

California College Republicans Judicial Board RELEVANCE AND CHARACTER EVIDENCE IN BRIEF

While not as legally complex as hearsay, relevance is just as important. Relevant evidence, and its cousin character evidence, take up much of the Judicial Board Rules of Evidence, hereinafter referred to as the Rules of Evidence. The purpose of this document is to clarify the Rules of Evidence concerning relevance and character evidence. For reference, the rules concerning relevance and character evidence can be found in Article IV of the Rules of Evidence.

Relevant evidence is defined by the Rules of Evidence to be any evidence that has a tendency to make a fact of consequence in the proceeding more or less probable than it would be without the evidence. The bar to prove that evidence is relevant is rather low — one need only be able to prove that the evidence makes some pertinent fact more or less likely to be true. It is essential to note, however, that the fact made more or less likely by the evidence in question *must* be a material fact, that is, important to the ultimate issue before the court, in order for the evidence to be relevant. For example, suppose that a person is accused of rape and the alleged victim's behavior (Fact A) increases the likelihood that the sexual encounter was in fact consensual (Fact B). A is clearly relevant to B upon a preliminary evaluation of the relationship between the two facts. Now suppose the alleged victim is a minor. Pursuant to the penal code, the consensual nature of a sexual encounter involving a minor has no legal consequence, so Fact A is clearly no longer relevant.

There are cases where clearly relevant evidence may be excluded by the court, the criteria for which are listed in Rule 403.

Character evidence is another interesting evidentiary issue, the rules concerning which are found in Rules 404 and 405. Generally, character evidence can be defined as any evidence being submitted to prove that in a particular instance a person acted in a particular way because of their character as a person. Three factors generally govern the admissibility of character evidence: its purpose, form, and the type of proceeding (criminal or civil). Due to the nature of the Judicial Board and its jurisdiction, the third factor can be taken as given — the Board only presides in a civil manner.

Therefore, let us examine the other two general factors that govern the admissibility of character evidence. First, its purpose. The Rules of Evidence state in Rule 404(a)(i) that character evidence is not admissible to prove a specific action

in accordance with the character, except in the case of the defendant or victim's character pursuant to subparagraph (ii). Character evidence is admissible for non-party witnesses, i.e. not the defendant or victim/plaintiff, only when the character trait is an essential element of the claim at issue. Character evidence is also admissible for purposes of attacking or strengthening a witness's credibility in the context of impeachment. Second, its form. Rule 405 enumerates the methods by which admissible character evidence can be probed: as a witness's opinion or evidence of reputation if the character trait is not an essential element of the claim, and by relevant specific instances of conduct if the character trait is essential to the claim, as discussed above.

Character evidence must be distinguished from habit evidence, found in Rule 406, which is generally admissible. Habit evidence is evidence of a person or organization's routine actions that is submitted to prove that the person or organization acted in accordance with the habit or routine practice on a particular occasion. Using character traits to prove a specific action is generally prohibited, but using habits to prove a specific action is generally allowed.

For any questions on relevance, character evidence, or other evidentiary matters, please contact the Judicial Board.