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As of: January 5, 2018 3:23 PM Z

## [In re Proposed New Rule Of Evidence 413](#)

Supreme Court of Washington

November 8, 2017, Decided; November 8, 2017, Filed

NO. 25700-A-1201

### Reporter

2017 Wash. LEXIS 1151 \*

IN THE MATTER OF THE PROPOSED NEW RULE OF EVIDENCE 413 — IMMIGRATION STATUS

**Notice:** DECISION WITHOUT PUBLISHED OPINION

### Core Terms

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immigration status, offer of proof, proposed new, new rule, bias, rules of evidence, essential facts, Proceedings, Post-Trial, admissible, witness's, party's, seal

**Judges:** [\*1] Mary E. Fairhurst, Chief Justice, Charles W. Johnson, Justice, Barbara Madsen, Justice, Susan Owens, Justice, Charles K. Wiggins, Justice, Steven C. González, Justice, Mary Yu, Justice.

### Opinion

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#### ORDER

Columbia Legal Services, et al., having recommended the adoption of the proposed new rule of Evidence 413 — Immigration Status, and the Court having considered the new rule and comments submitted thereto, and having determined that the proposed new rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the new rule as attached hereto is adopted.

(b) That the new rule will be published in the Washington Reports and will become effective September 1, 2018.

DATED at Olympia, Washington this 8th day of November, 2017.

/s/ Mary E. Fairhurst, Chief Justice

/s/ Charles W. Johnson, Justice

/s/ Barbara Madsen, Justice

/s/ Susan Owens, Justice

/s/ Charles K. Wiggins, Justice

/s/ Mary Yu, Justice

[PROPOSED] NEW EVIDENCE RULE 413. IMMIGRATION STATUS

(a) *Criminal Cases; Evidence Generally Inadmissible.* In any criminal matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact **[\*2]** of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to [ER 607](#). The following procedure shall apply prior to any such proposed uses of immigration status evidence to show bias or prejudice of a witness:

- (1) A written pretrial motion shall be made that includes an offer of proof of the relevancy of the proposed evidence.
- (2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.
- (3) If the court finds that the offer of proof is sufficient, the court shall order a hearing outside the presence of the jury.
- (4) The court may admit evidence of immigration status to show bias or prejudice if it finds the evidence is reliable, relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.
- (5) Nothing in this section shall be construed to exclude evidence which would result in the violation of a defendant's constitutional rights.

(b) *Civil Cases; Evidence Generally Inadmissible.* Except as provided in subsections (b)(1), evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact **[\*3]** to prove an element of a party's cause of action.

(1) *Post-Trial Proceedings.* Evidence of immigration status may be submitted to the court through a post-trial motion:

(A) Where a party, who is subject to a final order of removal in immigration proceedings, was awarded damages for future lost earnings; or

(B) Where a party was awarded reinstatement to employment.

(2) **Procedure to review evidence.** Whenever a party seeks to use or introduce immigration status evidence, the court shall conduct an *in camera* review of such evidence. The motion, related papers, and record of such review may be sealed pursuant to [GR 15](#), and shall remain under seal unless the court orders otherwise. If the court determines that the evidence may be used, the court shall make findings of fact and conclusions of law regarding the permitted use of that evidence.

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