

**CHAPTER 5  
RULES OF EVIDENCE**

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**ARTICLE IV  
RELEVANCE AND ITS LIMITS**

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**Rule 5.404 Character evidence; crimes or other acts.**

*a. Character evidence.*

(1) *Prohibited ~~acts~~uses.* Evidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) *Exceptions for a defendant or victim in a criminal case. The following exceptions apply in a criminal case:*

(A) ~~*In criminal cases.*~~

(i) A defendant may offer evidence of the defendant’s pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

(ii)(B) Subject to the limitations in rule 5.412, a defendant may offer evidence of the victim’s pertinent trait, and if the evidence is admitted, the prosecutor may ~~offer evidence to rebut it.~~

(i) Offer evidence to rebut it.

(ii) Offer evidence of the defendant’s same trait.

(iii)(C) When the victim is unavailable to testify due to death or physical or mental incapacity, the prosecutor may offer evidence of the victim’s trait of peacefulness to rebut evidence that the victim was the first aggressor.

(B) ~~*In civil cases.*~~

~~(i) Evidence of an alleged victim’s character for violence may be offered on the issue of self defense by a party accused of assaultive conduct against the victim.~~

~~(ii) If evidence of a victim’s character for violence is admitted, any party may offer evidence of the victim’s peaceful character to rebut it.~~

(3) *Exceptions for a witness.* Evidence of a witness’s character may be admitted under rules 5.607, 5.608, and 5.609.

*b. ~~Other Crimes~~crimes, wrongs, or other acts.*

(1) *Prohibited ~~use~~uses.* Evidence of any other crime, wrong, or ~~other~~ act is not admissible to prove a person’s character in order to show that on a particular

1 occasion the person acted in accordance with the character.

2 (2) *Permitted uses.* This evidence may be admissible for another purpose such  
3 as proving motive, opportunity, intent, preparation, plan, knowledge, identity,  
4 absence of mistake, or lack of accident.

5 (3) Notice in a Criminal Case. In a criminal case, the prosecutor must:

6 (A) Provide reasonable notice of any such evidence that the prosecutor intends  
7 to offer at trial, so that the defendant has a fair opportunity to meet it.

8 (B) Articulate in the notice the permitted purpose for which the prosecutor  
9 intends to offer the evidence and the reasoning that supports the purpose.

10 (C) Do so in writing before trial—or in any form during trial if the court, for  
11 good cause, excuses lack of pretrial notice.

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14 **Rule 5.408 Compromise offers and negotiations.**

15 *a. Prohibited uses.* Evidence of the following is not admissible—on behalf of  
16 any party—either to prove or disprove the validity or amount of a disputed claim  
17 or to impeach by a prior inconsistent statement or a contradiction:

18 (1) Furnishing, promising, or offering—or accepting, promising to accept, or  
19 offering to accept—a valuable consideration in compromising or attempting to  
20 compromise the claim—~~that was disputed on either validity or amount.~~

21 (2) Conduct or a statement made during compromise negotiations about the  
22 claim—except when offered in a criminal case and when the negotiations related  
23 to a claim by a public office in the exercise of its regulatory, investigative, or  
24 enforcement authority.

25 *b. Exceptions.* The court may admit this evidence for another purpose, such  
26 as proving a witness’s bias or prejudice, negating a contention of undue delay,  
27 or proving an effort to obstruct a criminal investigation or prosecution.

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30 **Rule 5.412 ~~Sexual abuse~~Sex-offense cases;: the victim’s past sexual**  
31 **behavior or predisposition.**

32 *a. Prohibited uses.* The following evidence is not admissible in a civil or  
33 criminal proceeding involving alleged sexual ~~abuse~~misconduct:

34 (1) ~~Reputation or opinion evidence~~Evidence offered to prove that a victim  
35 engaged in other sexual behavior.

36 (2) Evidence ~~offered to prove~~ a victim’s ~~other~~ sexual ~~behavior other than~~

1 ~~reputation or opinion evidence~~predisposition.

2 *b. Exceptions.*

3 (1) *Criminal cases.* The court may admit the following evidence in a criminal  
4 case:

5 (A) Evidence of specific instances of a victim's sexual behavior, if offered to  
6 prove that someone other than the defendant was the source of semen, injury,  
7 or other physical evidence.

8 (B) Evidence of specific instances of a victim's sexual behavior with respect  
9 to the person accused of sexual ~~abuse~~misconduct, if offered by the defendant  
10 ~~offers it~~ to prove consent or if offered by the prosecutor.

11 (C) Evidence whose exclusion would violate the defendant's constitutional  
12 rights.

13 (2) *Civil cases.* ~~Rule 5.412(b) does not apply in civil cases~~In a civil case, the  
14 court may admit evidence offered to prove a victim's sexual behavior or sexual  
15 predisposition if its probative value substantially outweighs the danger of harm  
16 to any victim and of unfair prejudice to any party. The court may admit evidence  
17 of a victim's reputation only if the victim has placed it in controversy.

18 *c. Procedure to determine admissibility.*

19 (1) *Motion.* If ~~the defendant in a criminal sexual abuse case~~a party intends to  
20 offer evidence under rule 5.412(b), the ~~defendant party~~ must:

21 (A) File a motion ~~to offer~~that specifically describes the evidence ~~at least 14~~  
22 ~~days before trial unless the court determines that the evidence is newly~~  
23 ~~discovered and could not have been obtained earlier through the exercise of due~~  
24 ~~diligence, or that the evidence relates to an issue that has newly arisen in the~~  
25 ~~case, and the court sets a different time~~and states the purpose for which it is to  
26 be offered.

27 (B) ~~Serve the motion on all parties and on the victim, or when appropriate,~~  
28 ~~the victim's guardian or representative~~Do so at least 14 days before trial unless  
29 the court, for good cause, sets a different time.

30 (C) ~~File with~~Serve the motion ~~an offer of proof that specifically describes the~~  
31 ~~evidence and states the purpose for which the evidence is to be offered~~on all  
32 parties.

33 (D) Notify the victim or, when appropriate, the victim's guardian or  
34 representative.

35 (2) *Hearing.* ~~If the court determines that the offer of proof contains evidence~~  
36 ~~described in rule 5.412(b), the court must conduct a hearing in camera to~~

1 ~~determine if such evidence is admissible~~Before admitting evidence under this  
2 rule, the court must conduct an in camera hearing and give the victim and  
3 parties a right to attend and be heard. Unless the court orders otherwise, the  
4 motion, related materials, and the record of the hearing must be and remain  
5 sealed.

6 (A) ~~At the hearing the parties may call witnesses, including the victim, and~~  
7 ~~offer relevant evidence.~~

8 (B) ~~Notwithstanding rule 5.104(b), if the relevance of the evidence depends on~~  
9 ~~the fulfillment of a condition of fact, the court, during a hearing in camera, must~~  
10 ~~accept evidence on whether the condition of fact is fulfilled.~~

11 (C) ~~If the court determines that the evidence is relevant and that the probative~~  
12 ~~value outweighs the danger of unfair prejudice, the evidence will be admissible~~  
13 ~~at trial to the extent the court specifies, including the evidence on which the~~  
14 ~~victim may be examined or cross-examined.~~

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17 **ARTICLE VI**  
18 **WITNESSES**

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21 **Rule 5.609 Impeachment by evidence of a criminal conviction.**

22 *a. In general.* The following rules apply to attacking a witness's character for  
23 truthfulness by evidence of a criminal conviction:

24 (1) For a crime that in the convicting jurisdiction was punishable by death or  
25 by imprisonment for more than one year, the evidence:

26 (A) Must be admitted, subject to rule 5.403, in a civil case or in a criminal  
27 case in which the witness is not a defendant.

28 (B) Must be admitted in a criminal case in which the witness is a defendant,  
29 if the probative value of the evidence outweighs its prejudicial effect to that  
30 defendant.

31 (2) For any crime regardless of the punishment, the evidence must be  
32 admitted if the ~~crime involved dishonesty~~court can readily determine that  
33 establishing the elements of the crime required proving—or the witness's  
34 admitting—a dishonest act or false statement.

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**ARTICLE VII**  
**OPINIONS AND EXPERT TESTIMONY**

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5 **Rule 5.702 Testimony by expert witnesses.** A witness who is qualified as an  
6 expert by knowledge, skill, experience, training, or education may testify in the  
7 form of an opinion or otherwise if:

8 a. ~~the~~The expert's scientific, technical, or other specialized knowledge will  
9 help the trier of fact to understand the evidence or to determine a fact in issue.

10 b. The testimony is based on sufficient facts or data.

11 c. The testimony is the product of reliable principles and methods.

12 d. The expert has reliably applied the principles and methods to the facts of  
13 the case.

14  
15 **Rule 5.703 Bases of an expert's opinion testimony.** An expert may base an  
16 opinion on facts or data in the case that the expert has been made aware of or  
17 personally observed. If experts in the particular field would reasonably rely on  
18 those kinds of facts or data in forming an opinion on the subject, they need not  
19 be admissible for the opinion to be admitted. But if the facts or data would  
20 otherwise be inadmissible, the proponent of the opinion may disclose them to  
21 the jury only if their probative value in helping the jury evaluate the opinion  
22 substantially outweighs their prejudicial effect.

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25 **Rule 5.706 Court-appointed expert witnesses.**

26 *a. Appointment process.* On a party's motion or on its own, the court may  
27 order the parties to show cause why expert witnesses should not be appointed  
28 and may ask the parties to submit nominations. The court may appoint any  
29 expert that the parties agree on and any of its own choosing. But the court may  
30 only appoint someone who consents to act.

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**ARTICLE VIII**  
**HEARSAY**

**Rule 5.801 Definitions that apply to this Article; exclusions from hearsay.**

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*d. Statements that are not hearsay.* A statement that meets the following conditions is not hearsay:

(1) *A declarant-witness’s prior statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) Is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) Is consistent with the declarant’s testimony and is offered:  
(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant’s credibility as a witness when attacked on another ground; or

(C) Identifies a person as someone the declarant perceived earlier.

(2) *An opposing party’s statement.* The statement is offered against an opposing party and:

(A) Was made by the party in an individual or representative capacity;

(B) Is one the party manifested that it adopted or believed to be true;

(C) Was made by a person whom the party authorized to make a statement on the subject;

(D) Was made by the party’s agent or employee on a matter within the scope of that relationship and while it existed; or

(E) Was made by the party’s coconspirator during and in furtherance of the conspiracy. ~~Prior to admission of hearsay evidence under rule 5.801(d)(2)(E), the trial court must make a preliminary finding, by a preponderance of evidence, that there was a conspiracy, that both the declarant and the party against whom the statement is offered were members of the conspiracy, and that the statements were made in the course and in furtherance of the conspiracy.~~

The statement must be considered but does not by itself establish the declarant’s authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

. . . .

1 **Rule 5.803 Exceptions to the rule against hearsay—regardless of whether**  
2 **the declarant is available as a witness.** The following are not excluded by the  
3 rule against hearsay, regardless of whether the declarant is available as a  
4 witness:

5 . . . .

6 (16) *Statements in ancient documents.* A statement in a document that ~~is at~~  
7 ~~least 30 years old~~ was prepared before January 1, 1998, and whose authenticity  
8 is established.

9 . . . .

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11 **Rule 5.804 Exceptions to the rule against hearsay—when the declarant is**  
12 **unavailable as a witness.**

13 . . . .

14 *b. The exceptions.* The following are not excluded by the rule against hearsay  
15 if the declarant is unavailable as a witness:

16 . . . .

17 (3) *Statement against interest.* A statement that:

18 (A) A reasonable person in the declarant’s position would have made only if  
19 the person believed it to be true because, when made, it was so contrary to the  
20 declarant’s proprietary or pecuniary interest or had so great a tendency to  
21 invalidate the declarant’s claim against someone else or to expose the declarant  
22 to civil or criminal liability; and

23 (B) Is supported by corroborating circumstances that clearly indicate its  
24 trustworthiness, if it is offered in a criminal case as one that tends to expose the  
25 declarant to criminal liability ~~and is offered to exculpate the defendant.~~

26 . . . .

27  
28 **Rule 5.807 Residual exception.**

29 *a. In general.* Under the following ~~circumstances~~ conditions, a hearsay  
30 statement is not excluded by the rule against hearsay even if the statement is  
31 not ~~specifically covered by~~ admissible under a hearsay exception in rule 5.803  
32 or 5.804:

33 (1) The statement ~~has—equivalent—circumstantial—guarantees—of~~  
34 trustworthiness; is supported by sufficient guarantees of trustworthiness—after  
35 considering the totality of circumstances under which it was made and evidence,  
36 if any, corroborating the statement.

1 ~~(2) It is offered as evidence of a material fact;~~

2 ~~(3)(2) It is more probative on the point for which it is offered than any other~~  
3 ~~evidence that the proponent can obtain through reasonable efforts; and~~

4 ~~(4) Admitting it will best serve the purposes of these rules and the interests~~  
5 ~~of justice.~~

6 *b. Notice.* The statement is admissible only if, ~~before the trial or hearing,~~ the  
7 proponent gives an adverse party reasonable notice of the intent to offer the  
8 statement ~~and its particulars, including the declarant's name and address,~~  
9 including its substance and the declarant's name—so that the party has a fair  
10 opportunity to meet it. The notice must be provided in writing before the trial or  
11 hearing—or in any form during the trial or hearing if the court, for good cause,  
12 excuses a lack of earlier notice.

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## 14 **ARTICLE IX**

### 15 AUTHENTICATION AND IDENTIFICATION

#### 16 **Rule 5.901 Authenticating or identifying evidence.**

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18 *a. In general.* To satisfy the requirement of authenticating or identifying an  
19 item of evidence, the proponent must produce evidence sufficient to support a  
20 finding that the item is what the proponent claims it is.

21  
22 *b. Examples.* The following are examples only—not a complete list—of  
23 evidence that satisfies the requirement:

24 . . . .

25 (8) *Evidence about ancient documents or data compilations.* For a document or  
26 data compilation, evidence that it:

27 (A) Is in a condition that creates no suspicion about its authenticity;

28 (B) Was in a place where, if authentic, it would likely be; ~~and.~~

29 (C) Is at least 3020 years old when offered.

30 . . . .

31  
32 **Rule 5.902 Evidence that is self-authenticating.** The following items  
33 of evidence are self-authenticating; they require no extrinsic evidence  
34 of authenticity to be admitted:

35 . . . .



1        (13) Certified records generated by an electronic process or system. A record  
2 generated by an electronic process or system that produces an accurate result,  
3 as shown by a certification of a qualified person that complies with the  
4 certification requirements of rule 5.902(11) or (12). The proponent must also  
5 meet the notice requirements of rule 5.902(11).

6        (14) Certified data copied from an electronic device, storage medium, or  
7 file. Data copied from an electronic device, storage medium, or file, if  
8 authenticated by a process of digital identification, as shown by a certification of  
9 a qualified person that complies with the certification requirements of rule  
10 5.902(11) or (12). The proponent also must meet the notice requirements of rule  
11 5.902(11).

12        . . . . .

13