

## **New Jersey Rules of Evidence**

### **Article I. General Provisions**

#### **N.J.R.E. 101. Applicability; Exceptions; Definitions**

##### **(a) Applicability; Exceptions.**

**(1) Applicability.** Except as provided by paragraph (a)(3), these rules of evidence shall apply in all proceedings, whether criminal, civil, family, municipal, tax, or any other proceeding conducted by or under the supervision of a court.

**(2) 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.

**(3) Relaxation.** Except as provided by subparagraph (a)(2) 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.

**(4) Administrative Proceedings.** Except as otherwise provided by subparagraph (a)(2) of this rule, proceedings before administrative agencies shall not be governed by these rules.

**(5) Undisputed Facts.** If there is no bona fide dispute between the parties as to a relevant fact, the court may permit that fact to be established by stipulation or binding admission. In civil proceedings the court 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.

**(6) 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 by a preponderance of the evidence, by clear and convincing evidence, beyond a reasonable doubt, or such other standard as required by law.

**(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).

**(4) "Public Official"** has the meaning given in the definition contained in Rule 801(f).

**(5) "Statement Under Oath"** means a statement made under penalty of perjury whether by oath, affirmation, or declaration.

**(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 caption revised, former paragraph (a)(1) redesignated as (a)(2), former paragraph (a)(2) amended and redesignated as (a)(1) and (a)(3), former paragraphs (a)(3) and (a)(4) amended and redesignated as (a)(4) and (a)(5), former paragraph (a)(5) redesignated as (a)(6), paragraph (b)(1) amended, and new paragraphs (b)(4) and (5) adopted September 16, 2019 to be effective July 1, 2020.

## **N.J.R.E. 102. Purpose and Construction**

These rules shall be construed to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

**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. 103. Not Adopted.]**

## **N.J.R.E. 104. Preliminary Questions**

### **(a) In General.**

(1) The court shall decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege and Rule 403.

(2) The court may hear and determine such matters out of the presence or hearing of the jury.

### **(b) Relevance That Depends on a Fact.**

(1) When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(2) In such cases the court shall instruct the jury to consider the issue of the existence of the fact and to disregard the evidence if it finds that the fact does not exist. The jury shall be instructed to disregard the evidence if the court subsequently determines that a jury could not reasonably find the existence of the fact.

### **(c) Preliminary Hearing on Admissibility of Defendant's Statements in Criminal Cases.**

(1) If the hearing involves the admissibility of a confession, the court shall conduct such hearing out of the presence of the jury;

(2) 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 court 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 court subsequently determines from all of the evidence that the statement is not admissible, the court shall take appropriate action.

**(d) Cross-Examining a Defendant in a Criminal Proceeding.** By testifying on a preliminary matter, a defendant in a criminal proceeding does not become subject to cross-examination on other issues in the case.

**(e) Evidence Relevant to Weight and Credibility.** This rule does not limit a party's right to introduce, before the trier of fact, evidence that is relevant to the weight or credibility of other evidence.

**NOTE:** Adopted September 15, 1992 to be effective July 1, 1993; paragraph (a) caption and text amended and portions redesignated as paragraphs (a)(1) and (2), paragraph (b) caption and text amended and portions redesignated as paragraphs (b)(1) and (2), paragraph (c) caption and text amended and portions redesignated as paragraphs (c)(1) and (2), paragraphs (d) and (e) captions and text amended September 16, 2019 to be effective July 1, 2020.

**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 court, 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; amended September 16, 2019 to be effective July 1, 2020.

**N.J.R.E. 106. Remainder of or Related Writings or Recorded Statements**

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part, or any other writing or recorded statement, that in fairness ought to be considered at the same time.

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