

## **Alabama Rules of Evidence**

### Article I. General Provisions

#### **Rule 105.**

##### **Limited admissibility.**

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

#### **Advisory Committee's Notes**

This rule, like its identical counterpart in the Federal Rules of Evidence, recognizes two instances when evidence has limited admissibility in litigation. Some evidence, for example, may be admissible against one party in a case but not admissible against another joined in the same lawsuit. Additionally, evidence may be admissible for some limited purpose in the case and yet not be admissible or usable for other purposes. Rule 105 declares that the court, when so requested in one of these limited admissibility settings, shall restrict the evidence to the party against whom it is admitted or to the purpose for which it is admitted and shall instruct the jury accordingly. Instructions in this regard will have maximum effectiveness in some cases only if the trial court likewise instructs the jury as to the purpose or purposes for which it may not use the evidence. See *Cups Coal Co. v. Tennessee River Pulp & Paper Co.*, 519 So.2d 932, 936 (Ala.1988). See also C. Gamble & G. Windle, *Subsequent Remedial Measures Doctrine in Alabama: From Exclusion to Admissibility and the Death of Policy*, 37 Ala.L.Rev. 547, 559 (1986).

This rule leaves in place that line of preexisting authority in Alabama under which evidence may be admissible against only one of two joined defendants. In cases involving negligent entrustment of an automobile, for example, it is common to admit evidence of collateral acts of negligent driving by the bailee as evidence against the bailor. While inadmissible to prove the primary negligence of the bailee, such evidence may be probative of the bailee's incompetency with an automobile and the bailor's knowledge of that incompetency. *Mason v. New*, 475 So.2d 854 (Ala.1985); *Bruck v. Jim Walter Corp.*, 470 So.2d 1141 (Ala.1985). See C. Gamble, *McElroy's Alabama Evidence* § 12.01 (4th ed. 1991).

Much of Alabama's evidence law consists of doctrines calling for the exclusion of particularly prejudicial evidence but only when it is offered for a specified, impermissible purpose. Evidence of collateral crimes committed by a criminal defendant, for example, may not be admitted if offered for the purpose of proving that the accused is of a particularly criminal character and acted in keeping therewith on the occasion of the now-charged crime. *Ex parte Cofer*, 440 So.2d 1121 (Ala.1983); C. Gamble, *McElroy's Alabama Evidence* § 27.02(1) (4th ed. 1991). However, such evidence may be admitted when offered for such permissible purposes as proving knowledge, intent, motive, identity, etc. *Ex parte Killough*, 438 So.2d 333 (Ala.1983); C. Gamble, *Character Evidence: A Comprehensive Approach* 35 (1987). Another historic example of this limited-purpose admissibility is found in the rule

defining excludable hearsay as only that which is offered to prove the truth of the matter asserted; this definition opens the door to a host of other permissible purposes for which a statement may be admitted and thereby avoid the ban on hearsay. *Atmore Farm & Power Equip. Co. v. Glover*, 440 So.2d 1042 (Ala.1983).

This theory of limited-purpose admissibility underlies several of the Alabama Rules of Evidence. Among these are Rule 404(b) (authorizing the admission of evidence of collateral misconduct when it is offered for some purpose other than to show that the subject person committed the now-charged act); Rule 801(c) (providing that declarations are nonhearsay by definition if not offered to prove the truth of the matter asserted); Rule 407 (allowing evidence of subsequent remedial measures when offered for purposes other than to prove negligence or culpable conduct); Rule 408 (recognizing that offers of compromise may be admissible when offered for purposes other than to prove liability for, or invalidity of, a claim or the amount); and Rule 411 (expressing the historic rule excluding evidence of liability insurance coverage when offered to prove that the insured person acted negligently or otherwise wrongfully).