

1 Rule 404. Character evidence not admissible to prove conduct; exceptions; other
2 crimes.

3 (a) Character evidence generally. Evidence of a person's character or a trait of
4 character is not admissible for the purpose of proving action in conformity therewith on a
5 particular occasion, except:

6 (a)(1) Character of accused. Evidence of a pertinent trait of character offered by an
7 accused, or by the prosecution to rebut the same, or if evidence of a trait of character of
8 the alleged victim of the crime is offered by the accused and admitted under Rule
9 404(a)(2), evidence of the same trait of character of the accused offered by the
10 prosecution;

11 (a)(2) Character of alleged victim. Evidence of a pertinent trait of character of the
12 alleged victim of the crime offered by an accused, or by the prosecution to rebut the
13 same, or evidence of a character trait of peacefulness of the alleged victim offered by
14 the prosecution in a homicide case to rebut evidence that the alleged victim was the first
15 aggressor;

16 (a)(3) Character of witness. Evidence of the character of a witness, as provided in
17 Rules 607, 608, and 609.

18 (b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs or acts is not
19 admissible to prove the character of a person in order to show action in conformity
20 therewith. It may, however, be admissible for other purposes, such as proof of motive,
21 opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or
22 accident, provided that upon request by the accused, the prosecution in a criminal case
23 shall provide reasonable notice in advance of trial, or during trial if the court excuses
24 pretrial notice on good cause shown, of the nature of any such evidence it intends to
25 introduce at trial.

26 (c) Evidence of similar crimes in child molestation cases. In a criminal case in which
27 the accused is charged with child molestation, evidence of the commission of other acts
28 of child molestation is admissible if:

29 (c)(1) the evidence is otherwise admissible under these rules; and

30 (c)(2) in advance of trial, or during trial if the court excuses pretrial notice for good
31 cause shown, the proponent gives to all adverse parties reasonable notice of the other
32 acts of child molestation the proponent intends to introduce at trial; and

33 (c)(3) the court conducts a hearing out of the presence of the jury to determine the
34 admissibility of the evidence and finds on the record by clear and convincing evidence
35 that :

36 (c)(3)(A) the other act of child molestation was committed;

37 (c)(3)(B) that commission of that act tends to prove a propensity to commit the crime
38 charged; and

39 (c)(3)(C) the probative value of the evidence outweighs the danger of unfair
40 prejudice.

41 (c)(4) upon the request of a party, the court gives an instruction on the limited
42 admissibility of the evidence pursuant to Rule 105.

43 (c)(5) When determining the issues in (3)(B) and (3)(C) above, the court shall
44 consider:

45 (c)(5)(A) the proximity in time of the crime charged and the other act of child
46 molestation;

47 (c)(5)(B) the similarity between the crime charged and the other act of child
48 molestation;

49 (c)(5)(C) the frequency of the other acts of child molestation;

50 (c)(5)(D) surrounding circumstances;

51 (c)(5)(E) relevant intervening events; and

52 (c)(5)(F) other relevant similarities or differences.

53 (c)(6) For purposes of this section “child molestation” means an act committed in
54 relation to a child under the age of 14 which would, if committed in this state, would be a
55 sexual offense or an attempt to commit a sexual offense.

56 (c)(7) Rule 404(c) does not limit the admissibility of evidence otherwise admissible
57 under Rule 404(a), 404(b), or any other rule of evidence.

58 Advisory Committee Note. Rule 404 is now Federal Rule of Evidence 404 verbatim.
59 The 2001 amendments add the notice provisions already in the federal rule, add the
60 amendments made to the federal rule effective December 1, 2000, and delete language

61 added to the Utah Rule 404(b) in 1998. However, the deletion of that language is not
62 intended to reinstate the holding of State v. Doporto, 935 P.2d 484 (Utah 1997).
63 Evidence sought to be admitted under Rule 404(b) must also conform with Rules 402
64 and 403 to be admissible.

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