

**KENTUCKY BAR ASSOCIATION
KENTUCKY RULES OF EVIDENCE**

**ARTICLE IV
RELEVANCY AND RELATED SUBJECTS**

KRE 410 Inadmissibility of pleas, plea discussions, and related statements

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) A plea of guilty which was later withdrawn;
- (2) A plea of nolo contendere in a jurisdiction accepting such pleas;
- (3) Any statement made in the course of formal plea proceedings, under either state procedures or Rule 11 of the Federal Rules of Criminal Procedure, regarding either of the foregoing pleas; or
- (4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a plea or 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.

Evidence Rules Review Commission Notes (2007)

The overall purpose of KRE 410 is to bar the use of certain pleas and plea discussions when later offered into evidence in a civil or criminal trial. The 2007 amendment to this provision of the Rules makes two changes. The first change is minor but substantive and the second is solely for the purpose of correcting an error made in the original enactment of the Rules.

The first change is to eliminate some language that was unwisely added to the rule during the course of its original enactment, specifically the language prohibiting the use of “a plea under *Alford v. North Carolina*, 394 U.S. 956 (1969).” (A so-called “Alford plea” is a guilty plea by a criminal defendant who refuses to acknowledge guilt but waives trial and accepts all the consequences of a conviction.) This added language created a question as to whether prior convictions based on “Alford pleas” might be introduced as evidence (for impeachment purposes or to prove persistent felony offender status), which the Supreme Court has resolved in favor of admissibility. See *Pettitway v. Commonwealth*, 860 S.W.2d 766 (Ky. 1993). The proposed change eliminates

language from the rule that serves no useful purpose and simultaneously brings the Kentucky provision into alignment with its federal counterpart.

The second change is designed to correct an error that was made upon the original enactment of the Rules. By mistake, the last sentence of the provision (beginning with the words “However, such a statement is admissible:” and ending with the words “in the presence of counsel.”) has been published as an exception applicable only to subsection (4) of the rule when it was intended by drafters, the Supreme Court, and the General Assembly to be an exception applicable to all of the subsections of the rule. See Study Committee, Kentucky Rules of Evidence, Final Draft, p. 33 (Nov. 1989). The proposed change modifies the rule as needed to accomplish its original objective, while simultaneously achieving uniformity between the Kentucky and Federal Rules on this point.

HISTORY: Amended by Supreme Court Order 2007-02, eff. 5-1-07; 1992 c 324, § 7, 34, eff. 7-1-92; 1990 c 88, § 20