

Character Reference Evidence in Pennsylvania Criminal Practice

A Program for Lawyers and Judges

I. Welcome and Introduction (CLE credit information)

- General Overview
- Relevance to Franklin County practice

II. The Framework: Pa.R.E. 404–405 Definition and three forms of character evidence

- Reputation within a relevant community
- Opinion based on personal observation
- Specific instances of conduct
- Source: Packel & Poulin, West's Pa. Practice, Evidence § 404-1 (4th ed., Nov. 2025)
- Three purposes for which character evidence may be offered
 - Character as an element of a claim or defense
 - Propensity / circumstantial evidence of conduct on a particular occasion
 - Non-character purposes under Rule 404(b): motive, intent, identity, absence of mistake
- The general prohibition: Pa.R.E. 404(a)(1) and 404(b)(1)
 - Rationale: preventing conviction or acquittal based on who someone is rather than what the evidence shows
- Exceptions in criminal cases: Pa.R.E. 404(a)(2)
 - Defendant's pertinent character trait
 - Alleged victim's pertinent trait (subject to Rule 412 in sex offense cases)
 - Prosecution rebuttal once defendant opens the door
- Methods of proving character: Pa.R.E. 405
 - Reputation and opinion testimony on direct
 - Specific instances only when character is an essential element
 - Cross-examination by specific instances to test foundation of character witness

III. Character Evidence in Post-Conviction Relief (PCRA)

Character evidence plays a distinct and often overlooked role in post-conviction proceedings under the Post Conviction Relief Act, 42 Pa. C.S. §§ 9541–9546. This section addresses the

ways in which character evidence intersects with PCRA practice, including claims of ineffective assistance of counsel and after-discovered evidence.

A. Ineffective Assistance of Counsel — Failure to Investigate and Present Character Evidence

- Standard: *Commonwealth v. Pierce*, 527 A.2d 973 (Pa. 1987) — three-part test
 - Underlying claim of arguable merit
 - No objectively reasonable basis for counsel's decision
 - Prejudice: reasonable probability that outcome would have been different
- Failure to interview or call character witnesses at trial
 - Counsel's obligation to investigate potential character witnesses
 - Risk of PCRA claim when counsel skips character investigation without strategic reason
 - Affidavits from would-be character witnesses as PCRA support
- Failure to present character evidence at sentencing
 - Sentencing counsel's duty to develop mitigating character evidence
 - Character letters and witnesses never assembled or submitted
 - PSI inaccuracies never corrected
- Strategic decisions vs. uninformed omissions
 - Courts distinguish between deliberate tactical choices and mere neglect
 - Importance of a complete record of counsel's pretrial investigation

B. After-Discovered Evidence Involving Character

- Standard: 42 Pa. C.S. § 9543(a)(2)(vi)
 - Evidence discovered after trial
 - Could not have been obtained at trial with due diligence
 - Not cumulative
 - Would likely compel a different verdict
- Character evidence rarely qualifies as after-discovered evidence
 - Courts skeptical when witnesses were known but not interviewed
 - Distinguishing newly discovered character facts from previously available witnesses

C. Character Evidence at PCRA Hearings

- PCRA hearings are evidentiary proceedings — character evidence of witnesses may be relevant
- Credibility of PCRA witnesses and petitioner subject to character impeachment
- Prior convictions of PCRA witnesses may be raised under Pa.R.E. 609
- Judicial perspective: how PCRA courts weigh character-based ineffectiveness claims

D. Practical Implications for Trial Counsel

- Document all character witness interviews and strategic decisions contemporaneously
- Retain notes and records of witness outreach — gaps become PCRA vulnerabilities
- If client declines to call character witnesses, memorialize the informed waiver
- Sentencing file should reflect affirmative efforts to gather character evidence

IV. Character Evidence at Trial: Substantive Use-Good character as substantive evidence of innocence

- Commonwealth v. Harris, 785 A.2d 998, 1000 (Pa. Super. 2001)
- Commonwealth v. Luther, 463 A.2d 1073, 1077 (Pa. Super. 1983)
- Good character evidence may, standing alone, create reasonable doubt warranting acquittal
- Selecting the right character trait — the pertinence requirement
 - Must be pertinent to the charges: honesty in fraud cases; peacefulness in assault cases
 - Impermissible: general reputation for kindness where no nexus to the offense
- Reputation vs. opinion testimony: Pa.R.E. 405(a)
 - Reputation witness: familiarity with standing in a relevant community
 - Opinion witness: personal acquaintance and direct observation over time
 - Flexible definition of “community”: neighborhood, workplace, congregation, professional network
- Cross-examination of character witnesses
 - “Have you heard” (reputation) vs. “did you know” (opinion) questions
 - Good-faith basis required before posing such questions
 - Prior convictions only — no arrests, charges, or allegations
 - Commonwealth v. Scott, 436 A.2d 607 (Pa. 1981) — prior arrests inadmissible on cross
 - Commonwealth v. Morgan, 739 A.2d 1033 (Pa. 1999) — mere allegations inadmissible
 - Commonwealth v. Ross, 856 A.2d 93 (Pa. Super. 2004) — prior convictions, even 10 years old, admissible

V. Jury Instructions: SSJI 3.06 and 3.07

A. SSJI 3.06 — Defendant’s Character (Reputation)

- Reserved for final instructions (subcommittee recommendation)
- Paragraph 1: identifies the character witnesses and the trait testified to
- Paragraph 2 (optional): limits jury’s use of prosecution rebuttal witness testimony
 - Request when prosecution called rebuttal character witnesses
- Paragraph 3: “Evidence of good character may by itself raise a reasonable doubt of guilt and require a verdict of not guilty”
 - Critical stand-alone reasonable doubt language — always request
 - Object if court omits or weakens this language
- Paragraph 4: integrating character evidence with all other evidence in deliberations
- Judicial perspective: how judges apply and adapt 3.06 in practice

B. SSJI 3.07 — Cross-Examination of Character Witness

- Dual-instruction approach recommended: give before evidence AND at final charge
- Paragraph 1: describes the cross-examination that occurred
- Paragraph 2: limits the jury’s use — testing witness credibility only, not proof of guilt or bad character
- Distinction: cross-examination tests the character witness, not the defendant’s propensity

- Objecting when 3.07 is omitted or given only once
- Judicial perspective: how courts craft and time the limiting instruction

VI. Character Evidence at Sentencing

Statutory basis: 42 Pa. C.S. §§ 9721, 9725 — court must consider defendant's history and character

- Broader admissibility at sentencing vs. trial
 - Written letters, unsworn statements, and hearsay all admissible
 - Any information relevant to character and background may be considered
- Presentence investigation report (PSI)
 - Required in many cases under 42 Pa. C.S. § 9732
 - Review for inaccuracies in character-related background information
 - Supplement or correct through letters, testimony, or objection on the record
- Character letters: what works and what does not
 - Specificity and concrete examples over generic praise
 - Credible authors: professional, community, family — each serves a different purpose
 - Acknowledging the seriousness of the offense
 - Genuine belief in capacity for rehabilitation
- Live character witnesses at sentencing
 - Allows court to assess credibility directly
 - Select witnesses who are composed and speak from sustained firsthand observation
- Judicial perspective: what sentencing judges actually find persuasive

VII. Impeachment by Character Evidence

A. Pa.R.E. 608 — Character for Truthfulness

- Reputation and opinion testimony attacking or supporting credibility
- Evidence of truthful character only admissible after character for truthfulness has been attacked
- Specific instances on cross-examination: no extrinsic evidence permitted

B. Pa.R.E. 609 — Prior Convictions

- Crimen falsi offenses: automatic admissibility — fraud, perjury, theft by deception, forgery
- Other felonies: balancing probative value against prejudicial effect
- Strategic implications: does the defendant's prior record preclude safely taking the stand?
- Age of conviction, nature of offense, and intervening conduct all relevant to prejudice analysis

VIII. Practical Considerations and Common Mistakes

Start assembling character evidence early — sentencing letters take time

- Witness selection: quality over quantity
 - Smaller number of specific, well-prepared witnesses outperforms a large generic group
 - Each witness should understand the relevant character traits and the basis for their knowledge

Interviewing Potential Character Witnesses

- Conduct a thorough, structured interview before committing to call any witness
 - How long and in what capacity has the witness known the defendant?
 - What specific incidents or interactions inform the witness's view of the defendant's character?
 - Is the witness aware of the charges and the nature of the alleged conduct?
 - Does the witness know of any prior arrests, convictions, or allegations that a prosecutor might raise on cross?
 - Can the witness speak to a pertinent character trait — or only to general likability?
 - How will the witness present: composed, credible, and non-defensive under pressure?
 - Has the witness ever testified before, and are they prepared for the formality of the courtroom?
 - Does the witness have any exposure (prior record, bias, relationship issues) that could be used to impeach them?

The goal of the witness interview is not only to assess what the witness can offer, but to determine whether the witness will survive cross-examination without damaging the defendant's case. A character witness who is unprepared, unaware of prior conduct, or easily rattled may do more harm than good.

- Witness preparation for cross-examination
 - Walk each witness through anticipated “have you heard” questions
 - Assess whether witness can respond credibly without conceding more than necessary
 - Reconsider calling witnesses who cannot handle anticipated cross without significant damage
- Coherence: build the presentation around two or three core traits
 - Multiple witnesses reinforcing the same traits from different perspectives
- Avoiding overreach: authenticity over advocacy
 - Effusive or rehearsed testimony undermines credibility
 - Judges and juries recognize advocates masquerading as observers
- At sentencing: pair character evidence with accountability
 - Letters and witnesses that acknowledge the offense while contextualizing it are most persuasive
- Document all witness interviews and strategic decisions — gaps become PCRA vulnerabilities

IX. Hypotheticals and Discussion

Scenario 1: Defense calls three character witnesses; prosecutor seeks to cross on a 12-year-old arrest — proper objection? What relief is available?

- Scenario 2: Judge declines to give SSJI 3.06, paragraph 3 — what do you do at trial? On appeal? In a PCRA?
- Scenario 3: Sentencing — defendant's employer submits a letter but does not acknowledge the offense — do you use it?
- Scenario 4: PCRA — prior trial counsel never interviewed a single character witness. Three witnesses now submit affidavits. Does this state a cognizable claim?
- Open Q&A from attendees

X. Conclusion and CLE Credit

Key takeaways for trial counsel and sentencing counsel

- Key takeaways for the bench
 - Resource list
 - Pa.R.E. 404, 405, 608, 609
 - Pa. SSJI (Crim) §§ 3.06, 3.07 (4th ed., Sept. 2024)
 - Commonwealth v. Harris, 785 A.2d 998 (Pa. Super. 2001)
 - Commonwealth v. Luther, 463 A.2d 1073 (Pa. Super. 1983)
 - Commonwealth v. Scott, 436 A.2d 607 (Pa. 1981)
 - Commonwealth v. Morgan, 739 A.2d 1033 (Pa. 1999)
 - Commonwealth v. Ross, 856 A.2d 93 (Pa. Super. 2004)
 - Packel & Poulin, West's Pa. Practice, Evidence § 404-1 (4th ed., Nov. 2025 update)
 - 42 Pa. C.S. §§ 9541–9546 (PCRA); §§ 9721, 9725, 9732 (Sentencing Code)
 - CLE credit verification
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