

NEW JERSEY STATE BAR ASSOCIATION



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May 1, 2023

Hon. Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Hughes Justice Complex
25 Market Street
P.O. Box 970
Trenton, NJ 08611

Re: Proposal for Evidence Rule Amendment

Dear Judge Grant:

Credibility determinations are often at the heart of family law trials. There is great incentive for individuals to provide untruthful testimony, as it can often go relatively unchecked but can yield inherent benefits. For this reason, while allowing examination into specific instances of untruthful conduct to question the credibility of a witness may not be appropriate in other types of cases, the New Jersey State Bar Association (NJSBA) suggests that it is appropriate for family law matters. We note that the potential for prejudice and abuse of such a rule is mitigated in family law matters since judges, not juries, are the ultimate fact finders in such matters.

The NJSBA proposes that Evidence Rule 608 be amended to include family part cases in N.J.R.E. 608(c), with one important exception: child welfare proceedings involving parental rights determinations based on allegations of abuse and neglect. Litigation involving parents facing the potential removal of their children by the Division of Child Protection and Permanency is very different from other family part matters between individual adults seeking to end their relationship. To account for that necessary exception, we propose that specific language be included referencing an exclusion for matters brought under Title 9 or Title 30 of the New Jersey statutes.

I am enclosing a proposed draft of an amendment to the New Jersey Evidence Rules for the Judiciary's review and thank you for your consideration. The NJSBA appreciates the Judiciary's willingness to explore the proposal and stands ready to provide any additional information that may be needed in the course of further discussion and debate.

Respectfully,



Jeralyn L. Lawrence
President

cc: Timothy McGoughran, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director

**New Jersey State Bar Association
Recommendation for Evidence Rule Amendment
(Proposed May 1, 2023)**

N.J.R.E. 608. Evidence of a Witness' Character for Truthfulness or Untruthfulness

(a) A witness' credibility may be attacked or supported by evidence in the form of opinion or reputation that relates to the witness' character for truthfulness or untruthfulness, provided that evidence of truthful character is admissible only after the witness' character for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) (1) In a criminal case, a witness' character for truthfulness may be attacked by evidence that the witness made a prior false accusation against any person of a crime similar to the crime with which defendant is charged if the judge preliminarily determines, by a hearing pursuant to Rule 104(a), that the witness knowingly made the prior false accusation.

(2) In a criminal case, a witness' character for truthfulness may be attacked by evidence that the witness made a prior false statement tending to exonerate the defendant if the judge preliminarily determines, by a hearing pursuant to Rule 104(a), that the witness knowingly made the prior false statement of exoneration.

(c) Except as otherwise provided by Rule 609 and paragraph (b) of this Rule, extrinsic evidence is not admissible to prove specific instances of a witness' conduct in order to attack or support the witness' character for truthfulness. In a criminal **or**

family part case, except in cases brought under Title 9 or Title 30 of the New Jersey Statutes, subject to the requirements in paragraphs (d), (e), and (f) of this Rule, the court may, on cross-examination, permit inquiry into specific instances of conduct that are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about pursuant to paragraph (a) of this Rule.

(d) The proponent of the specific conduct inquiry pursuant to paragraph (c) of this Rule must show that

(1) a reasonable factual basis exists that the specific instance of conduct occurred, and

(2) the specific instance of conduct has probative value in assessing the witness' character for truthfulness.

(3) If the witness is a criminal defendant, the proponent of the specific conduct inquiry pursuant to paragraph (c) of this Rule must give the defendant reasonable notice of the intent to cross-examine on the specific instance of conduct and the court must determine, by a hearing pursuant to Rule 104(a), that a reasonable factual basis exists that the specific instance of conduct occurred and that the specific instance of conduct has probative value in assessing the defendant's character for truthfulness.

(e) Except as provided below, the court's determination to allow inquiry under paragraph (c) of this Rule is subject to the balancing standard of Rule 403. If, however, the specific instance of conduct occurred more than ten years before the commencement of the trial, the court must find that the probative value of the specific instance of conduct in assessing the witness' character for truthfulness outweighs any prejudicial effect.

(f) Inquiry into specific instances of conduct of a witness committed while the witness was a juvenile is generally not permissible under paragraph (c) of this Rule. The court may, however, permit inquiry into such conduct by a witness, other than the defendant in a criminal case, if the inquiry would otherwise be permitted under paragraph (c) of this Rule if the conduct had been committed by an adult and the court determines that the inquiry is necessary for a fair determination of the issues in the action.

(g) By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness' character for truthfulness.