

## **New Jersey Rules of Evidence**

### **Article VIII. Hearsay**

#### **N.J.R.E. 801. Definitions**

**(a) Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

**(b) Declarant.** “Declarant” means the person who made the statement.

**(c) Hearsay.** “Hearsay” means a statement that:

**(1)** the declarant does not make while testifying at the current trial or hearing;  
and

**(2)** a party offers in evidence to prove the truth of the matter asserted in the statement.

**(d) Business.** A “business” includes every kind of business, institution, association, profession, occupation, and calling, whether or not conducted for profit, and also includes activities of governmental agencies.

**(e) Writing.** A “writing” consists of letters, words, numbers, data compilations, pictures, drawing, photographs, symbols, sounds, or combinations thereof or their equivalent, set down or recorded by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or by any other means, and preserved in a perceptible form, and their duplicates as defined by Rule 1001(d).

**(f) Public Official.** A “public official” includes an official of the United States, its territories, the District of Columbia and states, as well as political subdivisions, regional and other governmental agencies thereof.

**NOTE:** Adopted September 15, 1992 to be effective July 15, 1993; paragraph (a) amended September 15, 2004 to be effective July 1, 2005; paragraphs (a), (b), and (c) amended September 16, 2019 to be effective July 1, 2020.

#### **N.J.R.E. 802. Hearsay Rule**

Hearsay is not admissible except as provided by these rules or by other law.

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

#### **N.J.R.E. 803. Hearsay Exceptions Not Dependent on Declarant's Unavailability**

The following statements are not excluded by the hearsay rule:

**(a) A Declarant-Witness' Prior Statement.** The declarant-witness testifies and is subject to cross-examination about a prior otherwise admissible statement, and the statement:

(1) is inconsistent with the declarant-witness' testimony at the trial or hearing and is offered in compliance with Rule 613.

However, when the statement is offered by the party calling the declarant-witness, it is admissible only if, in addition to the foregoing requirements, it (A) is contained in a sound recording or in a writing made or signed by the declarant-witness in circumstances establishing its reliability or (B) was given under oath at a trial or other judicial, quasi-judicial, legislative, administrative or grand jury proceeding, or in a deposition; or

(2) is consistent with the declarant-witness' testimony and is offered to rebut an express or implied charge against the declarant-witness of (A) recent fabrication or (B) improper influence or motive; or

(3) is a prior identification of a person made after perceiving that person if made in circumstances precluding unfairness or unreliability.

**(b) Statement by Party-Opponent.** The statement is offered against a party-opponent and is:

(1) the party-opponent's own statement, made either in an individual or in a representative capacity; or

(2) a statement whose content the party-opponent has adopted by word or conduct or in whose truth the party-opponent has manifested belief; or

(3) a statement by a person authorized by the party-opponent to make a statement concerning the subject; or

(4) a statement by the party-opponent's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(5) a statement made at the time the party-opponent and the declarant were participating in a plan to commit a crime or civil wrong and the statement was made in furtherance of that plan.

In a criminal case, the admissibility of a defendant's statement, which is offered against the defendant, is subject to Rule 104(c).

**(c) Statements Not Dependent on Declarant's Availability.** The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

**(1) Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it and without opportunity to deliberate or fabricate.

**(2) Excited Utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition and without opportunity to deliberate or fabricate.

**(3) Then-Existing Mental, Emotional, or Physical Condition.** A statement made in good faith of the declarant's then-existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive, design, mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

**(4) Statements for Purposes of Medical Diagnosis or Treatment.** A statement that:

**(A)** is made in good faith for purposes of, and is reasonably pertinent to, medical diagnosis or treatment; and

**(B)** describes medical history; past or present symptoms or sensations; their inception; or their general cause.

**(5) Recorded Recollection.** A statement concerning a matter about which the witness is unable to testify fully and accurately because of insufficient present recollection if the statement is contained in a writing or other record that;

**(A)** was made at a time when the fact recorded actually occurred or was fresh in the memory of the witness; and

**(B)** was made by the witness or under the witness' direction or by some other person for the purpose of recording the statement when it was made; and

**(C)** the statement concerns a matter of which the witness had knowledge when it was made.

This exception does not apply if unless the circumstances indicate that the statement is not trustworthy. When the witness does not remember part or all of the contents of a writing, the portion the witness does not remember may be read into evidence but shall not be introduced as an exhibit over objection.

**(6) Records of a Regularly Conducted Activity.** A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make such writing or other record.

This exception does not apply if the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

**(7) Absence of an Entry in Records of Regularly Conducted Activity.**

Evidence that a matter is not included in a writing or other record kept in accordance with the provisions of Rule 803(c)(6), if:

(A) the evidence is admitted to prove that the matter did not occur or exist; and

(B) a record was regularly kept for a matter of that kind.

This exception does not apply if the sources of information or other circumstances indicate that the inference of nonoccurrence or nonexistence is not trustworthy.

**(8) Public Records, Reports, and Findings.** Subject to Rule 807,

(A) a statement contained in a writing made by a public official of an act done by the official or an act, condition, or event observed by the official if it was within the scope of the official's duty either to perform the act reported or to observe the act, condition, or event reported and to make the written statement; or

(B) statistical findings of a public official based upon a report of or an investigation of acts, conditions, or events, if it was within the scope of the official's duty to make such statistical findings.

This exception does not apply if the sources of information or other circumstances indicate that such statistical findings are not trustworthy.

**(9) Public Records of Vital Statistics.** Subject to Rule 807, a record of a birth, fetal death, death, or marriage or civil union, if reported to a public office in accordance with a legal duty.

**(10) Absence of Public Record or Entry.** Subject to Rule 807, a certification in accordance with Rule 902 stating that a diligent search failed to disclose a public record, report, writing, or entry when offered to prove:

(A) the record or statement does not exist; or

(B) the matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

This exception does not apply if the sources of information or other circumstances indicate that the inference of nonoccurrence or nonexistence is not trustworthy.

**(11) Records of Religious Organizations Concerning Personal or Family History.** Subject to Rule 807, a statement of birth, legitimacy, ancestry, marriage or civil union, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

**(12) Certificates of Marriage, Civil Union, Baptism, and Similar Ceremonies.**

Subject to Rule 807, a statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or civil union or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

**(13) Family Records.** Subject to Rule 807, a statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a family portrait, engraving on an urn, crypt, tombstone, or other burial marker.

**(14) Records of Documents that Affect an Interest in Property.** Subject to Rule 807, the record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

**(15) Statements in Documents that Affect an Interest in Property.** Subject to Rule 807, a statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose, unless dealings with the property are inconsistent with the truth of the statement or the purport of the document.

**(16) Statements in Ancient Documents.** A statement in a document at least 30 years old and whose authenticity is established.

**(17) Market Reports and Similar Commercial Publications.** Market quotations, tabulations, lists, directories, or other published compilations that are generally relied on by the public or by persons in particular occupations.

**(18) Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a published treatise, periodical, or pamphlet, on a subject of history, medicine, or other science or art, if:

(A) the statement is relied on by an expert witness on direct examination or called to the attention of the expert on cross-examination; and

(B) the publication is established as a reliable authority by testimony or by judicial notice.

If admitted, the statement may not be received as an exhibit but may be read into evidence or, if graphics, shown to the jury.

**(19) Reputation Concerning Personal or Family History.** Evidence of a person's reputation among members of a person's family by blood, adoption, or marriage or civil union, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage or civil union, divorce, death, legitimacy, ancestry, relationship by blood, adoption, or marriage or civil union, or other similar facts of a person's personal or family history.

**(20) Reputation Concerning Boundaries or General History.** Evidence of reputation in a community, arising before the controversy, concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation in which the community is located.

**(21) Reputation Concerning Character.** Evidence of reputation of a person's character at a relevant time among the person's associates or in the community.

**(22) Judgment of Previous Conviction of Crime.** In a civil proceeding, except as otherwise provided by court order on acceptance of a plea, evidence of a final judgment against a party adjudging the party guilty of an indictable offense in New Jersey or of an offense which would constitute an indictable offense if committed in this state, as against that party, to prove any fact essential to sustain the judgment.

**(23) Judgment Involving Personal, Family, or General History, or a Boundary.** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

**(24)** [Not adopted.]

**(25) Statement against Interest.** A statement that a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary, pecuniary or social interest, or had so great a tendency to invalidate the declarant's claim against another or to expose the declarant to civil or criminal liability. Such a statement is admissible against a defendant in a criminal proceeding only if the defendant was the declarant.

**(26) Judgments against Persons Entitled to Indemnity.** Subject to Rule 807 and except in a case brought under the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A-1 to -5, the record of a final judgment is admissible if offered by the judgment

debtor in an action in which the debtor seeks to recover partial or total indemnity or exoneration for money paid or a liability incurred because of the judgment, as evidence:

- (A) of the liability of the judgment debtor;
- (B) of the facts on which the judgment is based; and
- (C) of the reasonableness of the damages recovered.

If the defendant in the second action had notice of and opportunity to defend the first action, the judgment is conclusive evidence.

**(27) Statements by a Child Relating to a Sexual Offense.** A statement made by a child under the age of 12 relating to sexual misconduct committed with or against that child is admissible in a criminal, juvenile, or civil case if (a) the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement at such time as to provide the adverse party with a fair opportunity to prepare to meet it; (b) the court finds, in a hearing conducted pursuant to Rule 104(a), that on the basis of the time, content and circumstances of the statement there is a probability that the statement is trustworthy; and (c) either (i) the child testifies at the proceeding, or (ii) the child is unavailable as a witness and there is offered admissible evidence corroborating the act of sexual abuse; provided that no child whose statement is to be offered in evidence pursuant to this rule shall be disqualified to be a witness in such proceeding by virtue of the requirements of Rule 601.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; paragraph (c)(25) amended and paragraph (c)(27) added June 30, 1993 to be effective July 1, 1993; paragraphs (c)(5), (c)(22), (c)(26), and (c)(27) amended September 15, 2004 to be effective July 1, 2005; paragraphs (a), (a)(1), (a)(2), (b), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (c), (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), (c)(5)(A), (c)(5)(B), (c)(5)(C), (c)(6), (c)(7) amended, (c)(7) redesignated as (c)(7)(A) and (B), (c)(8), (c)(8)(A), (c)(8)(B), (c)(9), (c)(10), (c)(10)(A), (c)(10)(B), (c)(11), (c)(12) amended, (c)(12) redesignated as (c)(12)(A), (B), and (C), (c)(13), (c)(14) amended, (c)(14) redesignated as (c)(14)(A), (B), and (C), (c)(15), (c)(16), (c)(17), (c)(18), (c)(18) amended, (c)(18) redesignated as (c)(18)(A) and (B), (c)(19), (c)(20), (c)(21), (c)(22), (c)(23), (c)(23) amended, (c)(23) redesignated as (c)(23)(A) and (B), (c)(25), (c)(26), (c)(26) amended, (c)(26) redesignated as (c)(26 (A), (B), and (C), and (c)(27) amended September 16, 2019 to be effective July 1, 2020.

#### **N.J.R.E. 804. Hearsay Exceptions: Declarant Unavailable**

**a) Definition of Unavailable.** Except when the declarant's unavailability has been procured or wrongfully caused by the proponent of declarant's statement for the purpose of preventing declarant from attending or testifying, a declarant is "unavailable" as a witness if declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the statement; or

(2) persists in refusing to testify concerning the subject matter of the statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the statement; or

(4) is absent from the trial, hearing or proceeding because of death, physical or mental illness or infirmity, or other cause; and

(A) the proponent of the statement is unable by process or other reasonable means to procure the declarant's attendance at the trial, hearing, or proceeding; and

(B) with respect to statements proffered under Rules 804(b)(4) and (7), the proponent must be unable, without undue hardship or expense, to obtain declarant's deposition for use in lieu of testimony at the trial, hearing, or proceeding; or

(5) [Deleted – see N.J.R.E. 803(c)(27)].

**(b) Hearsay Exceptions.** Subject to Rule 807, the following are not excluded by the hearsay rule if the declarant is unavailable as a witness.

**(1) Testimony in Prior Proceedings.**

(A) Testimony that: (i) was given by a witness at a prior trial of the same or a different matter, or in a hearing or deposition taken in compliance with law in the same or another proceeding; and (ii) is now offered against a party who had an opportunity and similar motive in the prior trial, hearing or deposition to develop the testimony by examination or cross-examination.

(B) In a civil proceeding, or when offered by the defendant in a criminal proceeding, testimony given in a prior trial, hearing or deposition taken in compliance with law to which the party against whom the testimony is now offered was not a party, if the party who offered the prior testimony or against whom it was offered had an opportunity to develop the testimony on examination or cross-examination and had an interest and motive to do so, which is the same or similar to that of the party against whom it is now offered.

(C) Expert opinion testimony given in a prior trial, hearing, or deposition otherwise admissible under (A) or (B) may be excluded if the court finds that there are experts of a like kind generally available within a reasonable distance from the place in which the action is pending and the interests of justice so require.

**(2) Statement Under Belief of Imminent Death.** In a criminal proceeding, a statement made by a victim unavailable as a witness is admissible if it was made voluntarily and in good faith and while the declarant believed in the imminence of declarant's impending death.

**(3) Statement Against Interest.** [Adopted in 1993 as Rule 803(c)(25)]

**(4) Statement of Personal or Family History.** A statement about:

**(A)** the declarant's own birth, adoption, legitimacy, ancestry, marriage or civil union, divorce, relationship by blood, adoption, or marriage or civil union, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or of the matter stated; or

**(B)** another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or civil union, or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

**(5) Other Exceptions.** [Not Adopted]

**(6) Trustworthy Statements by Deceased Declarants.** In a civil proceeding, a statement made by a person unavailable as a witness because of death if the statement was made in good faith upon declarant's personal knowledge in circumstances indicating that it is trustworthy.

**(7) Voters' Statements.** A statement by a voter concerning the voter's qualifications to vote or the fact or content of the vote.

**(8)** [Deleted.]

**(9) Forfeiture by Wrongdoing.** A statement offered against a party who has engaged, directly or indirectly, in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; paragraphs (a)(5) and (b)(8) deleted and paragraph (b)(2) amended June 30, 1993 to be effective July 1, 1993; paragraphs (a) and (b) amended September 15, 2004 to be effective July 1, 2005; paragraph (b)(9) added September 15, 2010 to be effective July 1, 2011; paragraph (a) caption and text amended, paragraph (b) caption amended, paragraphs (b)(1), and (b)(4) captions and text amended, paragraphs (b)(2), (b)(6), (b)(7), (b)(9) captions amended September 16, 2019 to be effective July 1, 2020.

### **N.J.R.E. 805. Hearsay Within Hearsay**

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; amended September 16, 2019 to be effective July 1, 2020.

### **N.J.R.E. 806. Attacking and Supporting Credibility of Declarant**

When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which

would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, that party is entitled to examine the declarant on the statement as if under cross-examination.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; amended September 16, 2019 to be effective July 1, 2020.

#### **N.J.R.E. 807. Discretion of Court to Exclude Evidence Under Certain Exceptions**

Except if offered by a defendant in a criminal proceeding, when any statement is admissible under Rules 803(c)(8), 803(c)(9), 803(c)(10), 803(c)(11), 803(c)(12), 803(c)(13), 803(c)(14), 803(c)(15), 803(c)(26) or 804(b), the court may exclude the statement at the trial if it appears that the proponent's intention to offer the statement in evidence was not made known to the adverse party at such time as to provide that party with a fair opportunity to challenge the statement.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; caption and text amended September 16, 2019 to be effective July 1, 2020.

#### **N.J.R.E. 808. Expert Opinion Included in a Hearsay Statement Admissible Under an Exception**

Expert opinion that is included in an admissible hearsay statement shall be excluded if the declarant has not been produced as a witness unless the court finds that the circumstances involved in rendering the opinion tend to establish its trustworthiness. Factors to consider include the motive, duty, and interest of the declarant, whether litigation was contemplated by the declarant, the complexity of the subject matter, and the likelihood of accuracy of the opinion.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; amended September 16, 2019 to be effective July 1, 2020.