist the lawyer in the rendition of professional legal service.

(5) Confidential communication. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client which were made (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, (2) between the client's lawyer and the lawyer's representative, (3) among clients, their representatives, their lawyers, or their lawyers' representatives, in any combination, concerning a matter of common interest, but not including communications solely among clients or their representatives when no lawyer is a party to the communication\*, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

\* *Comment:* IRE 502(b)(3) is intended to provide that when clients who share a common interest in a legal matter are represented by different lawyers they can communicate with each other in an effort to develop a joint strategy or otherwise advance their interests, and their communications in that endeavor will be privileged; that each client involved has a privilege for all such communications; and that this privilege will survive a later falling-out among the parties. The privilege does not, however, extend to communications solely between the clients or their representatives when no lawyer is present. The rationale for this privilege was stated in *In Re: Grand Jury Subpoenas*, 902 F.2d 244, 249 (4th Cir. 1990): "[P]ersons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims." The original IRE 502(b)(3) was amended to expand the scope of the privilege to include all communications among clients, their representatives, their lawyers, and their lawyer's representatives when engaged in discussion of common legal concerns.

(c) Who may claim the privilege. The privilege may be claimed by the client or for the client through the client's lawyer, the guardian or conservator, or by the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication may claim the privilege but only on behalf of the client. The authority of the lawyer or lawyer's representative to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Furtherance of crime or fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) Claimants through same deceased client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(3) Breach of duty by a lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to the lawyer's client or by the client to the client's lawyer;

(4) Document attested by a lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

(5) Joint clients. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.

(6) Shareholder actions. As to a communication between a corporation and its lawyer or a representative of the lawyer, which was not made for the purpose of facilitating the rendition of professional legal services to the corporation during the litigation and concerning the litigation in which the privilege is asserted:

(A) in an action by a shareholder against the corporation which is based on a breach of fiduciary duty; or (B) in a derivative action by a shareholder on behalf of the corporation, provided that disclosure of privileged communications under either subpart (A) or

(B) of this exception shall be required only if the party asserting the right to disclosure shows good cause for the disclosure and provided further that the court may use in camera inspection or oral examination and may grant protective orders to prevent unnecessary or unwarranted disclosure.

(Adopted January 8, 1985, effective July 1, 1985; amended March 5, 2002, effective July 1, 2002.)

### **I.R.E. 503. Physician and Psychotherapist-Patient Privilege.**

(a) Definitions. As used in this rule:

(1) Patient. A "patient" is the person who consults or is examined or interviewed by a physician or psychotherapist for the purpose of obtaining diagnosis or treatment of a physical, mental or emotional condition, including alcohol or drug addiction.

(2) Physician. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) Psychotherapist. A "psychotherapist" is (A) a physician while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or, (B) a person licensed or certified as a psychologist under the laws of any state or nation, while similarly engaged.

(4) Confidential communication. A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General rules of privilege.

(1) Civil action. A patient has a privilege in a civil action to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(2) Criminal action. A patient has a privilege in a criminal action to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.

(c) Who may claim the privilege. The privilege may be claimed by the patient or for the patient through the patient's lawyer, guardian or conservator, or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication may claim the privilege but only on behalf of the patient. The authority of the physician or psychotherapist to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions.

(1) Proceedings for guardianship, conservatorship or hospitalization. There is no privilege under this rule for communications relevant to an issue in proceedings for the appointment of a guardian or conservator for a patient for mental illness or to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

(2) Examination by order of court. If the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) Condition an element of claim or defense. There is no privilege under this rule as to a communication relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which he relies

upon the condition as an element of his claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense.

(4) Child related communications. There is no privilege under this rule in a criminal or civil action or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987.)

#### **I.R.E. 504. Husband-Wife Privilege.**

(a) Definition. A communication is "confidential" if it is made during marriage privately by any person to the person's spouse, and is not intended for disclosure to any other person.

(b) General rule of privilege. A person has a privilege to prevent testimony as to any confidential communication between the person and his or her spouse made during the marriage.

(c) Who may claim the privilege. The privilege may be claimed by the person or by the spouse on behalf of the person, or by the lawyer for the person on behalf of the person. The authority of the spouse or lawyer to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Child related communications. In a criminal or civil action or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child.

(2) Criminal action. In a criminal action or proceeding in which one spouse is charged with a crime against the person or property of (A) the other spouse, (B) a person residing in the household of either spouse, or (C) a third person committed in the course of committing a crime against the other spouse or a person residing in the household of either spouse.

(3) Special proceeding. In proceedings (A) under the Reciprocal Enforcement of Support Act, or (B) concerning desertion or non-support of a spouse.

(4) Civil action. In a civil action or proceeding by one spouse against the other involving the person or property of the other.

(5) Proceedings for guardianship, conservatorship or hospitalization. There is no privilege under this rule for communications relevant to an issue in proceedings for the appointment of a guardian or conservator for a person for mental illness or to hospitalize the person for mental illness.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended March 18, 1998, effective July 1, 1998.)

#### **I.R.E. 505. Religious Privilege.**

(a) Definitions. As used in this rule:

(1) Clergyman. A "Clergyman" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be a clergyman by the person consulting.

(2) Confidential communication. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in the clergyman's professional character as spiritual adviser.

(c) Who may claim the privilege. The privilege may be claimed by the person, or for the person by the person's lawyer, the guardian or conservator, or by the personal representative if that person is deceased. The clergyman at the time of the communication may claim the privilege but only on behalf of the person. The authority of the clergyman to do so is presumed in the absence of evidence to the contrary.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 506. Political Vote.**

(a) General rule of privilege. Every person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot.

(b) Exceptions. This privilege does not apply if the court finds that the vote was cast illegally or determines that the disclosure should be compelled pursuant to the election laws of the State of Idaho.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 507. Conduct of Mediations.**

(1) Definitions. In this Rule:

(a) '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.

(b) '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.

(c) 'Mediator' means an individual who conducts a mediation.

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

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

(f) '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.

(g) 'Proceeding' means any proceeding referenced in Idaho Rule of Evidence 101(c).

(h) '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.

(i) 'Sign' means:

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

(2) 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

(3) to assent on a record with the present intent to authenticate a record.

(2) Scope.

(a) Except as otherwise provided in subsection (b) or (c), this Rule applies to a mediation in which:

(1) 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;

(2) 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

(3) 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.

(b) The Rule does not apply to a mediation:

(1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(2) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the Rule applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(3) conducted by a judge who might make a ruling on the case; or

(4) conducted under the auspices of:

(A) a primary or secondary school if all the parties are students or

(B) a correctional institution for youths if all the parties are residents of that institution.

(c) 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 subparts 3 through 5 do not apply to the mediation or part agreed upon. However, subparts 3 through 5 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

(3) Privilege against disclosure; admissibility; discovery.

(a) Except as otherwise provided in subpart 5, a mediation communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by subpart 4.

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

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) 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.

(4) Waiver and preclusion of privilege.

(a) A privilege under subpart 3 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) 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 subpart 3, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) 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 subpart 3.

(5) Exceptions to privilege.

(a) There is no privilege under subpart 3 for a mediation communication that is:

(1) in an agreement evidenced by a record signed by all parties to the agreement;

(2) available to the public under the Idaho Open Records Act or made during a session of a mediation which is open, or is required by law to be open, to the public;

(3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(4) intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(5) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(6) except as otherwise provided in subsection (c), 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

(7) 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.

(b) There is no privilege under subpart 3 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:

(1) a court proceeding involving a felony or misdemeanor; or

(2) except as otherwise provided in subsection (c), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation. This exception to privilege does not apply to any statement made in the course of a criminal mediation under Rule 18.1 of the Idaho Rules of Criminal Procedure or Rule 12.1 of the Idaho Juvenile Rules.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(2).

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

(6) Application to existing agreements or referrals.

(a) The privileges created in this rule apply to communication made in the course of a mediation pursuant to a referral or an agreement to mediate made on or after the effective date of this Rule.

(b) On or after one year following the effective date, the privileges created in this rule apply to any mediation regardless of when the referral or agreement to mediate was made.

(Adopted June 26, 1991, effective September 1, 1991; amended June 12, 1996, effective July 1, 1996) Rescinded and NEW RULE 507 ADOPTED January 3, 2008, effective July 1, 2008; amended April 27, 2012, effective July 1, 2012).

**I.R.E. 508. Secrets of State and Other Official Information; Governmental Privileges.**

(a) Federal. If the law of the United States creates a governmental privilege that the courts of this State must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States.

(b) State. No other governmental privilege is recognized except as created by the Constitution or statutes of this State.

(c) Effect of sustaining claim. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant, or dismissing the action.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 509. Identity of Informer.**

(a) Rule of privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who may claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) Exceptions:

(1) Voluntary disclosure. No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action.

(2) Informer as a Witness. If an informer appears as a witness for the public entity disclosure of the informer's identity shall be required unless the court finds, in its discretion, that the witness or others may be subjected to economic, physical or other harm or coercion by such disclosure. Any disclosure under this subsection shall be subject to any protective order deemed necessary by the court.

(3) Testimony on relevant issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the informed public entity invokes the privilege, the court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose the informer's identity, in criminal cases the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include one or more of the following: (A) requiring the prosecuting attorney to comply, (B) granting the defendant additional time or a continuance. (C) relieving the defendant from making disclosures otherwise required of the defendant, (D) prohibiting the prosecuting attorney from introducing specified evidence, or (E) dismissing charges. In civil cases, the court may make any order the interests of justice require. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except a showing in camera at which no counsel or party shall be permitted to be present.

(Adopted January 8, 1985, effective July 1, 1985; amended March 26, 1985, effective July 1, 1985.)

**I.R.E. 510. Waiver of Privilege by Voluntary Disclosure.**

A person upon whom these rules confer a privilege against disclosure of the confidential matter or communication waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This rule does not apply if the disclosure is itself a privileged communication.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 511. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege.**

Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (a) compelled erroneously or (b) made without opportunity to claim the privilege

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 512. Comment Upon or Inference From Claim of Privilege; Instruction.**

(a) Comment or inference not permitted. The claim of any privilege, created by these rules, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel and no inference may be drawn therefrom.

(b) Claiming privilege without knowledge of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Jury instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

(Adopted January 8, 1985, effective July 1, 1985; amended April 27, 2011, effective July 1, 2011.)

### **I.R.E. 513. Lawyer May Exercise Claim of Privilege.**

Whenever a person has a right to claim a privilege on behalf of the person or for another, it may be exercised by the lawyer for such person. The authority of the lawyer to do so is presumed in the absence of evidence to the contrary.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 514. Parent-Child; Guardian or Legal Custodian-Ward Privilege.**

(a) Definition. A communication is "confidential" if it is made by a minor child to the child's parent or a minor ward to the ward's guardian or legal custodian, and is not intended for disclosure to any other person.

(b) General rule of privilege. A child or ward has a privilege in a civil or criminal action or proceeding to which the child or ward is a party to refuse to disclose and to prevent the child's or ward's parent, guardian or legal custodian from disclosing any confidential communication made by the child or ward to the parent, guardian or legal custodian of the child or ward.

(c) Who may claim the privilege. The privilege may be claimed by the child or ward, the lawyer for the child or ward, or by the parent, guardian or legal custodian on behalf of the child or ward. The authority of the lawyer, parent, guardian or ward to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Civil action. In a civil action or proceeding by one of the parties to the confidential communication against the other.

(2) Criminal action. In a criminal action or proceeding for a crime committed by one of the parties to the confidential communication against the person or property of the other.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 515. Accountant-Client Privilege.**

(a) Definitions. As used in this rule:

(1) Client. A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional accounting services by an accountant, or who consults an accountant with a view to obtaining professional accounting services from the accountant.

(2) Representative of the client. A "representative of the client" is one having authority to obtain professional accounting services, or an employee of the client who is authorized to communicate information obtained in the course of employment to the accountant of the client.

(3) Accountant. An "accountant" is any licensed public accountant or certified public accountant authorized, or reasonably believed by the client to be authorized, to engage in the practice of accounting in any state or nation.

(4) Representative of the accountant. A "representative of the accountant" is one employed by the accountant to assist the accountant in the rendition of professional accounting service.

(5) Confidential communication. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional accounting services to the client or those reasonably necessary for the transmission of the communication.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional accounting services to the client which were made (1) between the client or the client's representative and the accountant or

the accountant's representative, (2) between the accountant and the accountant's representative, or (3) by the client or the client's representative or the client's accountant or a representative of the accountant to an accountant or a representative of an accountant representing another concerning a matter of common interest, (4) between representatives of the client or between the client and a representative of the client, or (5) among accountants and their representatives representing the same client.

(c) Who may claim the privilege. The privilege may be claimed by the client or for the client through the client's lawyer, accountant, guardian or conservator, or by the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the accountant or the accountant's representative at the time of the communication may claim the privilege but only on behalf of the client. The authority of the accountant or the accountant's representative to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Furtherance of crime or fraud. If the services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) Claimants through same deceased client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(3) Breach of duty by an accountant or client. As to a communication relevant to an issue of breach of duty by the accountant to the client or by the client to the accountant;

(4) Document attested by an accountant. As to a communication relevant to an issue concerning an attested document to which the accountant is an attesting witness;

(5) Joint clients. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to an accountant retained or consulted in common, when offered in an action between or among any of the clients.

(6) Shareholder actions. As to a communication between a corporation and its accountant or a representative of the accountant, which was not made for the purpose of facilitating the rendition of professional accounting services to the corporation during the litigation and concerning the litigation in which the privilege is asserted: (A) in an action by a shareholder against the corporation which is based on a breach of fiduciary duty; or (B) in a derivative action by a shareholder on behalf of the corporation, provided that disclosure of privileged communications under either subpart (A) or (B) of this exception shall be required only if the party asserting the right to disclosure shows good cause for the disclosure and provided further that the court may use in camera inspection or oral examination and may grant protective orders to prevent unnecessary or unwarranted disclosure.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 516. School Counselor-Student Privilege.**

(a) Definitions. As used in this rule:

(1) Student. A "student" is a person regularly enrolled on a part-time or full-time basis in any public or private school located in the State of Idaho, who consults or is examined or interviewed by a school counselor.

(2) School counselor. A "school counselor" is any person duly appointed, regularly employed and designated for the purpose of counseling students by any public or private school located in the State of Idaho, or reasonably believed by the student so to be.

(3) Confidential communication. A communication is "confidential" if made to the school counselor while acting in the counselor's capacity as a school counselor or reasonably believed by the student to be so acting, and if not intended to be disclosed to third persons except persons present to further the interest of the student in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the rendition of counseling services to the student under the direction of the school counselor, including members of the student's family.

(b) General rule of privilege. A student has a privilege in any civil or criminal action to which the student is a party to refuse to disclose and to prevent any other person from disclosing confidential communications made in the furtherance of the rendition of counseling services to the student, among the student, the student's school counselor, and persons who are participating in the counseling under the direction of the school counselor, including members of the student's family.

(c) Who may claim the privilege. The privilege may be claimed by the student, or for the student through the student's counselor, lawyer, parent, guardian or conservator, or the personal representative of a deceased student. The authority of the counselor, lawyer, parent, guardian, or conservator or personal representative to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Civil action. In a civil action, case or proceeding by one of the parties to the confidential communication against the other.

(2) Proceeding for guardianship, conservatorship or hospitalization. As to a communication relevant to an issue in proceedings for the appointment of a guardian or conservator for a student for mental illness or to hospitalize the student for mental illness.

(3) Child related communications. In a criminal or civil action or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child.

(4) Contemplation of crime or harmful act. If the communication reveals the contemplation of a crime or harmful act.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987.)

### **I.R.E. 517. Licensed Counselor-Client Privilege.**

(a) Definitions. As used in this rule:

(1) Client. A "client" is a person who is rendered licensed counselor services.

(2) Licensed counselor. A "licensed counselor" is any person licensed to be a licensed professional counselor or a licensed counselor in the State of Idaho pursuant to Title 54, Chapter 34, Idaho Code, or reasonably believed by the client so to be.

(3) Confidential communication. A communication is "confidential" if not intended to be disclosed to third persons except persons present to further the interest of the client in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the rendition of counseling services to the client under the direction of the licensed counselor, including members of the client's family.

(b) General rule of privilege. A client has a privilege in any civil or criminal action to which the client is a party to refuse to disclose and to prevent any other person from disclosing confidential communications made in the furtherance of the rendition of licensed counseling services to the client, among the client, the client's licensed counselor, and persons who are participating in the licensed counseling under the direction of the licensed counselor including members of the client's family.

(c) Who may claim the privilege. The privilege may be claimed by the client, or for the client through the client's licensed counselor, lawyer, guardian or conservator, or the personal representative of a deceased client. The authority of the licensed counselor, lawyer, guardian, conservator or personal representative to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Civil action. In a civil action, case or proceeding by one of the parties to the confidential communication against the other.

(2) Proceedings for guardianship, conservatorship or hospitalization. As to a communication relevant to an issue in proceedings for the appointment of a guardian or conservator for a client for mental illness or to hospitalize the client for mental illness.

(3) Child related communications. In a criminal or civil action or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition, of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child.

(4) Licensing board proceedings. In an action, case or proceeding under Idaho Code § 54-3404.

(5) Contemplation of crime or harmful act. If the communication reveals the contemplation of a crime or harmful act.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987.)

### **I.R.E. 518. Licensed Social Worker-Client Privilege.**

(a) Definitions. As used in this rule:

(1) Client. A "client" is the person who is rendered licensed social worker services.

(2) Licensed social worker. A "licensed social worker" is any person licensed to be a licensed certified social worker or a licensed social worker in the State of Idaho pursuant to Title 54, Chapter 32, Idaho Code.

(3) Confidential communication. A communication is "confidential" if not intended to be disclosed to third persons except persons present to further the interest of the client in the consultation or interview, or persons reasonably necessary to the transmission of the communication, or persons who are participating in the rendition of social services to the client under the direction of the licensed social worker, including members of the client's family.

(b) General rule of privilege. A client has a privilege in any civil or criminal action to which the client is a party to refuse to disclose and to prevent any other person from disclosing confidential communications made in the furtherance of the rendition of licensed social services to the client, among the client, the client's licensed social worker, and persons who are participating in the licensed social work under the direction of the licensed social worker, including members of the client's family.

(c) Who may claim the privilege. The privilege may be claimed by the client, or for the client through the client's licensed social worker, lawyer, guardian or conservator, or the personal representative of a deceased client. The authority of the licensed social worker, lawyer, guardian, conservator or personal representative to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) Contemplation or execution of crime or harmful act. If the communication reveals the contemplation or execution of a crime or harmful act.

(2) Charges against licensee. When the client waives the privilege by bringing charges against the licensee.

(3) Civil action. In a civil action, case or proceeding by one of the parties to the confidential communication against the other.

(4) Proceedings for guardianship, conservatorship or hospitalization. As to a communication relevant to an issue in proceedings for the appointment of a guardian or conservator for a client for mental illness or to hospitalize the client for mental illness.

(5) Child related communications. In a criminal or civil action or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987.)

### **I.R.E. 519. Hospital, In-Hospital Medical Staff Committee and Medical Society Privilege.**

(a) Definitions. As used in this rule:

(1) Hospital. A "hospital" is a facility defined in Idaho Code Section 39-1301(a)(1) and either licensed under Idaho Code Sections 39-1301 through 39-1314 or similarly licensed in another jurisdiction.

(2) In-hospital medical staff committee. An "in-hospital medical committee" is any individual doctor who is a hospital staff member, or any hospital employee, or any group of such doctors or hospital employees, or any combination thereof, who are duly designated a committee by hospital staff by-laws, by action of an organized hospital staff, or by action of the board of directors of a hospital, and which committee is authorized by said by-laws, staff or board of directors, to conduct research or study of hospital patient cases, or of medical questions or problems using data and information from hospital patient cases.

(3) Medical society. A "medical society" is any duly constituted, authorized and recognized professional society or entity made up of physicians licensed to practice medicine in Idaho, having as its purpose the maintenance of high quality in the standards of health care provided in Idaho or any region or segment of the state, operating with the approval of the Idaho State Board of Medicine, or any official committee appointed by the Idaho State Board of Medicine.

(4) Confidential communication. A communication is a "confidential communication" under this Rule if it (A) is made in connection with a proceeding for research, discipline, or medical study conducted by an in-hospital medical staff committee or medical society for the purpose of reducing morbidity and mortality, or improving the standards of medical practice or health care in the State of Idaho; (B) is a statement of opinion or conclusion concerning the subject matter of the proceeding; and (C) is not intended for disclosure to third persons, except persons present to further the purposes of or participate in the proceeding, or necessary for the transmission of the communication.

(b) General rule of privilege. A hospital, in-hospital medical staff committee, medical society, and maker of a confidential communication has a privilege to refuse to disclose and to prevent any other person from disclosing the confidential communication.

(c) Who may claim the privilege. The privilege may be claimed by the maker of the confidential communication, by a representative of the hospital, in-hospital medical staff committee or medical society, or for the holder of the privilege by its lawyer. The authority of the representative or lawyer to do so is presumed in the absence of evidence to the contrary.

(d) Exception. There is no privilege under this rule as to a communication made in connection with the on-going provision of medical care to a patient.

(e) Waiver of privilege by testimony. The privilege as to a confidential communication under this rule is waived if the maker of the confidential communication gives evidence of his opinion or conclusion concerning the subject matter of the confidential communication.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 520. Medical Malpractice Screening Panel Privilege.**

(a) Confidential communication. A communication is a "confidential communication" under this rule if it is made in a proceeding conducted or maintained under the authority of Idaho Code Sections 6-1001 to 6-1011 and is not intended for disclosure to third persons, except persons present to further the purposes of or participate in the proceeding, or necessary for the transmission of the communication.

(b) General rule of privilege. In any civil action or proceeding, a medical malpractice screening panel or any member thereof, any party to the medical malpractice screening panel proceeding, and any witness or other person who participated in the medical malpractice screening panel proceedings has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication under this rule.

(c) Who may claim the privilege. The privilege may be claimed by any holder of the privilege or for such person through the person's lawyer. The authority of the lawyer to do so is presumed in the absence of evidence to the contrary.

(Adopted January 8, 1985, effective July 1, 1985.)

## Article VI. Witnesses

### **I.R.E. 601. General Rule of Competency.**

Every person is competent to be a witness except:

(a) Incompetency determined by court. Persons whom the court finds to be incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

(b) Claim against estate. 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.

(c) Other exceptions. As otherwise provided in these rules.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 602. Lack of Personal Knowledge.**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 603. Oath or Affirmation.**

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the conscience of the witness and impress upon the mind of the witness of the duty to do so.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 604. Interpreters.**

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 605. Competency of Judge as Witness.**

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 606. Competency of Juror as Witness.**

(a) At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the person is sitting as a juror. If a juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry to validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes, but a juror may testify on the questions whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror and may be questioned about or may execute an affidavit on the issue of whether or not the jury determined any issue by resort to chance.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 607. Who May Impeach.**

The credibility of a witness may be attacked by any party including the party calling the witness.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 608. Evidence of Character and Conduct of Witness.**

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the credibility, of the witness, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness concerning (1) the character of the witness for truthfulness or untruthfulness, or (2) the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(c) Effect of giving testimony. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the privilege of the witness against self-incrimination when examined with respect to matters which relate only to credibility.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 609. Impeachment by Evidence of Conviction of Crime.**

(a) General rule. For the purpose of attacking the credibility of a witness, evidence of the fact that the witness has been convicted of a felony and the nature of the felony shall be admitted if elicited from the witness or established by public record, but only if the court determines in a hearing outside the presence of the jury that the fact of the prior conviction or the nature of the prior conviction, or both, are relevant to the credibility of the witness and that the probative value of admitting this evidence outweighs its prejudicial effect to the party offering the witness. If the evidence of the fact of a prior felony conviction, but not the nature of the conviction, is admitted for the purpose of impeachment of a party to the action or proceeding, the party shall have the option to present evidence of the nature of the conviction, but evidence of the circumstances of the conviction shall not be admissible.

(b) Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Withheld or vacated judgment; pardon for innocence. Evidence of a withheld judgment or a vacated judgment shall not be admitted as a conviction. Nor shall a conviction that has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence be admissible under this rule.

(d) Pardon, annulment or certificate of rehabilitation not based on innocence; pendency of an appeal. If the conviction has been the subject of a pardon, annulment or certificate of rehabilitation or other equivalent procedure not based on a finding of innocence, or is the subject of a pending appeal, the evidence of a conviction is not rendered inadmissible, but shall be considered by the court in determining admissibility. Evidence of the pardon, annulment, certificate of rehabilitation or other equivalent procedure, or pendency of an appeal is admissible if evidence of the conviction is admitted.

(Adopted January 8, 1985, effective July 1, 1985; amended March 18, 1998, effective July 1, 1998.)

#### **I.R.E. 610. Religious Beliefs or Opinions.**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the credibility of the witness is impaired or enhanced.

(Adopted January 8, 1985, effective July 1, 1985.)

#### **I.R.E. 611. Mode and Order of Interrogation and Presentation.**

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the testimony of the witness. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be made by leading questions.

(Adopted January 8, 1985, effective July 1, 1985.)

#### **I.R.E. 612. Writing or Object Used to Refresh Memory.**

(a) If while testifying, a witness uses a writing or object to refresh the memory of the witness, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

(b) Before testifying. If, before testifying, a witness uses a writing or object, not privileged under these rules or not protected from disclosure under Rule 26 of the Idaho Rules of Civil Procedure or Rule 16 of the Idaho Criminal Rules, to refresh the memory of the witness for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(c) Terms and conditions of production and use. A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony the court shall examine the writing or object in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

(Adopted January 8, 1985, effective July 1, 1985.)

#### **I.R.E. 613. Prior Statements of Witnesses.**

(a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

(Adopted January 8, 1985, effective July 1, 1985.)

#### **I.R.E. 614. Calling and Interrogation of Witnesses by Court.**

(a) Calling by court. When the court is the trier of fact, the court may on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the interrogation of a witness by the court may be made at the time of interrogation or at the next available opportunity when the jury is not present.

(Adopted January 8, 1985, effective July 1, 1985.)

#### **I.R.E. 615. Exclusion of Witnesses.**

(a) General rule. At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause, or (4) a crime victim whose exclusion is prohibited under Article I, Section 22 of the Idaho constitution.

(b) Preliminary hearings. Notwithstanding subsection (a) of this rule, in a preliminary hearing if either party requests it the magistrate must exclude all non-party witnesses who have not been examined.

(c) Child witnesses. Notwithstanding subsections (a) and (b) hereof or any other statutory provision, when a child is summoned as a witness in any hearing in any criminal matter, including any preliminary hearing, parents, a

counselor, friend or other person having a supportive relationship with the child may, in the discretion of the court, remain in the courtroom during the child's testimony.

(Adopted January 8, 1985, effective July 1, 1985; amended March 18, 1998, effective July 1, 1998.)

## **Article VII. Opinions and Expert Testimony**

### **I.R.E. 701. Opinion Testimony by Lay Witness.**

If the witness is not testifying as an expert, the testimony of the witness in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the testimony of the witness or the determination of a fact in issue, and (c) not based on scientific, technical or other specialized knowledge within the scope of Rule 702.

(Adopted January 8, 1985, effective July 1, 1985; amended March 5, 2002, effective July 1, 2002.)

### **I.R.E. 702. Testimony by Experts.**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 703. Basis of Opinion Testimony by Experts.**

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

(Adopted January 8, 1985, effective July 1, 1985; amended March 5, 2002, effective July 1, 2002.)

### **I.R.E. 704. Opinion on Ultimate Issue.**

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 705. Disclosure of Facts or Data Underlying Expert Opinion.**

The expert may testify in terms of opinion or inference and give the reasons therefor without prior disclosure of the underlying facts or data, provided that the court may require otherwise, and provided further that, if requested pursuant to the rules of discovery the underlying facts or data were disclosed. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 706. Court Appointed Experts.**

(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the expert witness consents to act. A witness so

appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; a deposition of the witness may be taken by any party; and the witness may be called to testify by any party or by the court pursuant to Rule 614(a). The expert witness shall be subject to cross-examination by each party, including a party calling the expert as a witness.

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation for the taking of property. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Parties' experts of own selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

(Adopted January 8, 1985, effective July 1, 1985.)

## **Article VIII. Hearsay**

### **I.R.E. 801. Definitions.**

The following definitions apply under this Article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if -

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony and was given under oath and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with declarant's testimony and is offered to rebut an express or implied charge against declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by a party to make a statement concerning the subject, or (D) a statement by a party's agent or servant concerning a matter within the scope of the agency or employment of the servant or agent, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 802. Hearsay Rule.**

Hearsay is not admissible except as provided by these rules or other rules promulgated by the Supreme Court of Idaho.

(Adopted January 8, 1985, effective July 1, 1985; amended March 26, 1985, effective July 1, 1985.)

### **I.R.E. 803. Hearsay Exceptions; Availability of Declarant Immaterial.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness.

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the memory of the witness and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (A) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case; (B) investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party; (C) factual findings offered by the government in criminal cases; (D) factual findings resulting from special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public

official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence thirty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or arts, established as a reliable authority by testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits, except upon motion and order for good cause shown.

(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of a person's personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to character. Reputation of a person's character among the person's associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Medical or dental tests and test results for diagnostic or treatment purposes. A written, graphic, numerical, symbolic or pictorial representation of the results of a medical or dental test performed for purposes of diagnosis or treatment for which foundation has been established pursuant to rule 904, unless the sources of information or other circumstances indicate lack of trustworthiness. This exception shall not apply to:

(a) psychological tests

(b) reports generated pursuant to I.R.C.P. 35(a)

(c) medical or dental tests performed in anticipation of or for purposes of litigation or

(d) public records specifically excluded from the Rule 803(8) exception to the hearsay rule.

(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the

proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended March 24, 2005, effective July 1, 2005.)

#### **I.R.E. 804. Hearsay Exceptions; Declarant Unavailable.**

(a) Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant -

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of declarant's statement has been unable to procure declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of declarant's statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that declarant's death was imminent, concerning the cause or circumstances of what declarant believed to be the declarant's impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject declarant to civil or criminal liability, or to render invalid a claim by declarant against another, that a reasonable man in declarant's position would not have made the statement unless declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

(6) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently

in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the party's intention to offer the statement and the particulars of it, including the name and address of the declarant.

(Adopted January 8, 1985, effective July 1, 1985; amended April 4, 2008, effective July 1, 2008)

#### **I.R.E. 805. Hearsay Within Hearsay.**

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

(Adopted January 8, 1985, effective July 1, 1985.)

#### **I.R.E. 806. Attacking and Supporting Credibility of Declarant.**

When a hearsay statement, or a statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with declarant's hearsay statement, is not subject to any requirement that declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

(Adopted January 8, 1985, effective July 1, 1985.)

### **Article IX. Authentication and Identification**

#### **I.R.E. 901. Requirement of Authentication or Identification.**

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony of a witness with knowledge that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 30 years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statute or rule. Any method of authentication or identification provided by Supreme Court rule or by a statute or as provided in the Constitution of this State.

(Adopted January 8, 1985, effective July 1, 1985.)

### **I.R.E. 902. Self-Authentication.**

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signatures and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any law of the United States or of this State, or rule prescribed by the Idaho Supreme Court.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control or origin.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of the United States or of this State, or rule prescribed by the Idaho Supreme Court, to be presumptively or prima facie genuine or authentic.

(11) Certified records of regularly conducted activity. The original or a duplicate of a record of regularly conducted activity, within the scope of Rule 803(6), which the custodian thereof or another qualified individual certifies (i) was made, at or near the time of the occurrence of the matters set forth, by (or from

information transmitted by) a person with knowledge of those matters, (ii) is kept in the course of the regularly conducted activity and (iii) was made by the regularly conducted activity as a regular practice, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness; but a record so certified is not self-authenticating under this subsection unless the proponent makes the intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it. As used in this subsection, "certifies" means, with respect to a domestic record, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country. The certificate relating to a foreign record must be accompanied by a final certification as to the genuineness of the signature and official position (i) of the individual executing the certificate or (ii) of any foreign official who certifies the genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify the genuineness of signature and official position of the executing individual. A final certification must be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country who is assigned or accredited to the United States.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987.)

**I.R.E. 903. Subscribing Witness' Testimony Unnecessary.**

Except as provided for by statute, the testimony of a subscribing witness is not required to authenticate a writing.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 904. Authentication of Medical or Dental Tests and Test Results for Diagnostic or Treatment Purposes.**

(1) Authentication of items described in Rule 803(23). Extrinsic evidence of authenticity as a condition precedent to admissibility is not required for items described in Rule 803(23) if the proposed exhibit identifies the person or entity who conducted or interpreted the test, the name of the patient, and the date when the test was performed, and notice was given in accord with subsection (2) of this rule.

(2) Notice. No less than 45 days before trial, any party intending to offer a document under this rule must serve on all parties a notice, stating that the document is being offered under this rule and shall be deemed authentic and admissible without testimony or further identification, unless objection is filed and served within 14 days of the date of notice, pursuant to subsection (3) of this rule. The notice served on the parties shall include a brief description of the document along with the name, address and telephone number of the documents author or maker, and the notice shall be accompanied by a copy of the document. The notice, but not the accompanying document, shall be filed with the court.

(3) Objection to authenticity or admissibility. Within 14 days of notice, any other party may object by filing and serving on all parties a written objection to any document offered under this rule, identifying each document to which objection is made. The grounds for the objection shall be specifically set forth, except objection on the grounds of relevancy need not be made until trial. If the court in a civil case finds that an objection was made without reasonable basis and the document is admitted at trial, the court may award the offering party any expenses incurred and reasonable attorney fees.

(4) Effect of Rule. This rule does not restrict argument or proof relating to the weight to be accorded the evidence submitted, nor does it restrict the trier of facts authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties. Nothing contained in this rule shall prohibit the admissibility of a written, graphic, numerical, symbolic or pictorial representation in evidence where otherwise admissible.

(Adopted October 23, 2008, effective January 1, 2009.)

## Article X. Contents of Writings, Recordings, and Photographs

### I.R.E. 1001. Definitions.

For purposes of this article the following definitions are applicable:

(1) Writings and recordings. "Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. "Photographs" include still photographs, X-ray films, video tapes, motion pictures, and similar products of processes which produce recorded images of objects.

(3) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures [miniatures], or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

(Adopted January 8, 1985, effective July 1, 1985.)

### I.R.E. 1002. Requirement of Original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.

(Adopted January 8, 1985, effective July 1, 1985.)

### I.R.E. 1003. Admissibility of Duplicates.

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity or continuing effectiveness of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

(Adopted January 8, 1985, effective July 1, 1985.)

### I.R.E. 1004. Admissibility of Other Evidence of Contents.

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

(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. No original can be obtained by any reasonably practicable, available judicial process or procedure; or

(3) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing; and the party does not produce the original at the hearing; or

(4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 1005. Public Records.**

(a) Proof of public record. The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

(b) Use of official transcripts of district court proceedings. In all cases where a party desires to place in evidence a transcript or partial transcript of a district court proceeding, or disclose the contents of a transcript during the examination of a witness, the transcript must be an official transcript as provided in subsection 27(d), Idaho Court Administrative Rules.

(Adopted January 8, 1985, effective July 1, 1985; amended March 15, 2004, effective July 1, 2004.)

**I.R.E. 1006. Summaries.**

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 1007. Testimony or Written Admission of Party.**

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 1008. Functions of Court and Jury.**

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised whether (a) the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

(Adopted January 8, 1985, effective July 1, 1985.)

**Article XI. Miscellaneous Rules**

**I.R.E. 1101. Adoption and Amendments.**

(a) Adoption. These rules shall take effect on the date stated in the order of adoption.

(b) Amendments. These rules may be amended or repealed by order of the Supreme Court effective on the date stated in the order. Any such order shall be published before the effective date as ordered by the Supreme Court, except in cases declared to be an emergency, in which case the order may be declared effective immediately.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 1102. Effect on Evidentiary Statutes and Rules.**

Statutory provisions and rules governing the admissibility of evidence, to the extent they are evidentiary and to the extent that they are in conflict with applicable rules of Idaho Rules of Evidence, are of no force or effect.

(Adopted January 8, 1985, effective July 1, 1985.)

**I.R.E. 1103. Application.**

The trial court shall apply these rules and any amendments to these rules to actions, cases and proceedings pending on the effective date unless it finds that such application would prejudice the substantive rights of any party.

(Adopted January 8, 1985, effective July 1, 1985.)