

Commentary to the Proposed Amendments to the Indiana Rules of Evidence by the Indiana Supreme Court Committee on Rules of Practice and Procedure

PREAMBLE

As adopted in 1994, the Indiana Rules of Evidence tracked the Federal Rules of Evidence, except where substantive Indiana law differed. In 2011 the Federal Rules were amended for the stated purpose of adopting stylistic, not substantive, changes. Unless otherwise noted in the commentary, the purpose of the proposed revisions to the Indiana Rules is to conform the rules stylistically to the recently restyled Federal Rules.

Rule 103

The amendment inserts a new subsection (b) and redesignates succeeding subsections. The proposed new subsection (b) provides that an objection or offer to prove need not be renewed once the court has definitively ruled on the record. The amendment parallels the provision in the Federal Rule, which was added to the Federal Rule in 2000, subsequent to the adoption of the Indiana Rules.

The amendment also adds a new subsection (f), which relocates from Rule 104(a) the preponderance of the evidence the standard for deciding questions of fact needed to determine the admissibility of evidence.

Rule 201

The amendment strikes subsection (b) of the existing rule, which is judicial notice of law. Law is not taken into evidence; the courts follow the law and do not consider it as evidence.

Rule 407

This amendment adopts the restyled Federal Rule, which contains language specific to product liability cases.

Rule 902

The amendment reorganizes the subsections of Indiana Rule 902 to follow the numbering used by the Federal Rule. The only substantive changes are in proposed subsections (1), (2), and (4).

Proposed subsections (1) and (2) address self-authentication of domestic public documents and establishes two separate subsections that focus on public documents that (i) have an official seal and are signed (subsection (1)); and (ii) do not have an

official seal, but are both signed and certified by an official (subsection (2)). These changes bring 901(1) and (2) in line with the approach taken by corresponding provisions of the Federal Rule and by Indiana Code section 34-37-1-8.

The amendment adds subsection (4), which fills a gap currently existing in Indiana law.

Rule 1001

The amendment, in subsection (e), omits from the definition of "duplicate" reference to any particular form of technology in recognition of the rapid pace of technological change. Those forms of technology referenced in the current Indiana Rule would continue to fall within the definition of "duplicate" in subsection (e).