



## ARTICLE I: GENERAL PROVISIONS

- 101 **Scope; Definitions.** (a) See R. 1101 for specific courts & proceedings to which the rules apply, along with exceptions. (b) **Definitions:** Following words are defined in this rule: "civil case," "criminal case," "public office," "records," "rule."
- 102 **Purpose:** to secure fairness, eliminate unjustified expense & delay, promote development of law of evidence.
- 103 **Rulings on Evidence.** (a) **Party may claim error** in a ruling to admit or exclude evidence only if substantial right affected & (1) if ruling admits evidence, timely & specific objection is made; or (2) if ruling excludes evidence, offer of proof is made. (b) No need to renew objection if definitive ruling already on record. (c) Court may add to record to show character/form of evidence, objections made, & ruling. Court may direct that offer of proof be in Q&A form. (d) Court to conduct trial so that inadmissible evidence is not heard by jury. (e) **Plain errors** affecting substantial rights may be noticed although not preserved.
- 104 **Preliminary questions.** (a) Qualifications, privileges, or admissibility are for judge; judge not bound by evidence rules except privileges. (b) If relevancy depends upon fulfillment of a condition of fact, court may admit evidence conditionally. (c) Court must conduct hearing so that jury cannot hear it if (1) it involves a confession; (2) defendant in criminal case is a witness; or (3) justice requires it. (d) Accused may testify on preliminary matter without cross-exam on other issues. (e) This rule does not limit evidence relevant to weight or credibility of other evidence.
- 105 **When evidence admissible against one party** or for one purpose, but not against another party, upon request court must so instruct jury.
- 106 **When any part of a STATEMENT is introduced, adverse party may at that time** require related writing to be admitted if fairness requires. The adverse party may do so over a hearsay objection.
- 107 **NEW (a) Permitted Uses.** Court may allow party to present an illustrative aid to help trier of fact understand evidence/argument (subject to 403) & if aid's utility does not confuse issues, mislead jury, cause undue delay or waste time. (b) **Use in Jury Deliberations.** Illustrative aid is not evidence & must not be provided to jury during deliberations unless: (1) all parties consent; or (2) court, for good cause, orders otherwise. (c) **Record.** When practicable, illustrative aid must be entered into record. (d) **Summaries of Voluminous Materials Admitted as Evidence.** Summary/chart/calculation admitted to prove content of voluminous evidence subject to R. 1006.

## ARTICLE II: JUDICIAL NOTICE

- 201 **Judicial Notice.** (a) Rule applies only to adjudicative (not legislative) fact. (b) Fact must not be subject to dispute because it (1) is generally known in jurisdiction, or (2) can be readily determined from accurate sources. (c) Court (1) **may take notice** on its own; (2) **must take** judicial notice on request if party supplies necessary information. (d) Court may take notice at any stage of proceeding. (e) Party to be heard upon request; if court takes notice before notifying party, party still to be heard on request. (f) In a civil case, court must instruct that the noticed fact is *conclusive*. In a criminal case, court must instruct jury that it may or may not accept the noticed fact as *conclusive*.

## ARTICLE III: PRESUMPTIONS IN CIVIL

- 301 **Presumptions in Civil Cases Generally.** Unless a federal statute or these rules provide otherwise, party against whom presumption is directed has burden of producing rebutting evidence, but burden of persuasion remains on party having it originally.
- 302 **Applying State Law to Civil Cases.** If state law supplies rule for claim or defense, effect of presumption is determined by state law.

## ARTICLE IV: RELEVANCE &amp; ITS LIMITS

- 401 **Test for Relevant Evidence.** Evidence is relevant if it tends to make a fact of consequence more probable or less probable.
- 402 **All relevant evidence is admissible,** except as otherwise provided by these rules or other law. Irrelevant evidence is not admissible.
- 403 **Relevant evidence may be excluded if its probative value is substantially outweighed** by danger of unfair prejudice, confusion of issues, misleading jury, or by considerations of delay, waste of time, or needless presentation of cumulative evidence.
- 404 **(a) Character Evidence; Character Traits**  
 (1) **Prohibited Uses:** Not admissible to prove that on a particular occasion person acted in accord with the character or trait.  
 (2) **Exceptions for a Defendant or Victim in Criminal Case.** (A) Defendant may offer evidence of the defendant's pertinent trait, & if admitted, prosecutor may offer evidence to rebut it; (B) Subject to Rule 412, defendant may offer evidence of alleged victim's pertinent trait, & if admitted, prosecutor may: (i) offer evidence to rebut it; & (ii) offer evidence of defendant's same trait; & (C) In homicide case, prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that victim was the first aggressor.  
 (3) **Exceptions for a Witness.** Evidence of a witness's character may be admitted under Rules 607 - 609.  
 (b) **Other Crimes, Wrongs, or Other Acts**  
 (1) **Prohibited Uses.** Evidence of a crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accord with the character.  
 (2) **Permitted Uses; Notice in Criminal Case.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.  
 (3) **Notice in Criminal Case.** Prosecutors must (A) provide reasonable notice of intent to use 404 evidence at trial, (B) articulate the permitted purpose for the evidence & supporting reasoning, & (C) do so in writing before trial or in any form during trial if the court, for good cause, excuses lack of pretrial notice.
- 405 **Methods of Proving Character**  
 (a) **By Reputation or Opinion.** When admissible, character may be proved by reputation or opinion. On cross-exam of the character witness, court may allow inquiry into relevant specific instances of the person's conduct.  
 (b) If character is an essential element of a charge, claim or defense, proof may also be made by relevant specific instances of that person's conduct.
- 406 **Habit or routine practice** may be admitted to prove that on a particular occasion the person or organization acted in accord with the habit

# Federal Rules Of Evidence

**Marcel A. Müller**



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