

NOTICE TO THE BAR

Evidence Rule Amendments – N.J.R.E. 530 (“Waiver of Privilege by Contract or Previous Disclosure; Limitations”); N.J.R.E. 608 (“Evidence of Character for Truthfulness and Evidence of a Prior False Accusation”); and Numerous Restyling Amendments – Amendments In Effect as of July 1, 2020

In a September 16, 2019 Notice to the Bar and Order, the Supreme Court announced that, pursuant to N.J.S.A. 2A:84A-35, it had adopted amendments to New Jersey Rules of Evidence as follows: N.J.R.E. 530, “Waiver of Privilege by Contract or Previous Disclosure; Limitations”; N.J.R.E. 608, “Evidence of Character for Truthfulness or Untruthfulness and Evidence of a Prior False Accusation”; and restyling amendments to a number of rules. There having been no legislative action with regard to these amendments to the Rules of Evidence as provided for by N.J.S.A. 2A:84-36, the amendments as set forth in the Court’s September 16, 2019 order became effective on July 1, 2020 (subject to technical revisions as set forth in notices to the bar dated June 10, 2020 and June 19, 2020).

The amendments to N.J.R.E. 530 address inadvertent disclosures of privileged material in the context of the attorney-client privilege and work product doctrine, and were adopted in response to the increasing use of electronic discovery in litigation and the attendant high risk of inadvertent disclosures. Paragraph (c) is new and contains the provisions that apply to a disclosure of a communication or information covered by the attorney-client privilege or work-product protection. This new paragraph accords with the Complex Business Litigation Program Electronic Discovery Stipulation and Order form, governing production, spoliation, and disclosure issues.

The amendments to N.J.R.E. 608 permit, in limited circumstances and in criminal cases only, inquiry into specific-act evidence on cross-examination when probative of a witness’ character for truthfulness. The amendments represent an expansion from the current rule where specific act evidence is permitted only in two circumstances: (1) under N.J.R.E. 609 (prior criminal convictions), and (2) false accusations of a crime similar to that with which the defendant is charged. The amendments were the result of the Court’s referral to the Committee on the Rules of Evidence in State v. Scott, 229 N.J. 469 (2017).

The restyling amendments to the New Jersey Rules of Evidence make the rules clearer, plainer, and easier to understand, but do not change their substantive meaning. Restyling amendments were made to 46 rules. The amendments eliminate ambiguous words, minimize the use of redundant intensifiers, select and use consistent terminology and punctuation, and preserve familiar phrases that have been interpreted frequently in

case law. The amendments are the result of a seven-year project that was initiated at the Chief Justice's request after the Federal Rules of Evidence were restyled in 2011.



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Acting Administrative Director of the Courts

Dated: July 1, 2020