

Rule 405. Methods of Proving Character

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

(Amended effective January 1, 1990.)

Committee Comment - 1977

While Rule 404 determines when character evidence is admissible, Rule 405 determines the proper methods of introducing character evidence. In the note to the federal rule the Supreme Court Advisory Committee explained the rationale for drawing distinctions as to the various methods of proving character:

Of the three methods of proving character provided by the rule, evidence of specific instances of conduct is the most convincing. At the same time it possesses the greatest capacity to arouse prejudice, to confuse, to surprise, and to consume time. Consequently the rule confines the use of evidence of this kind to cases in which character is, in the strict sense, in issue and hence deserving of a searching inquiry. When character is used circumstantially and hence occupies a lesser status in the case, proof may be only by reputation and opinion. These latter methods are also available when character is in issue. This treatment is with respect to specific instances of conduct and reputation, conventional contemporary common law doctrine. Citing C. McCormick, Evidence section 153 (1954).

When character is not in issue the rule permits evidence by way of reputation or opinion. The rule is consistent with Minnesota law. Minnesota has long followed the minority rule and has permitted opinion evidence to establish good character. State v. Humphrey, 173 Minn. 410, 413, 217 N.W. 373, 374 (1928); State v. Lee, 22 Minn. 407, 409, 410 (1876). The foundation for the opinion and the competency of the witness to make the statement should be governed by the principles in Articles 6 and 7.

On cross-examination of a character witness the opposing party may inquire into specific instances in order to test the basis for the testimony on direct. The rule is not meant to provide an opportunity for attorneys to make points by innuendo by asking questions about unsubstantiated instances, and the Court should levy appropriate sanctions where such is the case. See gen. State v. Flowers, 262 Minn. 164, 114 N.W.2d 78 (1962); State v. Silvers, 230 Minn. 12, 40 N.W.2d 630 (1950).