

REPORT
OF THE
ADVISORY COMMITTEE
ON
CIVIL RULES
TO THE
COMMITTEE
ON
RULES OF PRACTICE AND PROCEDURE

Asheville, North Carolina
December 17 - 19, 1992

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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CHAIRMAN

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SECRETARY

November 20, 1992

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EDWARD LEAVY
BANKRUPTCY RULES

TO: Honorable Robert E. Keeton, Chairman
Standing Committee on Rules of Practice and Procedure

Enclosed are proposed amendments to Rules 83 and 84 of the Federal Rules of Civil Procedure and to Rule 412 of the Federal Rules of Evidence. With the accompanying Committee Notes, these have been considered and approved by the Advisory Committee on Civil Rules for submission to the Standing Committee under rule 3c of the governing procedures with a request for publication and public comment. For your convenience, I also am enclosing a "clean" copy of these three rules, reflecting the text as it would appear if the changes were approved. We have attempted to conform to the conventions recommended by your Style Subcommittee.

Earlier versions of proposed Fed. R. Civ. P. 83 and 84 were submitted to the Standing Committee in the Summer of this year, but returned for further study in the light of similar proposals being considered by the other Advisory Committees. Some modifications have been made to the proposed revisions of Rule 83 and 84 in the hope of arriving at uniform language within the several sets of Rules containing similar provisions. I suggest that, after the Standing Committee reviews the proposals by the several Advisory Committees and perhaps makes alterations to achieve total uniformity, the several proposals be published at the same time, with a call for comments during the same period, and with any hearing to be conducted jointly before representatives of each of the Advisory Committees presenting such proposals.

I call your attention to the elimination of what was subdivision (b) in the earlier version of Rule 83. That subdivision contained provisions authorizing the use--with Judicial Conference approval and for a limited period of time--of local rules inconsistent with the national rules. This proposal had generated significant controversy, and the Advisory Committee has concluded that consideration of any such proposal should be deferred until after evaluation of the experience with diverse local rules under the Civil Justice Reform Act.

The proposed change to Evidence Rule 412 is drawn from language considered by the Advisory Committee on Criminal Rules, with some modifications in the text and more extensive changes in the explanatory note. I assume that the reconstituted Advisory Committee on Evidence Rules would be charged with responsibility for further action on

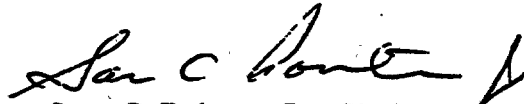
Hon. Robert E. Keeton, Chairman
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this rule, including consideration of comments and conducting any public hearings.

Extra copies of this letter and the enclosures are being sent to the Secretary of the Standing Committee to facilitate redistribution to members of the Standing Committee.

Sincerely,



Sam C. Pointer, Jr., Chairman
Advisory Committee on Civil Rules

cc: Secretary, Standing Committee
Members, Reporter, and Secretary
of Advisory Committee on Civil Rules
Chairmen, other Advisory Committees

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE**

Rule 83. Rules by District Courts; Orders

1 (a) Local Rules. Each district court ~~by action of,~~ acting by a majority of
2 ~~the its~~ judges thereof, may ~~from time to time,~~ after giving appropriate public notice
3 and an opportunity to comment, make and amend rules governing its practice. A
4 local rule must be not inconsistent with Acts of Congress, consistent with -- but not
5 duplicative of -- these rules adopted under 28 U.S.C. §§ 2072 and 2075, and
6 conform to any uniform numbering system prescribed by the Judicial Conference
7 of the United States. A local rule ~~so adopted shall~~ takes effect upon the date
8 specified by the district court and ~~shall~~ remains in effect unless amended by the
9 ~~district court~~ or abrogated by the judicial council of the circuit in which the district
10 is located. Copies of rules and amendments ~~so made by any district court shall~~
11 must, upon their promulgation, be furnished to the judicial council and the
12 Administrative Office of the United States Courts and ~~be made~~ available to the
13 public.

14 (b) Orders. In ~~all cases matters~~ not provided for by rule, the district
15 judges and magistrates judges may regulate their practice in any manner ~~not~~
16 ~~inconsistent with Acts of Congress, with these rules or adopted under 28 U.S.C. §§~~
17 2072 and 2075, and with local rules ~~these~~ of the district in which they act.

18 (c) Enforcement. Local rules and orders imposing a requirement of form
19 must not be enforced in a manner that causes a party to lose rights because of a
20 negligent failure to comply with the local requirement.

COMMITTEE NOTE

Purpose of Revision. A major goal of the Rules Enabling Act was to achieve national uniformity in the procedures employed in federal courts. The primary purpose of this revision is to encourage district courts to consider carefully the possibility of conflict between their local rules and practices and the nationally-promulgated rules. At various places within these rules (e.g., Rule 16), district courts are specifically authorized, if not encouraged, to adopt local rules to implement the purposes of Rule 1 in the light of local conditions. The omission of a similar explicit authorization in other rules should not be viewed as precluding by implication the adoption of other local rules subject to the constraints of this Rule 83.

Subdivision (a). The revision conforms the language of the rule to that contained in 28 U.S.C. § 2071 and also provides that local district court rules not conflict with the national Bankruptcy Rules adopted under 28 U.S.C. § 2075. Particularly in light of statutory and rules changes that may encourage experimentation through local rules on such matters as disclosure requirements and limitations on discovery, it is important that, to facilitate awareness within a bar that is increasingly national in scope, these rules be numbered or identified in conformity with any uniform system for such rules that may be prescribed from time to time by the Judicial Conference. Revised Rule 83(a) prohibits local rules that are merely duplicative or a restatement of national rules; this restriction is designed to prevent possible conflicting interpretations arising from minor inconsistencies between the wording of national and local rules, as well as to lessen the risk that significant local practices may be overlooked by inclusion in local rules that are unnecessarily long.

Subdivision (b). The revision conforms the language of the rule to that contained in 28 U.S.C. § 2071, and also provides that a judge's orders should not conflict with the national Bankruptcy Rules adopted under 28 U.S.C. § 2075. The rule continues to authorize--although not encourage--individual judges to enter orders that establish standard procedures in cases assigned to them (e.g., through a "standing order") if the procedures are consistent with these rules and with any local rules. In such circumstances, however, it is important to assure that litigants are adequately informed about any such requirements or expectations, as by providing them with a copy of the procedures.

Subdivision (c). This provision is new. Its aim is to protect against loss of rights in the enforcement of local requirements relating to matters of form. For example, a party should not be deprived of a right to a jury trial because its attorney, unaware of--or forgetting--a local rule directing that jury demands be noted in the caption of the case, includes a jury demand only in the body of the pleading. The subdivision assures that negligence in conforming to a local requirement relating to a matter of form will not deprive the party of some right; it does not, however, preclude the court from

appropriately sanctioning the attorney for such inattention, as by requiring attendance at a seminar covering the local rules of court.

The proscription of the subdivision is narrowly drawn--covering only violations attributable to negligence and only those involving local rules or standing orders directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney contumaciously or repeatedly violates a local rule, even one involving merely a matter of form. Nor does the subdivision affect the court's power to enforce local rules or standing orders that involve more than mere matters of form--for example, a local rule precluding evidence from a witness not identified in a pretrial listing of witnesses.

Although, as indicated above, subdivision (c) is quite limited in its scope, it reflects a broader concern; namely, that, particularly with the proliferation of local rules and standing orders, litigants can be unfairly prejudiced by rigorous enforcement of diverse local requirements not addressed by the national rules. Excesses in promulgating and enforcing local requirements can result in attorneys, otherwise qualified, being unwilling to appear in the particular federal forum, and in parties being forced into extra expenditures because of a fear of proceeding without local counsel familiar with the intricacies of local practice. Revised Rule 84(c) should, therefore, be viewed, notwithstanding its narrow explicit reach, as expressing a more general admonition to courts to ensure that their local requirements are enforced in a manner that appreciates the potential for error when counsel practice in a number of courts with different, sometimes inconsistent, local rules.

Rule 84. Forms; Technical Amendments

1 **(a) Forms.** ~~The forms contained in the Appendix of Forms are sufficient~~
2 suffice under the rules and ~~are intended to indicate~~ illustrate the simplicity and
3 brevity ~~of statement which that~~ the rules contemplate. The Judicial Conference of
4 the United States may authorize additional forms and may revise or delete forms.

5 **(b) Technical Amendments.** The Judicial Conference of the United States
6 may amend these rules or the explanatory notes to make them consistent in form
7 and style with statutory changes, to correct errors in grammar, spelling, cross-
8 references, or typography, and to make other similar technical changes of form or

COMMITTEE NOTE

SPECIAL NOTE: Mindful of the constraints of the Rules Enabling Act, the Committee calls the attention of the Supreme Court and Congress to these changes, which would eliminate the requirement of Supreme Court and Congressional approval in the limited circumstances indicated. The changes in subdivisions (a) and (b) are severable from each other, and from other proposed amendments to the rules.

The revision contained in subdivision (a) is intended to relieve the Supreme Court and Congress from the burden of reviewing changes in the forms prescribed for use in civil cases, which, by the terms of the rule, are merely illustrative and not mandatory. Rule 9009 of the Federal Rules of Bankruptcy Procedure similarly permits the adoption and revision of bankruptcy forms without need for review by the Supreme Court and Congress.

Similarly, the addition of subdivision (b) will enable the Judicial Conference, acting through its established procedures and after consideration by the appropriate Committees, to make technical amendments to these rules without having to burden the Supreme Court and Congress with such changes. This delegation of authority, not unlike that given to Code Commissions with respect to legislation, will lessen the delay and administrative burdens that can unnecessarily encumber the rule-making process on non-controversial non-substantive matters, at the risk of diverting attention from items meriting more detailed study and consideration. As examples of situations where this authority would have been useful, one might cite the numerous amendments that were required to make the rules "gender-neutral," section 11(a) of P.L. 102-198 (correcting a cross-reference contained in the 1991 revision of Rule 15), and the various changes contained in the current proposals in recognition of the new title of "Magistrate Judge" pursuant to a statutory change. It is anticipated, however, that a general re-write of the rules to improve language, style, and format throughout the rules--which, though unintentional, might result in substantive changes--would be submitted to the Supreme Court and Congress.

**PROPOSED AMENDMENT TO THE
FEDERAL RULES OF EVIDENCE**

Rule 412. ~~Sex Offense Cases; Relevance of Victim's Past Sexual Behavior or Predisposition~~

1 (a) ~~Evidence Generally Inadmissible; Exceptions. Notwithstanding any~~
2 ~~other provision of law, in a criminal case in which a person is accused of an~~
3 ~~offense under chapter 109A of title 18, United States Code, reputation or opinion~~
4 ~~evidence of the past sexual behavior of an alleged victim of such offense is not~~
5 ~~admissible.~~

6 ~~(b) Notwithstanding any other provision of law, in a criminal case in~~
7 ~~which a person is accused of an offense under chapter 109A of title 18, United~~
8 ~~States Code, Evidence of a victim's the past sexual behavior other than reputation~~
9 ~~or opinion evidence or predisposition of an alleged victim of sexual misconduct is~~
10 ~~also not admissible, unless such evidence other than reputation or opinion~~
11 ~~evidence is may be admitted only if it is otherwise admissible under these rules and~~
12 ~~is--~~

13 ~~(1) admitted in accordance with subdivisions (c)(1) and (c)(2) and~~
14 ~~is constitutionally required to be admitted; or~~

15 ~~(2) admitted in accordance with subdivision (c) and is evidence~~
16 ~~of--~~

17 ~~(A1) evidence of specific instances of past sexual behavior with~~
18 ~~persons someone other than the person accused; of the sexual misconduct,~~
19 ~~when offered by the accused upon the issue of whether the accused was or~~
20 ~~was not, with respect to the alleged victim, to prove that the other person~~

FEDERAL RULES OF EVIDENCE

21 was the source of semen, other physical evidence, or injury; or
22 (B2) evidence of specific instances of past sexual behavior with the
23 accused and is offered by the accused upon the issue of whether the
24 alleged victim consented to the sexual behavior with respect to which such
25 offense is alleged person accused of the sexual misconduct, when offered
26 to prove consent by the victim;

27 (3) evidence of specific instances of sexual behavior or other
28 evidence of sexual behavior or predisposition, when offered in a criminal
29 case in circumstances where exclusion of the evidence would violate the
30 constitutional rights of the defendant; or

31 (4) evidence of specific instances of sexual behavior or other
32 evidence -- including evidence in the form of reputation or opinion --
33 concerning the sexual behavior or predisposition of the victim, when offered
34 in a civil case in circumstances where the evidence is essential to a fair and
35 accurate determination of a claim or defense.^{1/}

36 (b) Procedure to Determine Admissibility. Evidence must not be offered
37 under this rule unless the proponent obtains leave of court by a motion filed under
38 seal, specifically describing the evidence and stating the purposes for which it will
39 be offered. The motion must be served on the alleged victim as well as the parties
40 and must be filed at least 15 days before trial unless the court directs an earlier

1. Public comment should also be solicited respecting the following alternative language in subdivision (a)(4): "... when offered in a civil case in circumstances where its probative value substantially outweighs the danger of unfair prejudice to the parties and harm to the victim." Some minor modifications of the Committee Note would be needed if this language were adopted.

41 filing or, for good cause shown, permits a later filing. After giving the parties and
42 the alleged victim an opportunity to be heard in chambers, the court must
43 determine whether, under what conditions, and in what manner and form the
44 evidence may be admitted. The motion and the record of any hearing in chambers
45 must remain under seal in the trial and appellate courts.

46 ~~(e)(1) If the person accused of committing an offense under chapter 100A~~
47 ~~of title 18, United States Code intends to offer under subdivision (b) evidence of~~
48 ~~specific instances of the alleged victim's past sexual behavior, the accused shall~~
49 ~~make a written motion to offer such evidence not later than fifteen days before the~~
50 ~~date on which the trial in which such evidence is to be offered is scheduled to~~
51 ~~begin, except that the court may allow the motion to be made at a later date,~~
52 ~~including during trial if the court determines that the evidence is newly discovered~~
53 ~~and could not have been obtained earlier through the exercise of due diligence or~~
54 ~~that the issue to which such evidence relates has newly arisen in the case. Any~~
55 ~~motion made under this paragraph shall be served on all other parties and on the~~
56 ~~alleged victim.~~

57 ~~(2) The motion described in paragraph (1) shall be accompanied by a~~
58 ~~written offer of proof. If the court determines that the offer of proof contains~~
59 ~~evidence described in subdivision (b), the court shall order a hearing in chambers~~
60 ~~to determine if such evidence is admissible. At such hearing the parties may call~~
61 ~~witnesses, including the alleged victim, and offer relevant evidence.~~
62 ~~Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which~~

FEDERAL RULES OF EVIDENCE

63 ~~the accused seeks to offer in the trial depends upon the fulfillment of a condition~~
64 ~~of fact, the court, at the hearing in chambers or at a subsequent hearing in~~
65 ~~chambers scheduled for such purpose, shall accept evidence on the issue of~~
66 ~~whether such condition in fact is fulfilled and shall determine such issue.~~

67 ~~(3) If the court determines on the basis of the hearing described in~~
68 ~~paragraph (2) that the evidence which the accused seeks to offer is relevant and~~
69 ~~that the probative value of such evidence outweighs the danger of unfair prejudice,~~
70 ~~such evidence shall be admissible in the trial to the extent an order made by the~~
71 ~~court specifies evidence which may be offered and areas with respect to which the~~
72 ~~alleged victim may be examined or cross-examined.~~

73 ~~(d) For purposes of this rule, the term "past sexual behavior" means~~
74 ~~sexual behavior other than the sexual behavior with respect to which an offense~~
75 ~~under chapter 109A of title 18, United States Code is alleged.~~

COMMITTEE NOTE

This revision is intended to clarify ambiguities and confusing references contained in the former rule and to expand its protection to all persons who are shown to be possible victims of sexual misconduct. As revised, the rule calls for exclusion in civil as well as criminal cases of evidence of an alleged victim's sexual history--whether involving specific acts or reputation or opinion testimony--unless the probative value of the evidence is sufficiently great to outweigh the invasion of privacy and potential embarrassment frequently associated with public exposure of a person's sexual history. The revised rule applies in all cases in which there is evidence that someone was the victim of sexual misconduct, without regard to whether the alleged victim or person accused is a party to the litigation. The terminology "alleged victim" is used because there will frequently be a factual dispute as to whether sexual misconduct occurred, and not to connote any requirement that the misconduct be alleged in the pleadings. Similarly, the reference to a person "accused" is used in a non-technical sense; there is no requirement that there be a criminal charge pending against the person or even that the misconduct would constitute a criminal offense.

Subdivision (a). The amended rule combines former subdivisions (a) and (b) and eliminates the introductory clauses--"notwithstanding any other provision of law"--which were confusing because of the lack of any indication in the text or legislative history regarding what laws were intended to be overridden. The revised rule applies in all cases in which a litigant seeks to offer evidence concerning the past sexual behavior or predisposition of a person who is asserted to be the victim of sexual misconduct. The general proscription against this type of evidence applies whether the evidence is offered as substantive evidence or for impeachment purposes, and whether offered during the victim's testimony or during examination of other witnesses.

The former rule inappropriately restricted its protection in criminal cases to charges brought under chapter 109A of title 18 of the United States Code. The need for protection against this type of evidence is, however, equally as great in other criminal cases. For example, in a prosecution for kidnapping in which the victim was sexually assaulted, evidence of the victim's prior sexual behavior should not be permitted. Although a court might exclude evidence of the victim's sexual history under the existing rules of evidence, the Advisory Committee believes that Rule 412 should be amended to explicitly call for rejection of such evidence.

The revision also extends the protection of the rule to civil actions. A person's privacy interests do not disappear merely because the litigation involves a claim for damages or injunctive relief, even when the claim is initiated by that person. As a matter of public policy, victims of sexual misconduct should not be intimidated from bringing those claims because of fear of inquiry into their entire sexual history that has only marginal relevance to the issues in the case.

The conditional clause "otherwise admissible under these rules" is included in subdivision (a) to emphasize that evidence described in paragraphs (1) through (4) is not automatically to be admitted. To be admitted, the evidence not only must meet one of the four listed exceptions, but also must satisfy the requirements for admissibility contained in the other rules of evidence. Thus, in determining admissibility, the court would also have to consider Rules 402 and 403, and perhaps other rules such as Rules 404 and 405.

Paragraphs (1) and (2) restate provisions of the prior rule, with appropriate changes to accommodate for the extension of the general proscription to the broader range of cases. These exceptions apply in both criminal and civil cases.

Paragraph (3) expands in part the language--but not the concept--of the former rule, permitting admissibility when essential to the protection of constitutional rights of a defendant in a criminal case. The language of the prior rule addressed only the possibility that the constitutional rights of an accused might in some criminal cases require admission of evidence of a victim's prior sexual behavior. See *Olden v Kentucky*, 488 U.S. 227 (1988) (defendant in rape case had right to inquire into alleged victim's cohabitation with another man to show bias). The revision provides that, if other types of evidence relating to the

sexual activities or predisposition of a victim would be required by the constitution, the rules of evidence should not preclude admissibility. This change is not intended to imply that reputation or opinion evidence concerning a victim of sexual misconduct would ever be constitutionally required, but the rule is reworded to accommodate that possibility.

Paragraph (4) is new. It provides a civil analogue to paragraph (3), recognizing that there can be civil cases in which exceptions (1) and (2) would not apply but admission of the evidence might be essential to a fair and accurate determination of a claim or defense. One example might be a case in which the plaintiff claims defamation and this type of evidence might be essential to show the statements were true or the plaintiff suffered no injury to her reputation. The exception alters for this type of evidence the normal standard of relevancy prescribed in Rule 402 by specifying that the evidence must be essential to an accurate determination of an issue. In specifying that the evidence must be essential to a "fair" determination of an issue, the exception also calls for the court to consider the legitimate privacy interests of the alleged victim, a concern that may not be adequately covered by Rule 403, particularly if the victim is not a party to the action.

Subdivision (b). This subdivision makes some changes in the special procedures to be followed before this type of evidence is received, as well as making stylistic changes for clarity.

The rule assures that the alleged victim, if not a party to the action, has the right to be heard in chambers with respect to the admissibility of the evidence. Depending on the circumstances, the trial court may determine to hear from the parties and victim separately or at the same time, but a record is to be made of the hearing. The motion and the record of the hearing must remain under seal even if the evidence is received, since often the hearing will refer to matters that are not received or are received in another form.

The revised rule eliminates the provision contained in former subdivision (c)(2) that had the effect of keeping from the jury evidence that the trial judge did not believe--a provision that was of questionable constitutional validity. See 1 S. Saltzburg & M. Martin, *Federal Rules of Evidence Manual*, 396-97 (5th ed. 1990). Under Rule 104(b), however, the judge can exclude evidence that reasonable jurors could not find credible.

Also eliminated is a provision contained in former subdivision (c)(3) which altered the standard prescribed in Rule 403 for weighing probative value against the danger of unfair prejudice. The Advisory Committee believes that, with respect to evidence described in subdivisions (a)(1)-(3), it is appropriate to apply the normal standards stated in Rule 403. The catch-all exception for civil cases in subdivision (a)(4) may, however, be subjected to the more stringent requirement that the proffered evidence be essential to a fair and accurate determination of a material issue in the case.

The revision authorizes the court to require that a motion for admission of evidence

under Rule 412 be filed more than 15 days before the trial begins. It preserves the power of the court to permit late filing of such a motion--even during trial--but prescribes a more general standard than before, "for good cause shown." In determining whether to permit late filing, the court may take into account the conditions previously contained in the rule; namely, whether the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence, and whether the issue to which such evidence relates has newly arisen in the case.

**PROPOSED REVISIONS OF THE
FEDERAL RULES OF CIVIL PROCEDURE**

Rule 83. Rules by District Courts; Orders

(a) **Local Rules.** Each district court, acting by a majority of its judges, may, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice. A local rule must be consistent with Acts of Congress, consistent with -- but not duplicative of -- rules adopted under 28 U.S.C. §§ 2072 and 2075, and conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit in which the district is located. Copies of rules and amendments made by a district court must, upon their promulgation, be furnished to the judicial council and the Administrative Office of the United States Courts and be available to the public.

(b) **Orders.** In matters not provided for by rule, the district judges and magistrate judges may regulate their practice in any manner consistent with Acts of Congress, with rules adopted under 28 U.S.C. §§ 2072 and 2075, and with local rules of the district in which they act.

(c) **Enforcement.** Local rules and orders imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a negligent failure to comply with the local requirement.

Rule 84. Forms; Technical Amendments

(a) **Forms.** The forms in the Appendix suffice under the rules and illustrate the simplicity and brevity that the rules contemplate. The Judicial Conference of the United States may authorize additional forms and may revise or delete forms.

(b) **Technical Amendments.** The Judicial Conference of the United States may amend these rules or the explanatory notes to make them consistent in form and style with statutory changes, to correct errors in grammar, spelling, cross-references, or typography, and to make other similar technical changes of form or style.

**PROPOSED REVISION OF THE
FEDERAL RULES OF EVIDENCE**

Rule 412. Victim's Past Sexual Behavior or Predisposition

(a) Evidence Generally Inadmissible; Exceptions. Evidence of the past sexual behavior or predisposition of an alleged victim of sexual misconduct may be admitted only if it is otherwise admissible under these rules and is--

(1) evidence of specific instances of sexual behavior with someone other than the person accused of the sexual misconduct, when offered to prove that the other person was the source of semen, other physical evidence, or injury;

(2) evidence of specific instances of sexual behavior with the person accused of the sexual misconduct, when offered to prove consent by the victim;

(3) evidence of specific instances of sexual behavior or other evidence of sexual behavior or predisposition, when offered in a criminal case in circumstances where exclusion of the evidence would violate the constitutional rights of the defendant; or

(4) evidence of specific instances of sexual behavior or other evidence -- including evidence in the form of reputation or opinion -- concerning the sexual behavior or predisposition of the victim, when offered in a civil case in circumstances where the evidence is essential to a fair and accurate determination of a claim or defense.^{1/}

(b) Procedure to Determine Admissibility. Evidence must not be offered under this rule unless the proponent obtains leave of court by a motion filed under seal, specifically describing the evidence and stating the purposes for which it will be offered. The motion must be served on the alleged victim as well as the parties and must be filed at least 15 days before trial unless the court directs an earlier filing or, for good cause shown, permits a later filing. After giving the parties and the alleged victim an opportunity to be heard in chambers, the court must determine whether, under what conditions, and in what manner and form the evidence may be admitted. The motion and the record of any hearing in chambers must remain under seal in the trial and appellate courts.

1. Public comment should also be solicited respecting the following alternative language in subdivision (a)(4): "... when offered in a civil case in circumstances where its probative value substantially outweighs the danger of unfair prejudice to the parties and harm to the victim." Some minor modifications of the Committee Note would be needed if this language were adopted.