

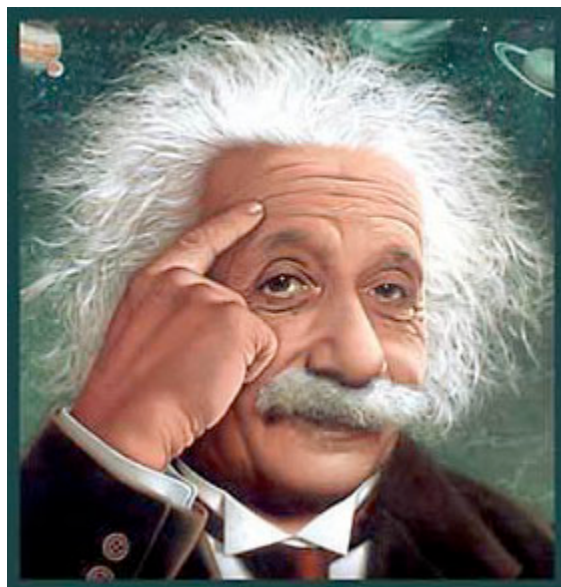
Garden state CLE Presents:

New Jersey Rules of Evidence for Dummies



SEVEN SHORT & SIMPLE LESSONS:

Guaranteed to make you look like the GENIUS you really are in Court!



Lesson Plan

Lesson 1 – WHEN THE RULES DO NOT EVEN APPLY!

RULE 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.

=====

Cross reference NJRE 101(E) and NJRE 104(a) as to relaxation of NJRE

Do the Rules of Evidence apply in a motor vehicle case? See State v. Schreiber, 122 N.J. 579 (1991).

See also State v. Widmair, 157 NJ 475 (1999) (discussion of “quasi-criminal)

Cross Reference Privileges NJRE 500 thru 533

Lesson 2 – Satisfying a condition of admissibility (The Rules still don't apply!)

RULE 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 the 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.

Lesson 3 – Relevance (Otherwise no trial would ever end!)

Rule 401. Definition of "Relevant Evidence".

"Relevant evidence" means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of this action.

Rule 402. Relevant Evidence Generally Admissible

Except as otherwise provided in these rules or by law, all relevant evidence is admissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.

Except as otherwise provided by these rules or other law, relevant evidence may be excluded if its probative value is substantially outweighed by the risk of (a) undue prejudice, confusion of issues, or misleading the jury or (b) undue delay, waste of time, or needless presentation of cumulative evidence.

Cross Ref NJRE 611 (avoid needless consumption of time)

Cross Ref NJRE 102 (These rules shall be construed to secure fairness in administration and elimination of unjustified expense and delay.)

Lesson 4 – Control by the Judge

Rule 611. Mode and Order of Interrogation and Presentation.

(a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily, leading questions should be permitted on cross-examination. When a party calls an adverse party or a witness identified with an adverse party, or when a witness demonstrates hostility or unresponsiveness, interrogation may be by leading questions, subject to the discretion of the court.

Cross Ref: NJRE 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.

Cross Ref NJRE 403 (waste of time)

Cross Ref NJRE 404(a)(1) (character of the accused raised by defendant)

Lesson 5 – A few common & *VERY* **Simple Hearsay Exceptions**

803(c) STATEMENTS NOT DEPENDENT ON DECLARANT'S AVAILABILITY. Whether or not the declarant is available as a witness:

(1) Present sense impression. A statement of observation, description or explanation of an event or condition made while or immediately after the declarant was perceiving the event or condition 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.

(4) Statements for purposes of medical diagnosis or treatment. Statements made in good faith for purposes of medical diagnosis or treatment which describe medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof to the extent that the statements are reasonably pertinent to diagnosis or treatment.

(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 which (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 at the time it was made, and (C) the statement concerns a matter of which the witness had knowledge when it was made, unless the circumstances indicate that the statement is not trustworthy; provided that 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 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 it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it 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, unless the sources of information or other circumstances indicate that such statistical findings are not trustworthy.

=====

But see also Crawford v. Washington, 541 U.S. 36 (2004).

Cross Ref – NJRE 902 (self-authentication)

Cross Ref – NJRE 1005 (copy of public records)

Lesson 6 – Opinion Testimony

Rule 701. Opinion Testimony by Lay Witnesses.

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences may be admitted if it (a) is rationally based on the perception of the witness and (b) will assist in understanding the witness' testimony or in determining a fact in issue.

Rule 702. Testimony by Experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

S.K.E.E.T. acronym for expert qualifications

Cross ref NJRE 403 for net opinion, ultimate issue, not rationally based upon perception, *etc.*

Cross Ref NJRE 704 - Opinion on Ultimate Issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Lesson 7 – Authentication

Rule 901. Requirement of Authentication or Identification.

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter is what its proponent claims.

Cross Ref NJRE 104(a)

Cross ref NJRE 602

Except as otherwise provided by Rule 703 (bases of opinion testimony by experts), a witness may not testify to a matter unless evidence is introduced sufficient to support a find that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of that witness.

Includes:

Documents and writings

Photographs & video

Scientific Exhibits

Real & Demonstrative Evidence

Reports

Opinions

Chain of Custody as a matter of weight – State v. Morton, 155 NJ 383 (1998)