

“Core” Rules For Examining Witnesses

Rule 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 his character is not admissible *for the purpose of proving that he acted in conformity therewith* on a particular occasion,

except:

(1) Character of Accused

Evidence of a *pertinent* trait of his character offered by an accused, or by the prosecution to rebut same;

(2) Character of Victim

Subject to Rule 412 [Rape Shield Law], 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 peaceable character 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 he 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,

upon *timely request* by the accused, *reasonable notice is given in advance of trial* of intent to introduce *in the State's case in chief* such evidence *other than that arising in the same transaction*.

(c) Character Relevant to Punishment

In the penalty phase, evidence may be offered by an accused or by the prosecution as to the prior criminal record of the accused. Other evidence of his character may be offered by an accused or by the prosecution. Nothing herein shall limit provisions of Article 37.071, Code of Criminal Procedure.

Rule 405: Methods of Proving Character

(a) Reputation or Opinion

In all cases in which evidence of character or trait of character of a person is admissible, [Rule 608(a)] proof may be made by testimony as to *reputation* or by testimony in the form of an *opinion*.

Provided, however,

that to be qualified to testify concerning the character or trait of character of an accused, a witness must have been familiar with the reputation, or with the underlying facts or information upon which the opinion is based, prior to the day of the offense.

In all cases where testimony is admitted under this rule, on *cross-examination inquiry is allowable into relevant specific instances of conduct*.

(b) Specific Instances of Conduct

In cases in which *character or 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 his conduct.

Rule 403: Exclusion of Relevant Evidence on Special Grounds

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, or needless presentation of cumulative evidence.

Rule 607: Who May Impeach

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

Rule 608: Evidence of Character & 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 his credibility*,

other than a conviction of a crime as provided in Rule 609,

may not be inquired into on cross-examination of the witness nor proved by extrinsic evidence.

Rule 609: Impeachment by Evidence of Conviction of Crime

(a) General Rule

For the purpose of attacking the credibility of a witness,

evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record

but only if

the crime was a felony *or involved moral turpitude*, regardless of punishment,

and the court determines that the *probative value of admitting this evidence outweighs its prejudicial effect to a party*.

(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*.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation

Evidence of a conviction is not admissible under this rule if

(1) based on the *finding of the rehabilitation of the person convicted, the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure, and that person has not been convicted of a subsequent crime which was classified as a felony or involved moral turpitude*, regardless of punishment, or

(2) *probation has been satisfactorily completed for the crime for which the person was convicted, and that person has not been convicted of a subsequent crime*

which was classified as a felony or involved moral turpitude, regardless of punishment, or

(3) based on a *finding of innocence*, the conviction has been the subject of a pardon, annulment, or other equivalent procedure.

(d) Juvenile Adjudications

Evidence of juvenile adjudications is not admissible under this rule unless required to be admitted by the Constitution of the United States or Texas.

(e) Pendency of Appeal

Pendency of an appeal renders evidence of a conviction inadmissible.

(f) Notice

Evidence of a conviction is not admissible if after timely written request by the adverse party specifying the witness or witnesses, the proponent fails to give 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.

Rule 611: Writing Used to Refresh Memory

If a witness uses a writing to refresh his memory for the purpose of testifying

either while testifying or before testifying,

an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce into evidence those portions which relate to the testimony of the witness.

If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portion 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 is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that 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.

Rule 614 Production of Statements of Witnesses

(a) Motion for Production

After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the state or the defendant and his attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

(b) Production of Entire Statement

If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.

(c) Production of Excised Statement

If the other party claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera.

Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party.

Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal.

(d) Recess for Examination of Statement

Upon delivery of the statement to the moving party, the court, upon application of that party, shall recess proceedings in the trial for a reasonable examination of such statement and for preparation for its use in trial.

(e) Sanction for Failure to Produce Statement

If the other party elects not to comply with an order to deliver a statement to the moving

party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the attorney for the state who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition

As used in this rule, a “statement” of a witness means:

- (1) a written statement made by the witness that is signed or otherwise adopted or approved by him;
- (2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or
- (3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.