

A plaintiff sued the insurer of her home after the insurer denied coverage for water damage to the home allegedly caused by a frozen plastic pipe that burst. At trial, the insurer called as an expert witness an engineer, who testified that the pipe had burst because of age rather than freezing. On cross-examination, the engineer admitted that five years earlier, he had been convicted of tax fraud, even though he had asserted that it was his accountant's error. In response, the insurer calls a witness, who is well acquainted with the engineer and his reputation, to testify that (1) in the witness's opinion, the engineer is a truthful person, and (2) the engineer's neighbors all describe him as a truthful person.

How much, if any, of the witness's testimony is admissible?

- A. All of the testimony is admissible to support the engineer's credibility.
- B. Only the portion concerning the engineer's reputation is admissible, because where both opinion and reputation evidence are available, only the latter is admissible under a rule of preference.
- C. Only the portion concerning the witness's opinion of the engineer's character, because the witness's reporting of the neighbors' comments is hearsay.
- D. None of the testimony is admissible, because it is collateral, having no bearing on the engineer's qualifications as an expert.

Explanation:

After a witness's **character for truthfulness** has been attacked, the party who called the witness may **rehabilitate** the witness's truthful character. This can be accomplished by offering **any or all of the following**:

reputation testimony – testimony by someone sufficiently familiar with the witness's reputation among associates or in the community

opinion testimony – testimony sharing an opinion on the witness's character that is based on personal knowledge and familiarity with the witness *or*

testimony on cross-examination about **specific instances of conduct** that are probative of the truthful character of the witness *or* another witness whose character the witness being cross-examined has testified.

Here, the engineer's character for truthfulness was attacked when the plaintiff elicited an admission that the engineer had been convicted of tax fraud five years earlier. In response, the insurer called a witness to testify to (1) the witness's *opinion* of the engineer's character for truthfulness and (2) the engineer's *reputation* among his neighbors, who all describe him as a truthful person. Since both methods can be used to support a witness's truthful character, all of the testimony is admissible for this purpose.

(Choice B) The Federal Rules of Evidence have a general preference for reputation and opinion testimony over evidence of specific instances of conduct. But there is no rule requiring that one of these methods be admitted over others.

(Choice C) The witness's reporting of the neighbor's comments *is* hearsay because these out-of-court statements are being offered for the truth of the matter asserted therein (ie, that the engineer is truthful). However, reputation testimony is *excepted* from the rule against hearsay.

(Choice D) The witness's testimony has no bearing on the engineer's qualifications as an expert. But it is relevant to the engineer's character for truthfulness, which was attacked by the plaintiff. Therefore, the testimony is not collateral (ie, irrelevant).

Educational objective:

After a witness's character for truthfulness has been attacked, the party who called the witness may rehabilitate that character by offering (1) reputation testimony, (2) opinion testimony, or (3) testimony on cross-examination regarding specific instances of conduct.

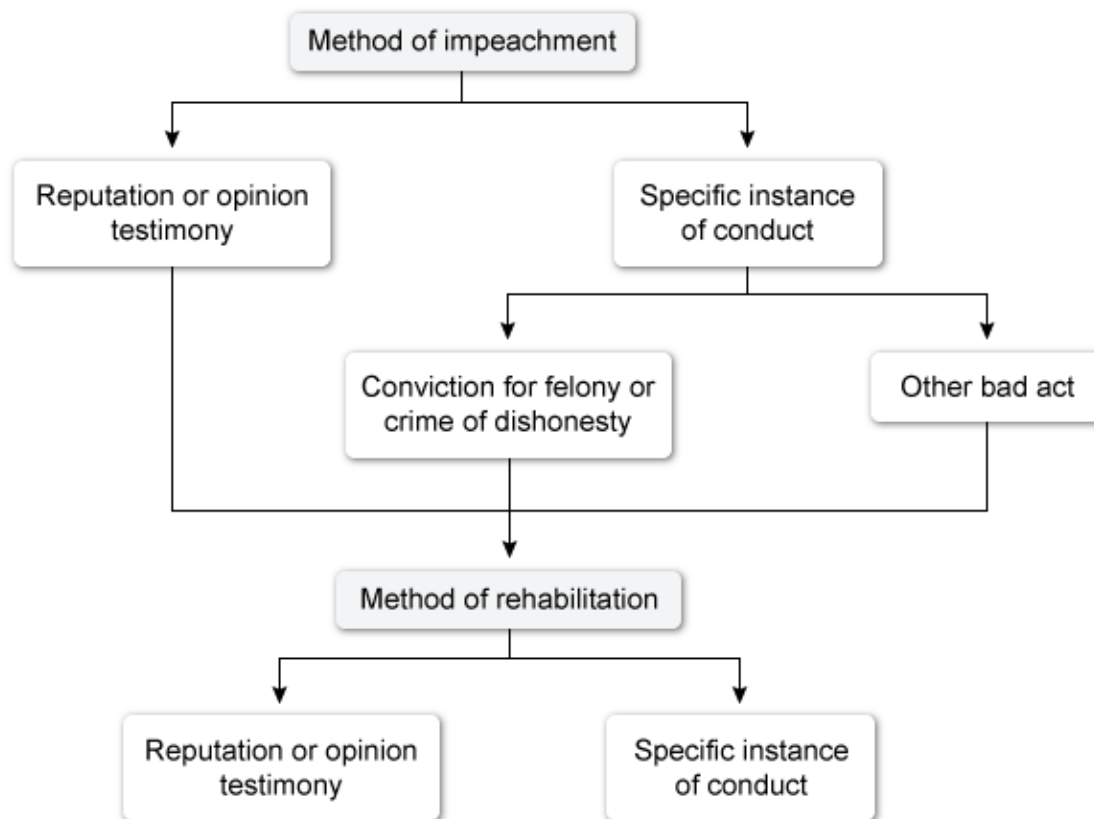
References

Fed. R. Evid. 806 (impeaching and rehabilitating witness's character for truthfulness).

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Impeaching and rehabilitating witness's truthful character (FRE 608 & 609)



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