

**§ 16.100**

*Trial Hearsay*

§ 16.220 Effect

§ 16.230 Basis

§ 16.240 Discussion

§ 16.241 Requirements

§ 16.242 Trial Practice

§ 16.250 Relevant Cases

§ 16.260 State Rules

§ 16.300 Character

§ 16.310 Rule 803(21): Reputation as to Character

§ 16.320 Effect

§ 16.330 Basis

§ 16.340 Discussion

§ 16.341 Admissibility Generally

§ 16.342 Rule 404

§ 16.343 Rule 608

§ 16.344 Proof of Reputation

§ 16.345 Trial Practice

§ 16.350 Relevant Cases

§ 16.351 Admissibility Generally

§ 16.352 Proof of Reputation

§ 16.353 Cross-Examination Concerning Specific Events

§ 16.360 State Rules

**§ 16.100 PERSONAL OR FAMILY HISTORY**

**§ 16.110 Rule 803(19): Reputation Concerning Personal or Family History**

The following are not excluded by the hearsay rule, even though the declarant is available as witness:

\* \* \*

(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relation-

**Reputation Concerning Family, Boundaries and Character § 16.141**

**ship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.**

**§ 16.120 Effect**

The Hearsay Rule does not preclude proof of:

- A matter concerning an individual's personal or family history (*e.g.*, age, marriage, divorce)
- By the acceptance or acknowledgment of that fact by the members of the individual's family, associates or community.

**§ 16.130 Basis**

Witnesses routinely testify to their age and give some family information as background. Family and community members regularly talk about births, marriages, divorces and similar personal family matters. Rule 803(19) avoids frivolous objections to this type of testimony. Acceptance by family and community members of facts concerning these personal matters is considered a sufficiently reliable basis for this exception to the hearsay rule. *See, Advisory Committee Note to Rule 803.*

Marital and other family relationships are likely to be discussed within the community where the individuals involved live or work and become "facts" if no reason is presented to doubt them. As a result, such reputations within a defined community are deemed to have circumstantial guaranties of trustworthiness to justify a hearsay exception. *Blackburn v. United Parcel Serv., Inc.*, 179 F.3d 81, 98-9 (3d Cir. 1999).

**§ 16.140 Discussion****§ 16.141 Use**

When family information is the major issue in a case (*e.g.*, citizenship, intestate inheritance), Rule 803(19) insures that what the family or the community accepted as a fact is admissible if stronger evidence is not available. Introducing evidence under this exception to the Hearsay Rule becomes practical when individuals with personal knowledge are no longer available, public or family records do not exist and what people have said

**§ 16.142*****Trial Hearsay***

or accepted is the best evidence that exists. In our modern society, these instances are rare.

By its terms, the Rule is applicable even when persons with personal knowledge of the relevant event are available as witnesses. It does not operate only if proof of the matter cannot be made by some better evidence. Thus, a person could introduce reputation evidence concerning paternity even though the purported parent and child are still alive. This usually does not happen because with the parent available and scientific means of proving the relationship, reputation evidence shrinks to insignificance.

**Illustration**

- ☉ W testifies that A was her uncle. W lacks personal knowledge of this fact since A was born 20 years before her. Nevertheless, the court should admit it.

**§ 16.142 Relevant Community for Reputation**

The Rule finds its presumption of trustworthiness by only allowing testimony as to what has been understood to be the relationship in question among the family, associates or those in the community of the individual in question. This presumably excludes unreliable sources of information. As to what constitutes an acceptable “community,” it includes not just a person’s neighborhood but also the “community” in which the person works. *Blackburn v. United Parcel Serv., Inc.*, 179 F.3d 81, 99 (3d Cir. 1999). The reputation where one works must be that where the individual has personal contact and dealings with others. In the instance of large companies with global operations, allegations of relationships at far-flung facilities would not be treated as a reputation within a community or among one’s associates. *Blackburn*, 179 F.3d at 101.

**§ 16.143 Who May Testify**

Reputation is developed by conversations and conduct. The witness for evidence of family or personal history to be admitted under Rule 803(19) should be a member of group for which the reputation is being shown.

The witness must know of the person involved and must be truly familiar with the neighborhood, work or other “community” in which the

**Reputation Concerning Family, Boundaries and Character § 16.145**

reputation has been formed so that the basis for the reputation is likely to be reliable. The witness can not be relying on nothing more than rumors from unknown sources or a single instance of “having been told by someone.” *Blackburn v. United Parcel Serv., Inc.*, 179 F.3d 81, 100-1 (3d Cir. 1999).

In *Blackburn*, the Third Circuit in recognition of the dearth of cases interpreting the Rule, looked to the more numerous decisions concerning the foundation required for character reputation under Rules 404(a), 405(a) and 803(21). [179 F.3d at 100-1] It found especially helpful the pre-Rules discussion on the qualifications of a character witness in *Michelson v. United States*, 335 U.S. 469, 478 69 S. Ct. 213, 93 L. Ed. 168 (1948), that:

[T]he witness must qualify to give an opinion by showing such acquaintance with the defendant, the community in which he has lived and the circles in which he has moved, as to speak with authority of the terms in which generally he is regarded.

**§ 16.144 When Reputation Arose**

Unlike Rule 803(20), which excepts evidence of reputation concerning land boundaries [*see* §§ 16.200 et seq.], Rule 803(19) does not require that the reputation arose before the controversy in question.

**Illustration**

- ☉ Talk among family members about a specific relationship may only occur when a believed to be long lost relative dies, leaving a fortune.

**§ 16.145 Declarant’s Interest**

In cases before the adoption of the Federal Rules of Evidence, admission of evidence of reputation concerning family or personal history required that the declarant not gain personally from a finding on the family matter asserted. Rule 803(19) does not contain this requirement. Essentially, the Rule relies on the common sense of the jury or judge to give reputation evidence only the weight it deserves.