

1 [Attorney Names]
2 [Attorneys' Business Address]
3 [City, ST ZIP Code]
4 [phone | fax]
5 [email]

[COURT NAME]

[JURISDICTION]

7 [PLAINTIFF'S NAME],

8 Plaintiff,

9 vs.

10 [DEFENDANT'S NAME],

11 Defendant

Case No.: [Number]

MOTION TO EXCLUDE CHARACTER
EVIDENCE FOR OTHER THAN
CREDIBILITY

12
13 STATEMENT OF FACTS

14 DISCUSSION

15 The admissibility of character evidence is controlled by a number of different statutes,
16 and the rules governing admissibility vary with the purpose of the evidence. The most
17 commonly cited statute, Evidence Code section 1101, governs the admission of character
18 evidence for the purpose of proving conduct, but specifically excludes character evidence on the
19 issue of credibility.
20

21 (a) Except as provided in this section and in Sections 1102, 1103, 1108, and 1109,
22 evidence of a person's character or a trait of his or her character (whether in the form
23 of an opinion, evidence of reputation, or evidence of specific instances of his or her
24 conduct) is inadmissible when offered to prove his or her conduct on a specified
25 occasion.

26 (b) Nothing in this section prohibits the admission of evidence that a person committed a
crime, civil wrong, or other act when relevant to prove some fact (such as motive,
opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or
accident, or whether a defendant in a prosecution for an unlawful sexual act or

1 attempted unlawful sexual act did not reasonably and in good faith believe that the
2 victim consented) other than his or her disposition to commit such an act.

3 (c) Nothing in this section affects the admissibility of evidence offered to support or
4 attack the credibility of a witness.

5 When character evidence is introduced to show conduct in a criminal matter, the
6 introduction is governed by statute. Evidence Code section 1102 directs that evidence of a
7 defendant's character, to show conduct, is admissible only when offered first by the defense, and
8 then by the prosecution, but only to rebut the defense evidence. Section 1103 set out the same
9 rule for character evidence concerning the victim of a crime. It is admissible only if first offered
10 by the defense to prove conduct in conformity with character or a trait of character, and then by
11 the prosecution only to rebut the defense evidence.
12

13 (a) In a criminal action, evidence of the character or a trait of character (in the
14 form of an opinion, evidence of reputation, or evidence of specific instances of conduct)
15 of the victim of the crime for which the defendant is being prosecuted is not made
16 inadmissible by Section 1101 if the evidence is:

17 (1) Offered by the defendant to prove conduct of the victim in conformity with the
18 character or trait of character.

19 (2) Offered by the prosecution to rebut evidence adduced by the defendant under
20 paragraph (1). (Evidence Code section 1103(a).)

21 Section 1103 then goes on to established a similar rule for character evidence for violence (Evid.
22 Sect. 1103(b)) and sets the prohibition against introduction of prior sexual conduct absent
23 compliance with Evid. Code section 782. (Evid. Section 1103(c).) Section 1108 specifically
24 permits the introduction of evidence of an accused's propensity in sex cases.

25 On the issue of credibility, the general rule is set forth by Evidence Code section 786.

26 Evidence of traits of his character other than honesty or veracity, or their opposites, is
inadmissible to attack or support the credibility of a witness.

Section 787 further held that, subject to the felony conviction rule of section 788, specific
instances of conduct where inadmissible to attack or support credibility. Thus under the Code,
MOTION TO EXCLUDE CHARACTER EVIDENCE FOR OTHER THAN CREDIBILITY - 2

1 only traits of character for honesty or veracity, or there opposites can be used. Evidence of the
2 character of following the rules, respecting elders, being a good student, being a good girl or boy,
3 or specific acts, are not admissible to show honesty under Code on the issue of credibility. The
4 Code then adopted the same scheme for the introduction of this form of character evidence as in
5 the sections 1102 and 1103. Under Evidence Code section 790, Evidence of good character of a
6 witness is inadmissible to support his credibility unless evidence of his bad character been
7 admitted to attack his credibility.
8

9 This well-crafted scheme has been abrogated by an Amendment to Article I, section (d)
10 of the California Constitution is criminal prosecutions. The issue first came before the
11 California Supreme Court on *People v. Harris* (1989) 47 Cal.3d 1047.

12 The People contend that the statutory limitations on the admission of evidence relevant to
13 a *witness's* honesty or veracity are no longer applicable in criminal cases, except to the
14 extent that exclusion is ordered pursuant to Evidence Code section 352. They rely for this
15 proposition on the conclusion of the Court of Appeal in *People v. Taylor* (1986) 180
16 Cal.App.3d 622, 631, 225 Cal.Rptr. 733, that the addition of section 28, subdivision (d)
17 (hereafter section 28(d)), the “Right to Truth in Evidence” provision of Proposition 8, to
18 article I of the California Constitution had the effect of a pro tanto repeal of Evidence
19 Code section 790, 14 in criminal cases. (*Id.* at p. 1080-1081.)

20 Although the nature of the evidence that is the subject of Evidence Code sections 786–
21 790 is similar to that in Evidence Code sections 1101–1103, the purpose for which it is to
22 be admitted is not to prove conduct. We, therefore, agree with the conclusion of the Court
23 of Appeal in *People v. Taylor*, supra, 180 Cal.App.3d 622, 631, 225 Cal.Rptr. 733, that
24 section 28(d) effected a pro tanto repeal of Evidence Code section 790, and find no basis
25 on which to distinguish Evidence Code sections 786 and 787. Defendant himself makes
26 no attempt to distinguish the sections, arguing instead that the electorate did not intend a
wholesale repeal of the provisions of the Evidence Code governing admission of
evidence when section 28(d) was adopted. Rather, he suggests, the intent was limited to
conforming California search and seizure law to the federal exclusionary rule applicable
to evidence seized in violation of the Fourth Amendment. (*Id.* at p. 1081.)

This ruling was confirmed by the Supreme Court in *People v. Ayala* (2000) 23 Cal.4th
225.

