

fers of such pleas, is inadmissible in any civil or criminal action, case or proceeding against the person making such plea or offer. The Senate amendment makes the rule inapplicable to a voluntary and reliable statement made in court on the record where the statement is offered in a subsequent prosecution of the declarant for perjury or false statement.

The issues raised by Rule 410 are also raised by proposed Rule 11(e)(6) of the Federal Rules of Criminal Procedure presently pending before Congress. This proposed rule, which deals with the admissibility of pleas of guilty or nolo contendere, offers to make such pleas, and statements made in connection with such pleas, was promulgated by the Supreme Court on April 22, 1974, and in the absence of congressional action will become effective on August 1, 1975. The conferees intend to make no change in the presently-existing case law until that date, leaving the courts free to develop rules in this area on a case-by-case basis.

The Conferees further determined that the issues presented by the use of guilty and nolo contendere pleas, offers of such pleas, and statements made in connection with such pleas or offers, can be explored in greater detail during Congressional consideration of Rule 11(e)(6) of the Federal Rules of Criminal Procedure. The Conferees believe, therefore, that it is best to defer its effective date until August 1, 1975. The Conferees intend that Rule 410 would be superseded by any subsequent Federal Rule of Criminal Procedure or Act of Congress with which it is inconsistent, if the Federal Rule of Criminal Procedure or Act of Congress takes effect or becomes law after the date of the enactment of the act establishing the rules of evidence.

The conferees adopt the Senate amendment with an amendment that expresses the above intentions.

NOTES OF ADVISORY COMMITTEE ON RULES—1979
AMENDMENT

Present rule 410 conforms to rule 11(e)(6) of the Federal Rules of Criminal Procedure. A proposed amendment to rule 11(e)(6) would clarify the circumstances in which pleas, plea discussions and related statements are inadmissible in evidence; see Advisory Committee Note thereto. The amendment proposed above would make comparable changes in rule 410.

AMENDMENT BY PUBLIC LAW

1975—Pub. L. 94-149 substituted heading reading “Inadmissibility of Pleas, Offers of Pleas, and Related Statements” for “Offer to Plead Guilty; Nolo Contendere; Withdrawn Pleas of Guilty”; substituted in first sentence “provided in this rule” for “provided by Act of Congress”, inserted therein “, and relevant to,” following “in connection with”, and deleted therefrom “action, case, or” preceding “proceeding”; added second sentence relating to admissibility of statements in criminal proceedings for perjury or false statements; deleted former second sentence providing that “This rule shall not apply to the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas or offers where offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false statement.”; and deleted former second par. providing that “This rule shall not take effect until August 1, 1975, and shall be superseded by any amendment to the Federal Rules of Criminal Procedure which is inconsistent with this rule, and which takes effect after the date of the enactment of the Act establishing these Federal Rules of Evidence.”

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided in part that the effective date of the amendment transmitted to Congress on Apr. 30, 1979, be extended from Aug. 1, 1979, to Dec. 1, 1980.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 410 has been amended as part of the restyling of the Evidence Rules to make them more

easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness’s bias or prejudice or proving agency, ownership, or control.

(Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1933; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

The courts have with substantial unanimity rejected evidence of liability insurance for the purpose of proving fault, and absence of liability insurance as proof of lack of fault. At best the inference of fault from the fact of insurance coverage is a tenuous one, as is its converse. More important, no doubt, has been the feeling that knowledge of the presence or absence of liability insurance would induce juries to decide cases on improper grounds. McCormick §168; Annot., 4 A.L.R.2d 761. The rule is drafted in broad terms so as to include contributory negligence or other fault of a plaintiff as well as fault of a defendant.

The second sentence points out the limits of the rule, using well established illustrations. *Id.*

For similar rules see Uniform Rule 54; California Evidence Code §1155; Kansas Code of Civil Procedure §60-454; New Jersey Evidence Rule 54.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendment is technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 411 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 411 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

Rule 412. Sex-Offense Cases: The Victim’s Sexual Behavior or Predisposition

(a) PROHIBITED USES. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

- (1) evidence offered to prove that a victim engaged in other sexual behavior; or
- (2) evidence offered to prove a victim’s sexual predisposition.

(b) EXCEPTIONS.

(1) *Criminal Cases.* The court may admit the following evidence in a criminal case:

- (A) evidence of specific instances of a victim’s sexual behavior, if offered to prove

that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C) evidence whose exclusion would violate the defendant's constitutional rights.

(2) *Civil Cases.* In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

(c) PROCEDURE TO DETERMINE ADMISSIBILITY.

(1) *Motion.* If a party intends to offer evidence under Rule 412(b), the party must:

(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) do so at least 14 days before trial unless the court, for good cause, sets a different time;

(C) serve the motion on all parties; and

(D) notify the victim or, when appropriate, the victim's guardian or representative.

(2) *Hearing.* Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.

(d) DEFINITION OF "VICTIM." In this rule, "victim" includes an alleged victim.

(Added Pub. L. 95-540, §2(a), Oct. 28, 1978, 92 Stat. 2046; amended Pub. L. 100-690, title VII, §7046(a), Nov. 18, 1988, 102 Stat. 4400; Apr. 29, 1994, eff. Dec. 1, 1994; Pub. L. 103-322, title IV, §40141(b), Sept. 13, 1994, 108 Stat. 1919; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON RULES—1994
AMENDMENT

Rule 412 has been revised to diminish some of the confusion engendered by the original rule and to expand the protection afforded alleged victims of sexual misconduct. Rule 412 applies to both civil and criminal proceedings. The rule aims to safeguard the alleged victim against the invasion of privacy, potential embarrassment and sexual stereotyping that is associated with public disclosure of intimate sexual details and the infusion of sexual innuendo into the factfinding process. By affording victims protection in most instances, the rule also encourages victims of sexual misconduct to institute and to participate in legal proceedings against alleged offenders.

Rule 412 seeks to achieve these objectives by barring evidence relating to the alleged victim's sexual behavior or alleged sexual predisposition, whether offered as substantive evidence or for impeachment, except in designated circumstances in which the probative value of the evidence significantly outweighs possible harm to the victim.

The revised rule applies in all cases involving sexual misconduct without regard to whether the alleged victim or person accused is a party to the litigation. Rule

412 extends to "pattern" witnesses in both criminal and civil cases whose testimony about other instances of sexual misconduct by the person accused is otherwise admissible. When the case does not involve alleged sexual misconduct, evidence relating to a third-party witness' alleged sexual activities is not within the ambit of Rule 412. The witness will, however, be protected by other rules such as Rules 404 and 608, as well as Rule 403.

The terminology "alleged victim" is used because there will frequently be a factual dispute as to whether sexual misconduct occurred. It does not connote any requirement that the misconduct be alleged in the pleadings. Rule 412 does not, however, apply unless the person against whom the evidence is offered can reasonably be characterized as a "victim of alleged sexual misconduct." When this is not the case, as for instance in a defamation action involving statements concerning sexual misconduct in which the evidence is offered to show that the alleged defamatory statements were true or did not damage the plaintiff's reputation, neither Rule 404 nor this rule will operate to bar the evidence; Rule 401 and 403 will continue to control. Rule 412 will, however, apply in a Title VII action in which the plaintiff has alleged sexual harassment.

The reference to a person "accused" is also used in a non-technical sense. There is no requirement that there be a criminal charge pending against the person or even that the misconduct would constitute a criminal offense. Evidence offered to prove allegedly false prior claims by the victim is not barred by Rule 412. However, this evidence is subject to the requirements of Rule 404.

Subdivision (a). As amended, Rule 412 bars evidence offered to prove the victim's sexual behavior and alleged sexual predisposition. Evidence, which might otherwise be admissible under Rules 402, 404(b), 405, 607, 608, 609, or some other evidence rule, must be excluded if Rule 412 so requires. The word "other" is used to suggest some flexibility in admitting evidence "intrinsic" to the alleged sexual misconduct. Cf. Committee Note to 1991 amendment to Rule 404(b).

Past sexual behavior connotes all activities that involve actual physical conduct, i.e. sexual intercourse and sexual contact, or that imply sexual intercourse or sexual contact. See, e.g., *United States v. Galloway*, 937 F.2d 542 (10th Cir. 1991), cert. denied, 113 S.Ct. 418 (1992) (use of contraceptives inadmissible since use implies sexual activity); *United States v. One Feather*, 702 F.2d 736 (8th Cir. 1983) (birth of an illegitimate child inadmissible); *State v. Carmichael*, 727 P.2d 918, 925 (Kan. 1986) (evidence of venereal disease inadmissible). In addition, the word "behavior" should be construed to include activities of the mind, such as fantasies or dreams. See 23 C. Wright & K. Graham, Jr., *Federal Practice and Procedure*, §5384 at p. 548 (1980) ("While there may be some doubt under statutes that require 'conduct,' it would seem that the language of Rule 412 is broad enough to encompass the behavior of the mind.").

The rule has been amended to also exclude all other evidence relating to an alleged victim of sexual misconduct that is offered to prove a sexual predisposition. This amendment is designed to exclude evidence that does not directly refer to sexual activities or thoughts but that the proponent believes may have a sexual connotation for the factfinder. Admission of such evidence would contravene Rule 412's objectives of shielding the alleged victim from potential embarrassment and safeguarding the victim against stereotypical thinking. Consequently, unless the (b)(2) exception is satisfied, evidence such as that relating to the alleged victim's mode of dress, speech, or life-style will not be admissible.

The introductory phrase in subdivision (a) was deleted because it lacked clarity and contained no explicit reference to the other provisions of law that were intended to be overridden. The conditional clause, "except as provided in subdivisions (b) and (c)" is intended to make clear that evidence of the types described in

subdivision (a) is admissible only under the strictures of those sections.

The reason for extending the rule to all criminal cases is obvious. The strong social policy of protecting a victim's privacy and encouraging victims to come forward to report criminal acts is not confined to cases that involve a charge of sexual assault. The need to protect the victim is equally great when a defendant is charged with kidnapping, and evidence is offered, either to prove motive or as background, that the defendant sexually assaulted the victim.

The reason for extending Rule 412 to civil cases is equally obvious. The need to protect alleged victims against invasions of privacy, potential embarrassment, and unwarranted sexual stereotyping, and the wish to encourage victims to come forward when they have been sexually molested do not disappear because the context has shifted from a criminal prosecution to a claim for damages or injunctive relief. There is a strong social policy in not only punishing those who engage in sexual misconduct, but in also providing relief to the victim. Thus, Rule 412 applies in any civil case in which a person claims to be the victim of sexual misconduct, such as actions for sexual battery or sexual harassment.

Subdivision (b). Subdivision (b) spells out the specific circumstances in which some evidence may be admissible that would otherwise be barred by the general rule expressed in subdivision (a). As amended, Rule 412 will be virtually unchanged in criminal cases, but will provide protection to any person alleged to be a victim of sexual misconduct regardless of the charge actually brought against an accused. A new exception has been added for civil cases.

In a criminal case, evidence may be admitted under subdivision (b)(1) pursuant to three possible exceptions, provided the evidence also satisfies other requirements for admissibility specified in the Federal Rules of Evidence, including Rule 403. Subdivisions (b)(1)(A) and (b)(1)(B) require proof in the form of specific instances of sexual behavior in recognition of the limited probative value and dubious reliability of evidence of reputation or evidence in the form of an opinion.

Under subdivision (b)(1)(A), evidence of specific instances of sexual behavior with persons other than the person whose sexual misconduct is alleged may be admissible if it is offered to prove that another person was the source of semen, injury or other physical evidence. Where the prosecution has directly or indirectly asserted that the physical evidence originated with the accused, the defendant must be afforded an opportunity to prove that another person was responsible. See *United States v. Begay*, 937 F.2d 515, 523 n. 10 (10th Cir. 1991). Evidence offered for the specific purpose identified in this subdivision may still be excluded if it does not satisfy Rules 401 or 403. See, e.g., *United States v. Azure*, 845 F.2d 1503, 1505-06 (8th Cir. 1988) (10 year victim's injuries indicated recent use of force; court excluded evidence of consensual sexual activities with witness who testified at in camera hearing that he had never hurt victim and failed to establish recent activities).

Under the exception in subdivision (b)(1)(B), evidence of specific instances of sexual behavior with respect to the person whose sexual misconduct is alleged is admissible if offered to prove consent, or offered by the prosecution. Admissible pursuant to this exception might be evidence of prior instances of sexual activities between the alleged victim and the accused, as well as statements in which the alleged victim expressed an intent to engage in sexual intercourse with the accused, or voiced sexual fantasies involving the specific accused. In a prosecution [sic] for child sexual abuse, for example, evidence of uncharged sexual activity between the accused and the alleged victim offered by the prosecution may be admissible pursuant to Rule 404(b) to show a pattern of behavior. Evidence relating to the victim's alleged sexual predisposition is not admissible pursuant to this exception.

Under subdivision (b)(1)(C), evidence of specific instances of conduct may not be excluded if the result

would be to deny a criminal defendant the protections afforded by the Constitution. For example, statements in which the victim has expressed an intent to have sex with the first person encountered on a particular occasion might not be excluded without violating the due process right of a rape defendant seeking to prove consent. Recognition of this basic principle was expressed in subdivision (b)(1) of the original rule. The United States Supreme Court has recognized that in various circumstances a defendant may have a right to introduce evidence otherwise precluded by an evidence rule under the Confrontation Clause. See, e.g., *Olden v. Kentucky*, 488 U.S. 227 (1988) (defendant in rape cases had right to inquire into alleged victim's cohabitation with another man to show bias).

Subdivision (b)(2) governs the admissibility of otherwise proscribed evidence in civil cases. It employs a balancing test rather than the specific exceptions stated in subdivision (b)(1) in recognition of the difficulty of foreseeing future developments in the law. Greater flexibility is needed to accommodate evolving causes of action such as claims for sexual harassment.

The balancing test requires the proponent of the evidence, whether plaintiff or defendant, to convince the court that the probative value of the proffered evidence "substantially outweighs the danger of harm to any victim and of unfair prejudice of any party." This test for admitting evidence offered to prove sexual behavior or sexual propensity in civil cases differs in three respects from the general rule governing admissibility set forth in Rule 403. First, it reverses the usual procedure spelled out in Rule 403 by shifting the burden to the proponent to demonstrate admissibility rather than making the opponent justify exclusion of the evidence. Second, the standard expressed in subdivision (b)(2) is more stringent than in the original rule; it raises the threshold for admission by requiring that the probative value of the evidence *substantially* outweigh the specified dangers. Finally, the Rule 412 test puts "harm to the victim" on the scale in addition to prejudice to the parties.

Evidence of reputation may be received in a civil case only if the alleged victim has put his or her reputation into controversy. The victim may do so without making a specific allegation in a pleading. Cf. Fed.R.Civ.P. 35(a).

Subdivision (c). Amended subdivision (c) is more concise and understandable than the subdivision it replaces. The requirement of a motion before trial is continued in the amended rule, as is the provision that a late motion may be permitted for good cause shown. In deciding whether to permit late filing, the court may take into account the conditions previously included in the rule: namely whether the evidence is newly discovered and could not have been obtained earlier through the existence of due diligence, and whether the issue to which such evidence relates has newly arisen in the case. The rule recognizes that in some instances the circumstances that justify an application to introduce evidence otherwise barred by Rule 412 will not become apparent until trial.

The amended rule provides that before admitting evidence that falls within the prohibition of Rule 412(a), the court must hold a hearing in camera at which the alleged victim and any party must be afforded the right to be present and an opportunity to be heard. All papers connected with the motion and any record of a hearing on the motion must be kept and remain under seal during the course of trial and appellate proceedings unless otherwise ordered. This is to assure that the privacy of the alleged victim is preserved in all cases in which the court rules that proffered evidence is not admissible, and in which the hearing refers to matters that are not received, or are received in another form.

The procedures set forth in subdivision (c) do not apply to discovery of a victim's past sexual conduct or predisposition in civil cases, which will be continued to be governed by Fed.R.Civ.P. 26. In order not to undermine the rationale of Rule 412, however, courts should enter appropriate orders pursuant to Fed.R.Civ.P. 26(c)

to protect the victim against unwarranted inquiries and to ensure confidentiality. Courts should presumptively issue protective orders barring discovery unless the party seeking discovery makes a showing that the evidence sought to be discovered would be relevant under the facts and theories of the particular case, and cannot be obtained except through discovery. In an action for sexual harassment, for instance, while some evidence of the alleged victim's sexual behavior and/or predisposition in the workplace may perhaps be relevant, non-work place conduct will usually be irrelevant. *Cf. Burns v. McGregor Electronic Industries, Inc.*, 989 F.2d 959, 962-63 (8th Cir. 1993) (posing for a nude magazine outside work hours is irrelevant to issue of unwelcomeness of sexual advances at work). Confidentiality orders should be presumptively granted as well.

One substantive change made in subdivision (c) is the elimination of the following sentence: "Notwithstanding subdivision (b) of Rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue." On its face, this language would appear to authorize a trial judge to exclude evidence of past sexual conduct between an alleged victim and an accused or a defendant in a civil case based upon the judge's belief that such past acts did not occur. Such an authorization raises questions of invasion of the right to a jury trial under the Sixth and Seventh Amendments. *See* 1 S. Saltzburg & M. Martin, *Federal Rules Of Evidence Manual*, 396-97 (5th ed. 1990).

The Advisory Committee concluded that the amended rule provided adequate protection for all persons claiming to be the victims of sexual misconduct, and that it was inadvisable to continue to include a provision in the rule that has been confusing and that raises substantial constitutional issues.

[The Supreme Court withheld that portion of the proposed amendment to Rule 412 transmitted to the Court by the Judicial Conference of the United States which would apply that Rule to civil cases. This Note was not revised to account for the Court's action, because the Note is the commentary of the advisory committee. The proposed amendment to Rule 412 was subsequently amended by section 40141(b) of Pub. L. 103-322. See below.]

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 412 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

CONGRESSIONAL MODIFICATION OF PROPOSED 1994 AMENDMENT

Section 40141(a) of Pub. L. 103-322 [set out as a note under section 2074 of this title] provided that the amendment proposed by the Supreme Court in its order of Apr. 29, 1994, affecting Rule 412 of the Federal Rules of Evidence would take effect on Dec. 1, 1994, as otherwise provided by law, and as amended by section 40141(b) of Pub. L. 103-322. See 1994 Amendment note below.

AMENDMENT BY PUBLIC LAW

1994—Pub. L. 103-322 amended rule generally. Prior to amendment, rule contained provisions relating to the relevance and admissibility of a victim's past sexual behavior in criminal sex offense cases under chapter 109A of Title 18, Crimes and Criminal Procedure.

1988—Pub. L. 100-690, §7046(a)(1), substituted "Sex Offense" for "Rape" in catchline.

Subd. (a). Pub. L. 100-690, §7046(a)(2), (3), substituted "an offense under chapter 109A of title 18, United

States Code" for "rape or of assault with intent to commit rape" and "such offense" for "such rape or assault".

Subd. (b). Pub. L. 100-690, §7046(a)(2), (5), substituted "an offense under chapter 109A of title 18, United States Code" for "rape or of assault with intent to commit rape" in introductory provisions and "such offense" for "rape or assault" in subd. (b)(2)(B).

Subds. (c)(1), (d). Pub. L. 100-690, §7046(a)(4), substituted "an offense under chapter 109A of title 18, United States Code" for "rape or assault with intent to commit rape".

EFFECTIVE DATE

Section 3 of Pub. L. 95-540 provided that: "The amendments made by this Act [enacting this rule] shall apply to trials which begin more than thirty days after the date of the enactment of this Act [Oct. 28, 1978]."

Rule 413. Similar Crimes in Sexual-Assault Cases

(a) PERMITTED USES. In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.

(b) DISCLOSURE TO THE DEFENDANT. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) EFFECT ON OTHER RULES. This rule does not limit the admission or consideration of evidence under any other rule.

(d) DEFINITION OF "SEXUAL ASSAULT." In this rule and Rule 415, "sexual assault" means a crime under federal law or under state law (as "state" is defined in 18 U.S.C. §513) involving:

- (1) any conduct prohibited by 18 U.S.C. chapter 109A;
- (2) contact, without consent, between any part of the defendant's body—or an object—and another person's genitals or anus;
- (3) contact, without consent, between the defendant's genitals or anus and any part of another person's body;
- (4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or
- (5) an attempt or conspiracy to engage in conduct described in subparagraphs (1)–(4).

(Added Pub. L. 103-322, title XXXII, §320935(a), Sept. 13, 1994, 108 Stat. 2135; amended Apr. 26, 2011, eff. Dec. 1, 2011.)

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 413 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

EFFECTIVE DATE

Section 320935(b)–(e) of Pub. L. 103-322, as amended by Pub. L. 104-208, div. A, title I, §101(a), [title I, §120], Sept. 30, 1996, 110 Stat. 3009, 3009-25, provided that:

"(b) IMPLEMENTATION.—The amendments made by subsection (a) [enacting this rule and rules 414 and 415 of these rules] shall become effective pursuant to subsection (d).