

New Jersey Rules of Evidence

Article I - General Provisions

N.J.R.E. 101. SCOPE; DEFINITIONS

(a) *Applicability; exceptions.*

(1) *Privileges.* --The provisions of Rule 500 (privileges) shall apply, without relaxation, to all proceedings and inquiries, whether formal, informal, public or private, and to all branches and agencies of government.

(2) *Court proceedings; relaxation.* --These rules of evidence shall apply in all proceedings, civil or criminal, conducted by or under the supervision of a court. Except as provided by paragraph (a)(1) of this rule, these rules may be relaxed in the following instances to admit relevant and trustworthy evidence in the interest of justice:

(A) actions within the cognizance of the Small Claims Section of the Special Civil Part of the Superior Court, Law Division, and the Small Claims Division of the Tax Court whether or not the action was instituted in a Small Claims Section or Division.

(B) in accordance with a statutory provision;

(C) proceedings in a criminal or juvenile delinquency action in which information is presented for the court's use in exercising a sentencing or other dispositional discretion, including bail and pretrial intervention and other diversionary proceedings;

(D) to the extent permitted by law, proceedings to establish probable cause, including grand jury proceedings, probable cause hearings, and ex parte applications;

(E) proceedings to determine the admissibility of evidence under these rules or other law.

(3) *Administrative proceedings.* --Except as otherwise provided by paragraph (a)(1) of this rule, proceedings before administrative agencies shall not be governed by these rules.

(4) *Undisputed facts.* --If there is no bona fide dispute between the parties as to a relevant fact, the judge may permit that fact to be established by stipulation or binding admission. In civil proceedings the judge may also permit that fact to be proved by any relevant evidence, and exclusionary rules shall not apply, except Rule 403 or a valid claim of privilege.

(5) *Affidavit in lieu of testimony.* --These rules shall not be construed to prohibit the use of an affidavit in lieu of oral testimony to the extent permitted by law.

(b) *Definitions.* --As used in these rules, the following terms shall have the meaning hereafter set forth unless the context otherwise indicates:

(1) "*Burden of persuasion*" means the obligation of a party to meet the requirements of a rule of law that the fact be proved either by a preponderance of the evidence or by clear and convincing evidence or beyond a reasonable doubt, as the case may be.

(2) "*Burden of producing evidence*" means the obligation of a party to introduce evidence when necessary to avoid the risk of a judgment or peremptory finding against that party on an issue of fact.

(3) "*Writing*" has the meaning given in the definition contained in Rule 801(e).

(c) *Repeal.*--The adoption of these rules of evidence shall not operate to repeal any existing statute by implication. However, where an existing statute has been expressly superseded pursuant to *N.J.S.A. 2A:84A-40* by an official note heretofore or hereafter appended to a rule of evidence, such statute shall have no further force or effect.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; paragraph (b)(2) amended September 15, 2004 to be effective July 1, 2005.

N.J.R.E. 102. PURPOSE AND CONSTRUCTION

These rules shall be construed to secure fairness in administration and elimination of unjustified expense and delay. The adoption of these rules shall not bar the growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 103. RULINGS ON EVIDENCE [Not Adopted]

N.J.R.E. 104 PRELIMINARY QUESTIONS

(a) *Questions of admissibility generally.* --When the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is subject to a condition, and the fulfillment of the condition is in issue, that issue is to be determined by the judge. In making

that determination the judge shall not apply the rules of evidence except for Rule 403 or a valid claim of privilege. The judge may hear and determine such matters out of the presence or hearing of the jury.

(b) *Relevance conditioned on fact.* --Where evidence is otherwise admissible if relevant and its relevance is subject to a condition, the judge shall admit it upon or subject to the introduction of sufficient evidence to support a finding of the condition. In such cases the judge shall instruct the jury to consider the issue of the fulfillment of the condition and to disregard the evidence if it finds that the condition was not fulfilled. The jury shall be instructed to disregard the evidence if the judge subsequently determines that a jury could not reasonably find that the condition was fulfilled.

(c) *Preliminary hearing on admissibility of defendant's statements.* --Where by virtue of any rule of law a judge is required in a criminal action to make a preliminary determination as to the admissibility of a statement by the defendant, the judge shall hear and determine the question of its admissibility out of the presence of the jury. In such a hearing the rules of evidence shall apply and the burden of persuasion as to the admissibility of the statement is on the prosecution. If the judge admits the statement the jury shall not be informed of the finding that the statement is admissible but shall be instructed to disregard the statement if it finds that it is not credible. If the judge subsequently determines from all of the evidence that the statement is not admissible, the judge shall take appropriate action.

(d) *Testimony by accused.* --By testifying upon a preliminary matter, the accused does not become subject to cross-examination as to other issues in the case.

(e) *Weight and credibility.* --This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 105. LIMITED ADMISSIBILITY

When evidence is admitted as to one party or for one purpose but is not admissible as to another party or for another purpose, the judge, upon request, shall restrict the evidence to its proper scope and shall instruct the jury accordingly, but may permit a party to waive a limiting instruction.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which in fairness ought to be considered contemporaneously.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.