**1A.14 LIMITING INSTRUCTION – CHARACTER EVIDENCE OFFERED TO IMPEACH OR BOLSTER CREDIBILITY**

It is for you to decide whether or not to believe a witness who testifies. In doing so, you may consider evidence of a witness' reputation for telling the truth (or telling lies) or someone's opinion of a witness' truthfulness (or untruthfulness). [This evidence may only be used in deciding whether or not to believe a witness. It is not a reason to favor one party over another.] Do not be surprised that these witnesses limit their testimony to reputation and opinion and do not describe the specific acts of the witness that they know or have heard about. The law does not allow them to testify about the specific past actions of a witness. It would take too long for us to consider all the good and bad things that a witness may ever have done.

However, a person who testifies about a witness' reputation for truthfulness or who gives an opinion about a witness' truthfulness may be asked whether they have heard or know specific things about the witness. If the answer~~s~~ is "yes," the person may be asked to explain how these things have affected the reputation or opinion of the witness. If the answer~~s~~ is "no," you may consider how this answer bears on what was said, remembering that what is stated in a question is not evidence and should not be assumed to be true.

Use Note

This instruction may be given whenever character witnesses testify on the issue of credibility under Alaska R. Evid. 608.

The two sentences of the first paragraph set off in brackets should only be given when the witness who is attacked or supported is a party.

The words in parentheses in the second sentence can be used if the judge fears that a reference to a witness' truthfulness somehow suggests that the witness is not a liar, or if the judge wants to make sure that the instruction is balanced.

The final paragraph of the instruction tells the jury the significance of the cross-examination that is permitted under Rule 608(b). It should not be used when there has been no such cross-examination.

Comment

It is difficult to explain to a jury that character evidence can be used on the question of the credibility of a party witness, but not on substantive questions. See Alaska R. Evid. 404(a). This instruction tries to make this point as clearly as it can be made. When a non-party witness is impeached or supported with character evidence, the jury is more likely to understand that the evidence relates only to credibility.

One of the most troublesome aspects of the impeachment of character witnesses is how to handle "have you heard" or "do you know" questions when the character witness denies knowing or hearing something. It is clear under Alaska R. Evid. 608 that extrinsic evidence is not admissible to prove that an event occurred which is unknown to the witness; yet the question implies that it did occur. This instruction assumes that if the witness admits knowing or hearing something and explains why or how this affected reputation or opinion, the jury will understand how to assess the testimony of the witness. If, however, the witness is ignorant of information, the instruction suggests that the jury should not assume that the information is true. If other witnesses have heard something and one witness has not, this may be something that the jury should take into account. And if the things that the character witness does not know about are otherwise in evidence--e.g., prior convictions--the jury may consider the lack of knowledge as important. But, if a witness has not heard things, they are not in evidence and there is no evidence that other character witnesses have heard them, a jury well might choose to believe that the information in the question simply is incorrect or unimportant, rather than that the character witness is not fully informed, especially if the character witness is generally believable.