

## Minnesota Rules of Evidence

Effective July 1, 1977

With amendments received through July 1, 2019

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#### **Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; 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 offered by an accused, or by the prosecution to rebut the same;

(2) *Character of victim.* Evidence of a pertinent trait of character of the victim of the crime offered by an accused, 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 witness.* Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

**(b) Other crimes, wrongs, or acts.** (1) Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(2) In a criminal prosecution, such evidence shall not be admitted unless the prosecutor, consistent with the rules of criminal procedure, gives notice of its intent to offer the evidence. The notice must include a summary of the evidence and the specific purpose(s) for which the evidence will be offered. Such evidence shall not be admitted in a criminal prosecution unless (a) the proffered evidence is relevant to an identified material issue other than conduct confirming with a character trait; (b) the other crime, wrong, or act and the participation in it by a relevant person are proven by clear and convincing evidence; and (c) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant. Evidence of past sexual conduct of the victim in prosecutions involving criminal sexual conduct, including attempts or any act of criminal sexual predatory conduct is governed by Rule 412.

(Amended effective January 1, 1990; amended effective September 1, 2006; amended effective January 1, 2019.)

*[For text of Comments, see M.S.2018, Volume 15]*

#### **Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver**

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

**(a) Disclosure Made in a State Court Proceeding; Scope of a Waiver.** When the disclosure is made in a state court proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a state court proceeding only if:

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and
- (3) they ought in fairness to be considered together.

**(b) Inadvertent Disclosure.** When made in a state court proceeding, the disclosure does not operate as a waiver if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Minnesota Rule of Civil Procedure 26.02(f)(2).

**(c) Controlling Effect of a Court Order.** A state court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court - in which event the disclosure is also not a waiver in any other state court proceeding.

**(d) Controlling Effect of a Party Agreement.** An agreement on the effect of disclosure in a state proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

**(e) Definitions.** In this rule:

- (1) "attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications; and
- (2) "work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

(Added effective January 1, 2019.)

#### ***Committee Comment - 2018***

*Rule 502 is modeled closely on Fed. R. Evid. 502. Consistent with Minnesota Statutes, section 595.02, subdivision 1(b), and section 480.0591, subdivision. 6, clauses (1) and (5), this rule is not meant to alter Minnesota law, but to clarify it. In its note to the federal rule, the Supreme Court Advisory Committee explained:*

*The rule seeks to provide a predictable, uniform set of standards under which parties can determine the consequences of a disclosure of a communication or information covered by the attorney-client privilege or work-product protection. Parties to litigation need to know, for example, that if they exchange privileged information pursuant to a confidentiality order, the court's order will be enforceable....*

*The rule makes no attempt to alter federal or state law on whether a communication or information is protected under the attorney-client privilege or work-product immunity as an initial matter. Moreover, while establishing some exceptions to waiver, the rule does not purport to supplant applicable waiver doctrine generally.*

#### **Rule 1101. Rules Applicable**

**(a)** Except as otherwise provided in subdivisions (b) and (c), these rules apply to all actions and proceedings in the courts of this state.

**(b) Rules inapplicable.** The rules other than those with respect to privileges do not apply in the following situations:

- (1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Proceedings before grand juries.

(3) Proceedings for extradition or rendition; probable cause hearings; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; and criminal expungement proceedings.

(4) Contempt proceedings in which the court may act summarily.

**(c) Restitution hearings.** For restitution hearings held under Minnesota Statutes, section 611A.045, subdivision 3, paragraph (b), these rules apply except that the foundation for admission of documentary evidence offered under Rule 803(6) may be provided by affidavit, or statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, in lieu of testimony.

(Amended effective January 1, 2019; amended effective July 1, 2019.)

***Committee Comment - 1977***

*These rules of evidence are not applicable to certain procedures. However, these proceedings may be governed by evidentiary rules set forth in statutes, federal and state constitutions, and other court rules. See e. g., Minn. R. Crim. P. 18.06.*

***Committee Comment - 2018***

*The amendment eliminating the paragraph and clause headers in paragraph (b) is stylistic and is intended to eliminate redundant language, not to alter existing law.*

***Committee Comment - 2019***

*Rule 1101 has been amended to clarify the applicability of the Rules of Evidence to criminal restitution and expungement hearings. In *State v. Willis*, 898 N.W. 2d 642 (Minn. 2017), the Minnesota Supreme Court held that the Rules of Evidence apply to criminal restitution hearings held under Minnesota Statutes, section 611A.045. It then referred the matter to the advisory committee for review. The advisory committee determined that the Rules of Evidence should continue to apply to restitution hearings, but that the standards for admissibility of hearsay should be relaxed. This approach is intended to ease the burden on victims presenting receipts for expenses, while also ensuring fair and accurate restitution awards.*

*The rule was also amended to clarify that the Rules of Evidence do not apply to criminal expungement proceedings held under Minnesota Statutes, chapter 609A. This amendment is consistent with existing practice in Minnesota.*