

FREQUENT EVIDENCE ERRORS

**CONSTRUCTION OF
THE RULES OF EVIDENCE**

**RULE 102: PURPOSE AND
CONSTRUCTION**

THESE RULES SHALL BE CONSTRUED
TO SECURE THE JUST, SPEEDY, AND
INEXPENSIVE DETERMINATION OF
PROCEEDINGS.

EXERCISE OF DISCRETION

DISCRETION IS ABUSED WHEN A JUDGE:

1. applies incorrect legal standard,
2. reaches illogical conclusion,
3. bases decision on clearly erroneous
assessment of evidence, or
4. employs reasoning that causes an
injustice to complaining party

1. applies incorrect legal standard SUBSTANTIVE AND PROCEDURAL LAW

2. reaches illogical conclusion REASONING

3. bases decision on clearly erroneous assessment of evidence FACTUAL CONSIDERATION

4. employs reasoning that causes an injustice to complaining party REASONING

APPLICATION:
EXERCISE OF DISCRETION:
GENERAL APPROACH

1. Require counsel to specify the specific ground(s) for the objection as required in Rule 103. Tenn. R. Evid. 103 (objection must "state the specific ground" if not apparent).

Ex: When a Rule 403 objection is raised, require objecting counsel: (1) to specify the dangers that counsel claims the evidence presents. For the record, also ask offering counsel (2) to describe the probative value of the evidence.

2. Identify and Summarize the evidence rule that is at issue (by looking at the Rule).
3. State the applicable standard for your decision.
4. Apply the standard.
5. Rule clearly with a brief explanation that will inform appellate review.

APPLICATION:
EXERCISE OF DISCRETION:
RULES THAT SPECIFY REQUIREMENTS

Examples:
Rule 403-412
Rule 608-609, 612-13
Rules 702-703
Rules 803 (6),(8), (25), (26)

**APPLICATION:
EXERCISE OF DISCRETION:
RULES THAT REQUIRE BALANCING
UNDER SPECIFIC STANDARDS**

Examples:
Rule 404(b)
Rule 05(a)
Rule 412(d)
Rule 608(b)
Rules 609(a)(b)& (d)

**APPLICATION:
EXERCISE OF DISCRETION:
RULES THAT HAVE DIFFERENT
BALANCING REQUIREMENTS FROM 403**

Examples:
Rule 404 (b)(1)–(4)
Rule 405 (a)(1)–(3)
Rule 412 (d)(1)–(4)
Rule 608 (b)(1)–(e)
Rules 609 (a)(1)–(3)
Rule 703

**APPLICATION:
EXERCISE OF DISCRETION:
RULES THAT HAVE SPECIFIC
PROCEDURAL REQUIREMENTS**

Examples:
Rule 404(b)
Rule 405(a)
Rule 412(d)
Rule 608(b)
Rules 609(a)(b)& (d)

EXERCISE OF ULTIMATE DISCRETION:
RULES THAT REQUIRE OR MAY REQUIRE
PRE-ADMISSION DETERMINATION OF
TRUSTWORTHINESS

Examples:
Rules 702-703
Rules 803 (6),(8), (25), (26)

SPECIFIC EVIDENCE ERRORS

REFRESHING RECOLLECTION &
RECOLLECTION RECORDED

REFRESHING RECOLLECTION

a TECHNIQUE that
 does not require that the refreshing device
 be admissible &
 does not in and of itself prompt the
 introduction of the refreshing device

RECORDED RECOLLECTION

a HEARSAY EXCEPTION that
 requires proponent to establish six specific
 elements and
 allows reading the recorded recollection but
 not offering it as an exhibit unless by
 adverse party

**APPLICATION:
 REFRESHING RECOLLECTION &
 RECOLLECTION RECORDED**
