

THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. IV]

Order Adopting Amendments to Rule 405; No. 249, Supreme Court Rules; Doc. No. 1

The Committee on Rules of Evidence has prepared a Final Report explaining the amendments to Rule 405 (Methods of Proving Character) that were adopted July 20, 2000, effective October 1, 2000. These amendments expand the limitation on cross-examination of defense character witnesses consistent with *Commonwealth v. Morgan*, 739 A.2d 1033 (Pa. 1999). The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 20th day of July, 2000, upon the recommendation of the Committee on Rules of Evidence, this Recommendation having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Evidence 405 is hereby amended as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective October 1, 2000.

Annex A

TITLE 25. RULES OF EVIDENCE

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 405. Methods of Proving Character.

(a) *Reputation Evidence.* In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation. On cross-examination of the reputation witness, inquiry is allowable into specific instances of conduct probative of the character trait in question, except that in criminal cases inquiry into [**arrests**] **allegations of other criminal misconduct** of the accused not resulting in conviction is not permissible.

(b) *Specific Instances of Conduct.* Specific instances of conduct are not admissible to prove character or a trait of character, except as follows:

(1) In civil cases where character or a trait of character is admissible as an element of a claim or defense, character may be proved by specific instances of conduct.

(2) In criminal cases where character or a trait of character is admissible under Pa.R.E. 404(a)(2), the accused may prove the complainant's character or trait of character by specific instances of conduct.

Comment

Pa.R.E. 405 differs from F.R.E. 405. One of the principal points of divergence is that Pennsylvania law does not

permit proof of character by opinion evidence. See [*Com.*] *Commonwealth v. Lopinson*, [**427 Pa. 284**,] 234 A.2d 552 (Pa. 1967).

Reputation evidence is an exception to the hearsay rule under Pa.R.E. 803(21).

Subsection (a). Pa.R.E. 405(a) differs from F.R.E. 405 because Pa.R.E. 405(a) prohibits cross-examination of reputation witnesses offered on behalf of a defendant in a criminal case regarding arrests of the defendant not resulting in conviction. This is consistent with Pennsylvania law. See *Commonwealth v. Scott*, [**496 Pa. 188**,] 436 A.2d 607 (Pa. 1981). **Subsection (a) was amended in 2000 in view of *Commonwealth v. Morgan*, 739 A.2d 1033 (Pa. 1999).** Where a reputation witness is cross-examined regarding specific instances of conduct, the court should take care that the cross-examiner has a reasonable basis for the questions asked. See *Commonwealth v. Adams*, [**426 Pa. Super. 332**,] 626 A.2d 1231 (Pa. Super. 1993).

Subsection (b). Unlike F.R.E. 405(b), Pa.R.E. 405(b) distinguishes between civil and criminal cases in permitting the use of specific instances of conduct to prove character.

Cf. Pa.R.E. 608(b) (use of specific instances of conduct to attack or support credibility of witness, either on cross-examination or as extrinsic evidence).

Subsection (b)(1). With regard to civil cases, Pa.R.E. 405(b)(1) is identical to the Federal Rule in permitting proof of character by specific instances of conduct where character is an essential element of the claim or defense. This is consistent with Pennsylvania law. See *Matusak v. Kulczewski*, [**295 Pa. 208**,] 145 A. 94 (Pa. 1928); *Dempsey v. Walso Bureau, Inc.*, [**431 Pa. 562**,] 246 A.2d 418 (Pa. 1968); *Commonwealth ex rel. Grimes v. Grimes*, [**281 Pa. Super. 484**,] 422 A.2d 572 (Pa. Super. 1980).

Subsection (b)(2). In criminal cases under Pa.R.E. 404(a)(2), the accused may offer evidence of a pertinent trait of character of the complainant. In such a case the trait may be proven by specific instances of conduct. This is consistent with Pennsylvania law. See *Commonwealth v. Dillon*, [**528 Pa. 417**,] 598 A.2d 963 (Pa. 1991); *Commonwealth v. Amos*, [**445 Pa. 297**,] 284 A.2d 748 (Pa. 1971).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended July 20, 2000, effective October 1, 2000.

* * * * *

Committee Explanatory Reports:

Final Report explaining the July 20, 2000 amendment of paragraph (a) concerning allegations of other criminal misconduct published with the Court's Order at 30 Pa.B. 3920 (August 5, 2000).

FINAL REPORT ¹

Amendments to Pa.R.E. 405

Cross-Examination of Defense Character Witness

On July 20, 2000, upon the recommendation of the Committee on Rules of Evidence, the Supreme Court adopted amendments to Pa.R.E. 405, effective October 1, 2000. The rule changes conform the rule to recent changes in case law.

Present Rule 405(a), which was based on *Commonwealth v. Scott*, 436 A.2d 607 (Pa. 1981), and was approved and adopted by the Court effective October 1, 1998, permits cross-examination into specific instances of conduct that is probative of the character trait in question. The only limitation is in criminal cases with regard to arrests of the accused not resulting in conviction.

In 1999, the Court in *Commonwealth v. Morgan*, 739 A.2d 1033 (Pa. 1999), expanded the limitation on cross-examination of defense character witnesses, holding that in criminal cases, defense character witnesses cannot be cross-examined regarding conduct of the accused not resulting in conviction. In view of this expansion of the limitation on cross-examination of defense witnesses, the Committee recommended that the Court amend Rule 405(a) to reflect the change in the law set forth in *Morgan*.

Accordingly, Pa.R.E. 405(a) has been amended as follows:

In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation. On cross-examination of the reputation witness, inquiry is allowable into specific instances of conduct probative of the character trait in question, except that in criminal cases inquiry into [**arrests**] **allegations of other criminal misconduct** of the accused not resulting in conviction is not permissible.

In addition, a cross-reference to *Morgan* has been added to the Comment.

[Pa.B. Doc. No. 00-1313. Filed for public inspection August 4, 2000, 9:00 a.m.]

¹ The Committee's Final Report should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Report.

Title 25—LOCAL
COURT RULES

DELAWARE COUNTY

Reestablishment of the Magisterial Districts within
the Thirty-Second Judicial District of the Commonwealth of Pennsylvania; No. 122 Magisterial
Doc. No. 1; Book No. 2

Order

Per Curiam:

And Now, this 19th day of July, 2000, upon consideration of the Petition for Establishment of a Thirty-Third Magisterial District Within the Thirty-Second Judicial District (Delaware County) of the Commonwealth of Pennsylvania, *It Is Ordered and Decreed* that the Petition, which provides for the establishment of Magisterial District 32-2-52 through the realignment of Magisterial Districts 32-1-33, 32-1-34, 32-1-35, and 32-2-51, is granted.

Effective September 1, 2000, Magisterial Districts 32-1-33, 32-1-34, 32-1-35, and 32-2-51 will be realigned and Magisterial District 32-2-52 will be created as follows:

- Magisterial District 32-1-33 Borough of Millbourne; Township of Upper Darby, districts and precincts: 4-1, 6-1, 6-2, 6-3, 6-4, 6-10, 6-12, 7-2, 7-3, 7-4, 7-5, 7-6, 7-8, 7-10, 7-11
- Magisterial District 32-1-34 Township of Upper Darby, districts and precincts: 1-1, 1-2, 1-3, 1-8, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-9, 3-10
- Magisterial District 32-1-35 Township of Upper Darby, districts and precincts: 1-9, 3-1, 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9, 4-10, 4-11, 5-1, 5-3, 5-7, 5-8
- Magisterial District 32-2-51 Township of Upper Darby, districts and precincts: 5-2, 5-4, 5-5, 5-6, 5-9, 6-5, 6-6, 6-7, 6-8, 6-9, 6-11, 6-13, 6-14, 7-1, 7-7, 7-9
- Magisterial District 32-2-52 Township of Upper Darby, districts and precincts: 1-4, 1-5, 1-6, 1-7, 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-7

[Pa.B. Doc. No. 00-1314. Filed for public inspection August 4, 2000, 9:00 a.m.]

NORTHUMBERLAND COUNTY

Adoption of Local Rule NCV-208-Continuances; Misc. Doc. No. 00-97

Order

And Now, this 24th day of July 2000, the Court hereby adopts the following Northumberland County Rule of Civil Procedure, to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Rules Committee and one (1) copy to the *Northumberland County Legal Journal* for publication in the *Northumberland County Legal Journal*.

It is further ordered that this local rule shall be kept continuously available for public inspection and copying in the Prothonotary's office.

By the Court

HONORABLE ROBERT B. SACAVAGE,
President Judge

MOTION FOR CONTINUANCE

NOW COMES _____, (by and through (his) (her) (its) attorney, _____,) and moves for a
(Name of party) (Name of Attorney)
continuance as follows:

1. The above captioned matter is scheduled for

(Nature of proceeding, i.e., argument, hearing, arraignment, etc.)
on the _____ day of _____, 2 _____, at _____ .m., before _____ .
(Name of judge, master, etc.)

2. The moving party for said proceeding is

(Name of party whose claim is to be heard)

3. The opposing parties are:

_____ represented by: _____
_____ represented by: _____
_____ represented by: _____
_____ represented by: _____

4. The proceeding was scheduled by _____ dated _____ .
(Order or notice) (Date)

5. The proceeding (has) (has not) been previously continued (_____ time(s)). (The moving party has obtained a
continuance _____ time(s)).

6. A continuance is requested because _____

(If a continuance is requested because of a conflicting court matter, state: the name of the case; the court; the nature of the scheduled proceeding; the date,
time and expected duration of the conflicting proceeding; the date of the order or notice scheduling the conflicting proceeding.)

7. _____ The following parties have been notified of this request and have no objection:

_____ The following parties have not been notified of this request:

Efforts to notify the opposing party include:

_____ The following parties objected to the continuance for the reason stated herein: _____

8. I hereby certify that if a continuance is granted, the party moving for the continuance will be provided a copy of this
motion forthwith and I will notify all witnesses who would be appearing at my request.

9. I specifically request a continuance

_____ of not less than _____
_____ of not more than _____ (or)
_____ to the next available date.

Respectfully submitted,

ORDER

AND NOW, this _____ day of _____, 2 _____, upon consideration of the attached motion of _____ requesting a continuance:

(Moving party) _____ the motion is denied. _____ the motion is granted and the matter scheduled for _____ at _____ .m. before _____ is hereby continued until _____ at _____ .m. (Name of judge, master, etc.) (Date) (Time)

The moving party shall promptly notify all interested parties of this order.

BY THE COURT:

Judge—Master—Hearing Officer

[Pa.B. Doc. No. 00-1315. Filed for public inspection August 4, 2000, 9:00 a.m.]

NORTHUMBERLAND COUNTY

Change in Rules of Criminal Procedure, NCR-10,008, Continuances; Misc. Doc. No. 00-96

Order

And Now, this 24th day of July 2000, the Court hereby adopts the following Northumberland County Rule of Criminal Procedure, to be effective thirty (30) days after the date of publication in the Pennsylvania Bulletin.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, one (1) certified copy to the Criminal Rules Committee and one (1) copy to the Northumberland County Legal Journal for publication in the Northumberland County Legal Journal.

It is further ordered that this local rule shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

By the Court

HONORABLE ROBERT B. SACAVAGE,
President Judge

MOTION FOR CONTINUANCE

NOW COMES _____, (by and through (his) (her) (its) attorney, _____,) and moves for a continuance as follows: (Name of party) (Name of Attorney)

- 1. The above captioned matter is scheduled for _____ on the _____ day of _____, 2 _____, at _____ .m., before _____ . (Nature of proceeding, i.e., arraignment, omnibus pre-trial, trial, etc.) (Name of Judge)
- 2. The opposing party is: _____ represented by _____ .
- 3. The proceeding was scheduled by _____ dated _____ . (Notice or Order)
- 4. The proceeding (has) (has not) been previously continued (_____ time(s)).
- 5. A continuance is requested because _____

(If a continuance is requested because of a conflicting court matter, state: the name of the case; the court; the nature of the scheduled proceeding; the date, time and expected duration of the conflicting proceeding; the date of the order or notice scheduling the conflicting proceeding.)

- 6. _____ The opposing party has been notified of this request and has no objection. _____
- _____ The opposing party has not been notified of this request. _____

Efforts to notify the opposing party include: _____
_____ The opposing party objected to the continuance for the reasons stated herein: _____

7. I hereby certify that if a continuance is granted, I will notify all witnesses who would be appearing at my request.

8. I specifically request a continuance
_____ of not less than _____
_____ of not more than _____ (or)
_____ to the next available date.

Respectfully submitted,

ORDER

AND NOW, this _____ day of _____, 2 _____, upon consideration of the attached motion of _____ requesting a continuance.

(Moving party)

_____ the motion is denied.

_____ the motion is granted and the _____ scheduled for _____ at _____ .m.

(Matter being continued)

(Date)

(Time)

before _____ is hereby continued until _____ at _____ .m.

(Name of Judge)

(Date)

(Time)

The moving party shall promptly notify all interested parties of this order.

BY THE COURT:

Judge

[Pa.B. Doc. No. 00-1316. Filed for public inspection August 4, 2000, 9:00 a.m.]
