

**KENTUCKY BAR ASSOCIATION  
KENTUCKY RULES OF EVIDENCE**

**ARTICLE I  
GENERAL PROVISIONS**

**KRE 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, and upon request of the court 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, upon request of the examining attorney, the witness may make a specific offer of his answer to the question.

(b) 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 the ruling thereon. It may direct the making of an offer in question and answer form.

(c) 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) Motions in limine. A party may move the court for a ruling in advance of trial on the admission or exclusion of evidence. The court may rule on such a motion in advance of trial or may defer a decision on admissibility until the evidence is offered at trial. A motion in limine resolved by order of record is sufficient to preserve error for appellate review. Nothing in this rule precludes the court from reconsidering at trial any ruling made on a motion in limine.

(e) Palpable error. A palpable error in applying the Kentucky Rules of Evidence which affects the substantial rights of a party may be considered by a trial court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

## **Evidence Rules Review Commission Notes (2007)**

The 2007 amendment to this provision of the Rules makes two changes in the original (1992) rules on preserving errors for review. Both of the changes are in the first subsection of the provision (KRE 103(a)). None of the other subsections are affected by the 2007 amendment.

The first of the changes involves the requirement that a party make “specific” rather than “general” objections when the party desires exclusion of offered evidence. Under the 1992 version of this rule, a party was required to give grounds for objection only when requested to do so by the trial court; under the 2007 amendment, a party is required to state grounds for an objection in order to preserve error for review (and not just when requested to do so by the court) unless the ground for the objection was apparent from the context. The reasons for making this change include all of the following:

- (1) One of the reasons for requiring specific objections is to impose on lawyers an obligation to assist the trial judge with difficult issues of evidence law so that the judge may rule intelligently and quickly on those issues. This policy is sufficiently sound to require a statement of grounds in all instances and not merely upon request by the court.
- (2) The amendment brings KRE 103(a)(1) into alignment with **FRE** 103(a)(1). Uniformity with the Federal Rules has been consistently pursued by drafters of the Kentucky Rules and would be advanced by this amendment.
- (3) The amendment would bring Kentucky law into alignment with the prevailing if not universal rule of other states and would bring the law into alignment with a proposal made by the drafters of the 1992 version of the Kentucky Rules. See Study Committee, Kentucky Rules of Evidence, Final Draft, pp. 2-4 (Nov. 1989).

The second of the changes involves the requirement that a party make a “proper offer” of proof in order to preserve error when offered evidence is excluded by the trial judge. Under the 1992 version of this rule, lawyers were required to use witnesses when making a record of evidence ruled inadmissible by the judge; the rule left no room for what is known widely as a “proffer” of evidence (i.e., where the lawyer states for the record what the witness would have said if allowed to testify). Under the 2007 amendment, lawyers are required to make the substance of excluded testimony “known to the court by offer” but are not required to do so through testimony of witnesses (thereby opening the door to the use of “proffers” of evidence). The reasons for this change include all of the following:

- (1) It is more efficient and less burdensome to allow the lawyers to state for the record what a witness would say in testimony if permitted (using the “proffer”) and should in some instances enhance the fluidity of the production of evidence, all without imposing any burden on the opposing party or on the affected courts

(trial and appeal).

(2) The amendment brings KRE 103(a)(2) into alignment with FRE 103(a)(2), brings Kentucky's law into alignment with the law of most if not all other states, and adopts a position first advanced by the original drafters of Kentucky's Rules of Evidence. See Study Committee, Kentucky Rules of Evidence, Final Draft, pp. 2-3 (Nov. 1989).

(3) The amendment also serves to eliminate an ambiguity in KRE 103 because of the inconsistency of saying on the one hand that an offer of excluded evidence must come from the witness (as in the original version of KRE 103(a)(2)) but then saying on the other hand that the trial judge "may direct the making of an offer in question and answer form" (as has always been stated in KRE 103(b)).

HISTORY: Amended by Supreme Court Order 2007-02, eff. 5-1-07; 1992 c 324, § 34, eff. 7-1-92; 1990 c 88, § 2