

M.R. 24138

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered January 6, 2015.

(Deleted material is struck through and new material is underscored.)

Effective immediately, Illinois Rules of Evidence 101, 608, 609, 613 and 1101 are amended, as follows.

ILLINOIS RULES OF EVIDENCE

Rule 101.

SCOPE

These rules govern proceedings in the courts of Illinois to the extent and with the exceptions stated in Rule 1101. A statutory rule of evidence is effective unless in conflict with a rule or a decision of the Illinois Supreme Court.

Adopted September 27, 2010, eff. January 1, 2011; comment amended Jan. 6, 2015, eff. immediately.

COMMENT

Rule 101 provides that a statutory rule of evidence is effective unless in conflict with an Illinois Supreme Court rule or decision. There is no current statutory rule of evidence that is in conflict with a rule contained in the Illinois Rules of Evidence, ~~with the possible exception of the statute discussed in the commentary to Rule 609(d) below.~~

Rule 608.

**EVIDENCE OF CHARACTER OF WITNESS FOR TRUTHFULNESS OR
UNTRUTHFULNESS**

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.

Adopted September 27, 2010, eff. January 1, 2011; amended Jan. 6, 2015, eff. immediately.

Rule 609.

IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime, except on a plea of nolo contendere, is admissible but only if the crime, (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, or (2) involved dishonesty or false statement regardless of the punishment unless (3), in either case, the court determines that the probative value of the evidence of the crime is substantially outweighed by the danger of unfair prejudice.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of conviction or of the release of the witness from confinement, whichever is the later date.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure, and (2) the procedure under which the same was granted or issued required a substantial showing of rehabilitation or was based on innocence.

(d) Juvenile Adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Adopted September 27, 2010, eff. January 1, 2011; comment amended Jan. 6, 2015, eff. immediately.

Comment

~~Rule 609 represents a codification of a draft of Fed.R.Evid. 609, as adopted by the Illinois Supreme Court in *People v. Montgomery*, 48 Ill.2d 510, 268 N.E.2d 695 (1971). Rule 609(d) is a codification of the *Montgomery* holding related to the admissibility of juvenile adjudications for impeachment purposes. Rule 609(d) may conflict with section 5-150(1)(c) of the Juvenile Court Act (705 ILCS 405/5-150(1)(c)), which arguably makes such adjudications admissible for~~

~~impeachment purposes. Concerning that issue, it should be noted that in *People v. Harris*, 231 Ill. 2d 582 (2008), the Supreme Court held that juvenile adjudications are admissible for impeachment purposes when a defendant opens the door to such evidence (in that case, by testifying that “I don’t commit crimes”). Because of its holding, which was based on the defendant’s own testimony, the court declined to consider whether section 5-150(1)(e) overrides the common law prohibition against such use. The codification of *Montgomery* in Rule 609(d) is not intended to resolve this issue.~~

Rule 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 first afforded an opportunity to explain or deny the same and the opposing 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).

(c) Evidence of Prior Consistent Statement of Witness. A prior statement that is consistent with the declarant-witness’s testimony is admissible, for rehabilitation purposes only and not substantively as a hearsay exception or exclusion, when the declarant testifies at the trial or hearing and is available to the opposing party for examination concerning the statement, and the statement is offered to rebut an express or implied charge that:

- (i) the witness acted from an improper influence or motive to testify falsely, if that influence or motive did not exist when the statement was made; or
- (ii) the witness’s testimony was recently fabricated, if the statement was made before the alleged fabrication occurred.

Adopted September 27, 2010, eff. January 1, 2011; amended Jan. 6, 2015, eff. immediately.

Rule 1101.

APPLICABILITY OF RULES

(a) Except as otherwise provided in paragraphs (b) and (c), these rules govern proceedings in the courts of Illinois.

(b) Rules Inapplicable. These rules (other than 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.

(2) Grand Jury. Proceedings before grand juries.

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, ~~or granting or revoking probation,~~ conditional discharge or supervision; postconviction hearings; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise, and contempt proceedings in which the court may act summarily.

(c) Small Claims Actions. These rules apply to small claims actions, subject to the application of Supreme Court Rule 286(b).

Adopted September 27, 2010, eff. January 1, 2011; amended Apr. 8, 2013, eff. immediately; amended Jan. 6, 2015, eff. immediately.