

## **RULES OF EVIDENCE CHEAT SHEET**

(Please refer to “Simplified Rules of Evidence” section for the complete rule)

**Rules 402 and 403** – RELEVANT EVIDENCE is generally admissible unless it is unfairly prejudicial, may confuse the issue, or waste the court’s time.

**Rule 404** – CHARACTER EVIDENCE is generally not admissible to prove conduct, except:

- Character of Accused offered by Accused (State may rebut)
- Character of Victim offered by Accused (State may rebut), or peacefulness of victim offered by State to rebut self-defense.
- Character of Witness, as provided in Rules 607-609.
- Other crimes, wrongs or acts are not admissible to prove action in conformity with character but are admissible for other purposes.

**Rule 405** - If character admissible, OPINION AND GENERAL REPUTATION are admissible. Specific conduct only admissible during direct examination when character is an essential element. Otherwise, only during cross-examination.

**Rule 406** – HABIT OR ROUTINE is admissible to prove action in conformity therewith.

**Rule 407** – SUBSEQUENT REMEDIAL MEASURES are not admissible to prove liability but may be admissible to show ownership, control, feasibility of precautionary measures (if controverted), or for impeachment.

**Rule 408** – Evidence of COMPROMISE OR OFFERS TO COMPROMISE are not admissible to prove liability, invalidity of claim, or value of claim. May be admissible for other purposes.

**Rule 409** – PAYMENT OF MEDICAL OR SIMILAR EXPENSES is not admissible to prove liability.

**Rule 410** – Withdrawn GUILTY PLEAS, nolo pleas, statements made in federal Rule 11, or similar, proceedings, and plea discussions that don’t result in guilty plea (or plea is withdrawn), are not admissible. Plea discussion statements are admissible if another such statement has been admitted and the statement ought to be considered with it, or in a criminal perjury proceeding.

**Rule 501**- PRIVILEGES include: spouses, attorney/client, grand jurors, state secrets, and psychiatrist/patient.

**Rule 601** – Everyone is COMPETENT to be a witness.

**Rule 602** - Witnesses may only testify about facts within their PERSONAL KNOWLEDGE (except experts).

**Rule 607** – Any party, including the party calling a witness, may attack the credibility of a witness.

**Rule 608** - Evidence as to the TRUTHFULNESS OR UNTRUTHFULNESS of a witness is admissible in the form of opinion or reputation (evidence of truthfulness only admissible after character has been attacked). SPECIFIC INSTANCES OF CONDUCT (except convictions under Rule 609) may not be proved by extrinsic evidence. Judge may allow it on cross-exam concerning truthfulness or untruthfulness of witness, or other witness about whom witness testified.

**Rule 609** - Adult convictions for crimes of dishonesty are admissible for impeachment unless annulled. Other felony convictions, less than ten years old, are admissible only if the probative value outweighs the prejudice. See simplified rule for complete conditions.

- JUVENILE ADJUDICATIONS are generally not admissible. However, judge may allow adjudication of a witness other than the accused if it would be admissible to attack credibility of an adult and if court is satisfied that evidence is necessary for a fair determination on the issue of guilt or innocence.

**Rule 611** – Court shall exercise reasonable control over methods of INTERROGATION AND PRESENTATION to make sure they are effective for ascertaining truth, avoiding needless use of time, and protecting witnesses from harassment and undue embarrassment. Scope of CROSS-EXAM is not limited to scope of direct exam, but re-direct and re-cross should be limited in scope to issue raised during cross and re-direct. LEADING QUESTIONS should only be asked during cross-exam, when questioning an adverse or hostile witness, or when necessary on direct exam.

**Rule 612** – WRITTEN STATEMENTS used to refresh the memory of a witness shall be produced for inspection by the adverse party. The adverse party may cross-examine the witness regarding the statement and introduce relevant parts into evidence.

**Rule 613** – PRIOR STATEMENTS OF WITNESSES need not be shown or disclosed to the witnesses but, on request, they shall be shown to opposing counsel. EXTRINSIC EVIDENCE of a prior inconsistent statement by a witness is admissible only after the witness is afforded an opportunity to explain or deny the statement and the opposing party is given an opportunity to interrogate.

**Rule 701** – A LAY OPINION is admissible only if limited to inferences based on witnesses' own perception and if helpful in explaining witness' story. An EXPERT OPINION is admissible only after the expert is qualified as such.

**Rule 702** – An Expert opinion is admissible if it is helpful to jury.

**Rule 703** - Expert opinion can be based on any information made known to the expert at or before trial. The information need not be admissible if it is normally relied upon by experts in the field.

**Rule 704** - An Opinion otherwise admissible is not objectionable because it embraces issue to be decided by trier of fact. However, an expert in a criminal case shall not express opinion as to guilt or innocence of the accused.

**Rule 802** - HEARSAY is an out of court statement, made by someone other than the witness, which is introduced to prove the truth of the matter asserted. It is generally not admissible.

**Rule 803** – HEARSAY EXCEPTIONS: present sense impressions, excited utterances, statements of present mental state or physical condition, statements for medical diagnosis or treatment, recorded recollection, business records, learned treatises, reputation as to character, judgment of previous conviction.

**Rule 804** – HEARSAY EXCEPTIONS, DECLARANT UNAVAILABLE

- “Unavailability as a witness” includes situations where declarant is unavailable due to: privilege, refusal to testify, lack of memory, death or illness, absence.

- The following are not excluded by the hearsay rule if the declarant is unavailable as a witness: former testimony, statement under belief of impending death, statement against interest, statement of personal or family history, statement offered against party that has acted with intent to procure unavailability of witness.

**Rule 805** – HEARSAY WITHIN HEARSAY is not admissible unless it conforms with an exception to the hearsay rule.