

**KENTUCKY BAR ASSOCIATION
KENTUCKY RULES OF EVIDENCE**

**ARTICLE IV
RELEVANCY AND RELATED SUBJECTS**

KRE 404 Character evidence and evidence of other crimes

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of character or of general moral character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404(a)(2), evidence of the same trait of character of the accused offered by the prosecution;

(2) Character of victim generally. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, other than in a prosecution for criminal sexual conduct, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witnesses. Evidence of the character of witnesses, as provided in KRE 607, KRE 608, and KRE 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible:

(1) If offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; or

(2) If so inextricably intertwined with other evidence essential to the case that separation of the two (2) could not be accomplished without serious adverse effect on the offering party.

(c) Notice requirement. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it shall give reasonable pretrial notice to the defendant of its intention to offer such evidence. Upon failure of the prosecution to give such notice the court may

exclude the evidence offered under subdivision (b) or for good cause shown may excuse the failure to give such notice and grant the defendant a continuance or such other remedy as is necessary to avoid unfair prejudice caused by such failure.

Evidence Rules Review Commission Notes (2007)

The 2007 amendment to this rule makes a change with respect to the admissibility of evidence of the character of an accused (as provided in subsection (a)(1) of the provision) and leaves all of the other provisions of the rule unchanged.

The change expands the circumstances under which the prosecution is permitted to prove a defendant's character to show the commission of a criminal act. Under the 1992 version of this rule, the prosecution could not introduce evidence of a defendant's character except in rebuttal of character evidence first offered by the defendant (i.e., the defendant's character was not in issue until he had put it in issue). The change opens the door for the prosecution to prove the bad character of a defendant after the defense has attacked the character of the victim (although keeping his own character out of the issues of the case).

The drafters of the Federal Rules made this same change in year 2000 and offered the following explanation for doing so:

"The amendment makes clear that the accused cannot attack the alleged victim's character and yet remain shielded from the disclosure of equally relevant evidence concerning the same character trait of the accused. For example, in a murder case with a claim of self-defense, the accused, to bolster this defense, might offer evidence of the alleged victim's violent disposition. If the government has evidence that the accused has a violent disposition, but is not allowed to offer this evidence as part of its rebuttal, the jury has only part of the information it needs for an informed assessment of the probabilities as to who was the initial aggressor . . . Thus, the amendment is designed to permit a more balanced presentation of character evidence when an accused chooses to attack the character of the alleged "victim." See Fed.R.Evid. 404, Advisory Committee Notes, 2000 Amendment.

Needless to say, the 2007 amendment to the Kentucky Rules, serves to bring KRE 404(a)(1) into full alignment with its counterpart in the Federal Rules.

It needs to be noted, as stated in the commentary to the Federal Rules that "the amendment does not permit proof of the accused's character when the accused attacks the alleged victim's character as a witness under Rule 608 or 609, See Fed.R.Evid. 404, Advisory Committee Notes, 2000 Amendment.

HISTORY: Amended by Supreme Court Order 2007-2, eff. 5-1-07; 1992 c 324, § 4, 34, eff. 7-1-92; 1990 c 88, § 14