

Rule of Completeness

By: Brett A. Purtzer; May 2006

Oftentimes, the state or defense will seek to introduce favorable testimony through a witness by asking limited questions to evoke a limited response. Evidence Rule 106, however, allows the adverse party to require the party at that time, to introduce any other part, or any other writing or recorded statement, that ought, in fairness, be considered contemporaneously with it.

The significance of this rule is that, as opposed to having to wait and put a particular statement in context during either cross-examination or re-direct examination, you can control aspects of testimony when a party seeks to incorporate or rehabilitate an impeached witness.

The aforementioned evidence rule applies only to writings or recorded statements, not oral conversations. Oral conversations, however, are governed by the common law Rule of Completeness, which allows introduction of an unrecorded or oral statement. See generally State v. West, 700 Wn.2d 751, 424 P.2d 1014 (1967).

Given the situation, however, one must be careful when seeking to introduce testimony under either the codified or common law rule. Situations arise that, although you may be able to place into context a certain statement, by doing so you may open the door for other inadmissible evidence that is bad for your client. Additionally, limitations exist as to what is admissible because of other evidence rules and because of the court's discretion. One way to consider whether to implement the rule is whether you can introduce testimony from other witnesses that can place a particular witnesses' statement into context, but which does not open the door to the potentially wholesale introduction of damaging evidence. As that approach may be more palatable than trying to clean up potentially damaging evidence, care must be exercised when using the Rule of Completeness.

Finally, you might decide that although the introduced statement is bad, trying to salvage the testimony might be worse.

As such, be judicious when using the Rule, and know both its advantages as well as its limitations.

End

Page 1 of 1