

M.R. 24138

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

Order entered October 15, 2015.

(Deleted material is struck through and new material is underscored, except in Rules 412 and 413, which are entirely new.)

Effective immediately, Illinois Rules of Evidence 103, 410, 611, 613 and 801 are amended, and Illinois Rules of Evidence 412 and 413 are adopted, as follows.

ILLINOIS RULES OF EVIDENCE

Rule 103.

RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Preserving a Claim of Error for Appeal.

(1) Civil and Criminal Cases. In civil and criminal trials where the court has not made a previous ruling on the record concerning the admission of evidence, a contemporaneous trial objection or offer of proof must be made to preserve a claim of error for appeal.

(2) Criminal Cases. In criminal trials, once the court rules before or at trial on the record concerning the admission of evidence, a contemporaneous trial objection or offer of proof need not be renewed to preserve a claim of error for appeal.

(3) Civil Cases. In civil trials, even if the court rules before or at trial on the record concerning the admission of evidence, a contemporaneous trial objection or offer of proof must be made to preserve a claim of error for appeal.

(4) Posttrial Motions. In all criminal trials and in civil jury trials, in addition to the requirements provided above, a claim of error must be made in a posttrial motion to preserve the claim for appeal. Such a motion is not required in a civil nonjury trial.

(b) (c) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and

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OCT 15 2015

SUPREME COURT
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the ruling thereon. It may direct the making of an offer in question and answer form.

~~(e)~~ **(d) Hearing of Jury.** In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

~~(d)~~ **(e) Plain Error.** Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Adopted September 27, 2010, eff. January 1, 2011; amended Oct. 15, 2015, eff. immediately.

Rule 410.

INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS

~~Except as otherwise provided in this rule, evidence of a plea discussion or any resulting agreement, plea, or judgment the following~~ is not admissible in any criminal proceeding against the defendant who made the plea or was a participant in the plea discussions under the following circumstances:

- (1) a plea of guilty which is not accepted or is later withdrawn;
- (2) a plea of nolo contendere;
- (3) any statement made in the course of any proceedings under Illinois Supreme Court Rule 402 regarding either of the foregoing pleas; or
- (4) any statement made in the course of a plea discussions which ~~do~~ does not result in a plea of guilty, or which results in a plea of guilty which is not accepted or is later withdrawn, or which results in a judgment on a plea of guilty which is reversed on direct or collateral review.

~~However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.~~

Adopted September 27, 2010, eff. January 1, 2011; amended Oct. 15, 2015, eff. immediately.

Rule 412.

Prior Sexual Activity or Reputation as Evidence

Evidence of the sexual activity or reputation of a person alleged to be a victim of a sexual offense is inadmissible:

(a) in criminal cases, as provided for and subject to the exceptions in section 115-7 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7);

(b) in civil cases, as provided for and subject to the exceptions in section 8-2801 of the Code of Civil Procedure (735 ILCS 5/8-2801).

Adopted Oct. 15, 2015, eff. immediately.

Rule 413.

Evidence of Other Offenses in Criminal Cases

(a) **Evidence in Certain Cases.** In a criminal case for an offense set forth in section 115-7.3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.3), evidence of the defendant's commission of another offense or offenses set forth in section 115-7.3 is admissible, as provided in section 115-7.3.

(b) **Evidence in Domestic Violence Cases.** In a criminal case for an offense related to domestic violence as set forth in section 115-7.4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.4), evidence of the defendant's commission of another offense or offenses of domestic violence is admissible, as provided in section 115-7.4.

(c) **Evidence of Prior Convictions.** In a criminal case for the type of offenses set forth in section 115-20 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-20), evidence of the defendant's conviction for an offense set forth in that section is admissible when the victim is the same person who was the victim of the previous offense that resulted in the conviction of the defendant, as provided in section 115-20.

Adopted Oct. 15, 2015, eff. immediately.

Rule 611.

MODE AND ORDER OF INTERROGATION AND PRESENTATION

(a) **Control by Court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) **Scope of Cross-Examination.** Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness, which include matters within the knowledge of the witness that explain, qualify, discredit or destroy the witness's direct testimony. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) **Leading Questions.** Leading questions should not be used on the direct examination of a

witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile or an unwilling witness or an adverse party or an agent of an adverse party as defined by section 2-1102 of the Code of Civil Procedure (735 ILCS 5/2-1102), interrogation may be by leading questions.

Adopted September 27, 2010, eff. January 1, 2011; amended Oct. 15, 2015, eff. immediately.

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 statements 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; amended Oct. 15, 2015, eff. immediately.

Rule 801.

DEFINITIONS

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying

at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) **Statements Which Are Not Hearsay.** A statement is not hearsay if

(1) **Prior Statement by Witness.** In a criminal case, the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is

(A) inconsistent with the declarant's testimony at the trial or hearing, and—

(1) was made under oath at a trial, hearing, or other proceeding, or in a deposition, or

(2) narrates, describes, or explains an event or condition of which the declarant had personal knowledge, and

(a) the statement is proved to have been written or signed by the declarant, or

(b) the declarant acknowledged under oath the making of the statement either in the declarant's testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought or at a trial, hearing, or other proceeding, or in a deposition, or

(c) the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording; or

(B) one of identification of a person made after perceiving the person.

(2) **Admission Statement by Party-Opponent.** The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy, or (F) a statement by a person, or a person on behalf of an entity, in privity with the party or jointly interested with the party.

Adopted September 27, 2010, eff. January 1, 2011; amended Oct. 15, 2015, eff. immediately.