

Garden State CLE Presents:

12 Angry Credits



New Rules of Evidence for 2020



Lesson Plan

Instructors

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Introduction



The amendments to the New Jersey Rules of Evidence (NJRE) will become effective on July 1, 2020, as required by statute (NJSA 2A:84A-36). They include the following changes:

- 1. A comprehensive amendment to NJRE 530 related to a Waiver of Privilege by Contract or Previous Disclosure;**
- 2. A comprehensive revision to NJRE 608 related to a witness' character for truthfulness or falsity.**

3. In addition, the amended NJRE also contain a restyling of 46 other rules of evidence. The restyling amendments to the New Jersey Rules of Evidence are intended to make the rules clearer, plainer, and easier to understand, but without changing their substantive meaning. The amendments eliminate ambiguous words, minimize the use of redundant intensifiers, and select consistent terminology and punctuation, while preserving familiar phrases that have been interpreted frequently in case law. The amendments are the end product of a seven-year project that was initiated after the Federal Rules of Evidence were restyled in 2011.

The amendments are based on the 2017-2019 report of the Supreme Court Committee on the Rules of Evidence.

In the following reproduction of the amendments, please note that underlined materials are new, while the text in brackets has been deleted, all to be effective July 1, 2020.

Summary and Review of Amended Rules of Evidence

NJRE 101



NJRE 101. [Scope] Applicability; Exceptions; Definitions

(a) Applicability; Exceptions[exceptions].

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

(2) [(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.

(3) [(2) Court proceedings; relaxation] 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 subparagraph (a)(2) [(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.

(4) [(3)] Administrative Proceedings [proceedings]. Except as otherwise provided by subparagraph (a)(2) [(a)(1)] of this rule, proceedings before administrative agencies shall not be governed by these rules.

(5) [(4)] Undisputed Facts [facts]. If there is no bona fide dispute between the parties as to a relevant fact, the [judge] court may permit that fact to be established by stipulation or binding admission. In civil proceedings the [judge] 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) [(5)] Affidavit in Lieu of Testimony [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.



Definitions within the NJRE

(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, or such other standard as required by law [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).

(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.

NJRE 102. Purpose and Construction

These rules shall be construed to [secure fairness in] administer every proceeding fairly, eliminate unjustifiable [administration and elimination of unjustified] expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination. [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.]



NJRE 104. Preliminary Questions

(a) In General. [Questions of admissibility generally]

(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. [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.]

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

(b) Relevance [conditioned] that Depends on a Fact [on fact].

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

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

(c) Preliminary Hearing on Admissibility of Defendant's Statements [hearing on admissibility of defendant's statements] .

(1) If the hearing involves the admissibility of defendant's statements. the court shall conduct such hearing out of the presence of the jury [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.]

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

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

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

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 the action.

[No amendment made to this definition]



NJRE 402. Relevant Evidence Generally Admissible

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

NJRE 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 [undue] prejudice, confusion of issues, or misleading the jury; or

(b) Undue [undue] delay, waste of time, or needless presentation of cumulative evidence.

EVIDENCE

NJRE 404. Character Evidence Not Admissible to Prove Conduct; **Exceptions; Other Crimes Evidence**

(a) Character Evidence [evidence generally]. Evidence of a person's character or character trait, including a trait of care or skill or lack thereof, is not admissible [for the purpose of proving] to prove that on a particular occasion the person acted in conformity [therewith] with [on a particular occasion] the character or trait except:

(1) Character of [accused] Defendant in a Criminal Proceeding. Evidence of a pertinent trait of the defendant's character offered by the defendant or by the prosecution to rebut it. Evidence of a pertinent trait of the [accused's] defendant's character offered by the [accused] defendant [, which] shall not be excluded under Rule 403 [, or by the prosecution to rebut the same];

(2) Character of Victim [victim]. Evidence of a pertinent trait of character of the victim of the crime offered by [an accused] a defendant in a criminal proceeding or by the prosecution to rebut [the same] it, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of Witness [witness]. Evidence of the character of a witness as provided in Rule 608.

(b) Other Crimes, Wrongs, or Acts [crimes, wrongs, or acts].

(1) Prohibited Uses. Except as otherwise provided by Rule 608(b), evidence of other crimes, wrongs, or acts is not admissible to prove [the disposition of a person] a person's disposition in order to show that [such person acted in conformity therewith] on a particular occasion the person acted in conformity with such disposition.



(2) Permitted Uses. [Such] This evidence may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident when such matters are relevant to a material issue in dispute.

(3) Character and Character Trait in Issue [character trait in issue]. Evidence of a person's character or [trait of character] character trait is admissible when that character or trait is an element of a claim or defense.

Instructor's Commentary

In *State v. Cofield*, [127 N.J. 328, 338 \(1992\)](#), the Supreme Court framed a four-pronged test to determine whether to admit other-crimes evidence for a permitted purpose under [N.J.R.E. 404\(b\)](#). The *Cofield* test requires that:

- 1. The evidence of the other crime must be admissible as relevant to a material issue;**
- 2. It must be similar in kind and reasonably close in time to the offense charged;**
- 3. The evidence of the other crime must be clear and convincing; and**
- 4. The probative value of the evidence must not be outweighed by its apparent prejudice.**



NJRE 405. Methods of Proving Character

(a) Reputation, Opinion, or Conviction of Crime [opinion, or conviction of crime]. When evidence of [character or a trait of character of a person] a person's character or character trait is admissible, it may be proved by evidence of the person's reputation, evidence in the form of opinion, or evidence of conviction of a crime which tends to prove the trait. Specific instances of conduct not the subject of a conviction of a crime shall be inadmissible except as otherwise provided.

(b) Specific Instances of Conduct [instances of conduct]. When [character or a trait of character of a person] a person's character or character trait is an essential element of a charge, claim, or defense, [evidence of specific instances of conduct may also be admitted] the character or trait may also be proved by specific instances of the person's conduct.



NJRE 530(c) Waiver of Privilege



Committee Commentary - 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 are 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 1 protection. This new section accords with the Complex Business Litigation Program Electronic Discovery Stipulation and Order form, governing production, spoliation, and disclosure issues.

(c) Attorney-Client Privilege and Work Product; Limitations on Waiver. The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(1) Disclosure Made in a State Proceeding or to a State Office or Agency: Scope of a Waiver. When the disclosure is made in a state proceeding or to a state office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication in a state proceeding only if:

A. the waiver is intentional;

B. the disclosed and undisclosed communications or information concern the same subject matter;
and

C. they ought in fairness to be considered together.

(2) Inadvertent Disclosure. When made in a state proceeding or to a state office or agency, the disclosure does not operate as a waiver in a state proceeding if:

A. the disclosure is inadvertent;

B. the holder of the privilege or protection took reasonable steps to prevent disclosure;
and

C. the holder promptly took reasonable steps to rectify the error.

(3) Disclosure Made in Another Forum. When the disclosure is made in another state or in a federal proceeding, the disclosure does not operate as a waiver in the New Jersey proceeding if the disclosure:

A. Would not be a waiver under this rule if it had been made in a New Jersey proceeding; or

B. Is not a waiver under the law of the forum where the disclosure occurred.

(4) Controlling Effect of a Court Order. A court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court, in which event the disclosure is also not a waiver in any other federal or state proceeding. The existence of such an agreement between the parties shall not limit a party's right to conduct a review of documents, electronically stored information or other information for relevance, responsiveness or segregation of privileged or protected information before production.



(5) Controlling Effect of a Party Agreement. An agreement on the effect of a disclosure in a state proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(6) Definitions. In this rule:

A. "Attorney-client privilege" means the protection afforded under Rule 504; and

B. "Work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.



NJRE 601. General Rule of Competency

Every person is competent to be a witness unless (a) the [judge] court finds that the proposed witness is incapable of expression [concerning the matter] so as to be understood by the [judge] court and any jury either directly or through interpretation, or (b) the proposed witness is incapable of understanding the duty of a witness to tell the truth, or (c) [except] as otherwise provided by these rules or by law.



NJRE 602. Lack of [Of] Personal Knowledge

[Except as otherwise provided by Rule 703 (bases of opinion testimony by experts), a] A witness may [not] testify to a matter [unless] only if evidence is introduced sufficient to support a finding 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] witness' own testimony. This rule does not apply to expert testimony under Rule 703.



NJRE 608(b)(2) - Evidence of a witness' character for truthfulness or untruthfulness.

Committee commentary - 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: under N.J.R.E. 609 (prior criminal convictions) and false accusations of a crime similar to that with which the defendant is charged. The amendments were adopted in response to the Supreme Court's referral to the Committee on the Rules of Evidence in State v. Scott, 229 N.J. 469, 494 (2017).

NJRE 608(b)(2) In a criminal case, a witness' character for truthfulness may be attacked by evidence that the witness made a prior false statement tending to exonerate the defendant if the judge preliminarily determines, by a hearing pursuant to Rule 104(a), that the witness knowingly made the prior false statement of exoneration.

(c) Except as otherwise provided by Rule 609 and paragraph (b) of this Rule, extrinsic evidence is not admissible to prove specific instances of a witness' conduct in order to attack or or support the witness' character for truthfulness.

In a criminal case, subject to the requirements in paragraphs (d), (e), and (f) of this Rule, the court may, on cross-examination, permit inquiry into specific instances of conduct that are probative of the character for truthfulness or untruthfulness of:

(1) the witness, or

(2) another witness whose character the witness being cross-examined has testified about pursuant to paragraph (a) of this Rule.

(d) The proponent of the specific conduct inquiry pursuant to paragraph (c) of this Rule must show that:

(1) a reasonable factual basis exists that the specific instance of conduct occurred,

(2) the specific instance of conduct has probative value in assessing the witness' character for truthfulness.



If the witness is a criminal defendant, the proponent of the specific conduct inquiry pursuant to paragraph (c) of this Rule must give the defendant reasonable notice of the intent to cross-examine on the specific instance of conduct and the court must determine, by a hearing pursuant to Rule 104(a), that a reasonable factual basis exists that the specific instance of conduct occurred and that the specific instance of conduct has probative value in assessing the defendant's character for truthfulness.

(e) Except as provided below, the court's determination to allow inquiry under paragraph (c) of this Rule is subject to the balancing standard of Rule 403. If, however, the specific instance of conduct occurred more than ten years before the commencement of the trial, the court must find that the probative value of the specific instance of conduct in assessing the witness' character for truthfulness outweighs any prejudicial effect.

(f) Inquiry into specific instances of conduct of a witness committed while the witness was a juvenile is generally not permissible under paragraph (c) of this Rule. The court may, however, permit inquiry into such conduct by a witness, other than the defendant in a criminal case, if the inquiry would otherwise be permitted under paragraph (c) of this Rule if the conduct had been committed by an adult and the court determines that the inquiry is necessary for a fair determination of the issues in the action.

(g) By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness' character for truthfulness.

NJRE 611. Mode and Order of Interrogation and Presentation

(a) Control by Court [court]; Purposes. 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] those procedures effective for [the ascertainment of] determining the truth;

(2) avoid [needless consumption of] wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-examination [cross-examination]. Cross-examination should [be limited to] not go beyond the subject matter of the direct examination and matters affecting the [credibility of the witness] witness' credibility. The court may [, in the exercise of discretion, permit] allow inquiry into additional matters as if on direct examination.

(c) Leading Questions [questions]. Leading questions should not be used on [the] direct examination [of a witness] except as [may be] necessary to develop the witness' 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.



NJRE 613. Prior Statements of Witnesses

(a) Examining Witness Concerning Prior Statement [witness concerning prior statement]. When [In] examining a witness [concerning a] about the witness' prior statement, [made by the witness,] whether written or not, [the statement need not be shown or its] a party need not show it or disclose [the] its contents [disclosed] to the witness [at that time]. But the party must upon [Upon] request., [the statement shall be shown or disclosed to opposing counsel] show it or disclose its contents to an adverse party's attorney or a self-represented litigant unless the self-represented litigant is the witness.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness [evidence of prior inconsistent statement of witness]. Extrinsic evidence of a witness' prior inconsistent statement [made by a witness] may [in the judge's discretion] be excluded unless the witness is afforded an opportunity to explain or deny the statement and the opposing party is afforded an opportunity to interrogate on the statement, or the interests of justice otherwise require. This rule does not apply to admissions of a party opponent as defined in Rule 803(b).



NJRE 614. Calling and Interrogation of Witnesses by Court [Judge]

(a) Calling. The court [judge, in accordance with law and subject to the right of a party to make timely objection,] may call a witness [and may interrogate any witness] on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) Examining. The court may examine a witness regardless of who calls the witness.

(c) Objections. A party may object to the court's calling or examining a witness.



NJRE 801. Hearsay – Definitions



[For purposes of this article, the following definitions apply:]

(a) Statement "Statement" means a person's [A "statement" is (1) an] oral assertion, [or] written assertion, or [(2)] nonverbal conduct, [of a person] if the person intendeded[s]s it as an assertion.

(b) Declarant [A] "Declarant [declarant]" means the [is a] person who made the [makes a] statement.

(c) Hearsay. "Hearsay" means [is] a statement[, other than one made by the declarant] that:

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

(2) a party offers[, offered] in evidence to prove the truth of the matter asserted [in the statement]

NJRE 803(c) Statements Not Dependent on Declarant's Availability [not dependant on declarant's availability]. The following are not excluded by the rule against hearsay, regardless of whether [Whether or not] the declarant is available as a witness:

(1) Present Sense Impression [sense impression]. A statement describing or explaining [of observation, description or explanation of] an event or condition.¹ made while or immediately after the declarant [was perceiving the event or condition] perceived it and without opportunity to deliberate or fabricate.

(2) Excited Utterance [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 [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) A Statement for Purposes of Medical Diagnosis or Treatment purposes of medical diagnosis or treatment. A statement [Statements] that: (A) is made in good faith for purposes of, and is reasonably pertinent to, medical diagnosis or treatment; and [which] describes medical history;[, or] past or present symptoms[, pain,] or sensations;[, or the] their inception; or their 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 [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] 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 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] 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. This exception does not apply if the circumstances indicate that the statement is not trustworthy.

(6) Records of Regularly Conducted Activity [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] 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 [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)[when offered] the evidence is admitted to prove that [the nonoccurrence or nonexistence of] the matter did not occur or exist; and

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

[if the matter was of a kind of which a writing or other record was regularly made and preserved, unless]

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

(8) Public Records, Reports, and Findings [records, reports, and findings]. Subject to Rule 807,

(A) a statement contained in a writing or other record 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 [unless] the sources of information or other circumstances indicate that such statistical findings are not trustworthy .

(9) Records of Vital Statistics [vital statistics]. Subject to Rule 807, a statement contained in any form such as a record[s] of a birth[s], fetal death[s], death[s], or marriage[s] or civil union, if the report thereof was made to a public office pursuant to requirements of law.

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

(A) the [absence of a public record, report, writing, or entry] record or statement does not exist: or

(B) the [nonoccurrence or nonexistence of a] matter [of which a record, report, writing, or entry is regularly made and preserved by] did not occur or exist if a public office or agency[,] regularly kept a record or statement for a matter of that kind.

The exception does not apply if [unless] 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 [religious organizations]. Subject to Rule 807, a statement[s] of birth[s], legitimacy, ancestry marriage[s] or civil union, divorce[s], death[s], [legitimacy,] [ancestry,] relationship by blood or marriage or civil union, or [other] similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Certificates of Marriage, Civil Union, Baptism, [civil union, baptismal], and Similar [similar certificates] Ceremonies. Subject to Rule 807, statements 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) [that the maker] attesting that the person performed a marriage or civil union, or [other] similar ceremony, or administered a sacrament;[, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified,] and

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



(13) Family Records [records]. Subject to Rule 807, statements of fact [concerning a] about personal or family history contained in a family record, such as a Bible[s], genealogy[ies], chart[s], engraving[s] on a ring[s], inscription[s] on a family portrait[s], engraving[s] on an urn[s], crypt[s], [or] tombstone[s], or other [the like] burial marker.

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

(A) the record is admitted [as proof of] to prove the content of the original recorded document, along with its signing and its [execution and] delivery by each person by who[m it] purports to have signed it [been executed,];

(B) [if] the record is kept in a [record of] public office; and

(C) [an applicable] a statute authorizes[d the] recording [of] documents of that kind in that office .

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

(16) Statements in Ancient Documents [ancient documents]. A statement [Statements] in a document [in existence] at least 30 years old and [or more] whose authenticity is established.

(17) Market Reports [reports], and Similar Commercial Publications [commercial publications]. Market quotations, tabulations, lists, directories, or other published compilations[,] that are generally used and relied [up]on by the public or by persons in particular occupations.

(18) Statements in Learned Treatises [treatises], Periodicals, or Pamphlets. [To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert in direct examination,] A statement[s] contained in a published treatise[s], periodical[s], or pamphlet[s] 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 of cross-examination; and

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

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

(19) Reputation Concerning Personal or Family History [concerning personal or family history]. Evidence of a person's reputation[,] among members of [the] a person's family ·by blood, adoption, or marriage, or civil union, or among [that] 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 [the] a person's personal or family history.

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

(21) Reputation Concerning [as to] Character [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 [Judgments of previous conviction of crime]. In a civil [proceeding] case, 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 [as to] Involving Personal, Family, or General History, or Boundaries [personal, family, or general history, or boundaries]. A judgment [Judgments] that is admitted to prove [as proof of] a matter[s] of personal, family, or general history, or boundaries, [essential to the judgment,] if [those] the matter[s]:

(A) was essential to the judgment; and

(B) [would] could be proved [proveable] by evidence of reputation.

(24) [Not adopted.]

(25) Statement Against Interest [against interest]. A statement which was at the time of its making so far contrary to the declarant's pecuniary, proprietary, or social interest, or so far tended to subject declarant to civil or criminal liability, or to render invalid declarant's claim against another, that a reasonable person in declarant's position would not have made the statement unless the person believed it to be true. Such a statement is admissible against [an accused] a defendant in a criminal [action] proceeding only if the [accused] defendant was the declarant.



NJRE 805. Hearsay Within Hearsay

[A statement within the scope of an exception to Rule 802 shall not be inadmissible on the ground that it includes a statement made by another declarant which is offered to prove the truth of its contents if the included statement itself meets the requirements of an exception to Rule 802.]

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.



NJRE 901. Requirement of Authentication or Identification

[The] To satisfy the requirement of [authentication or identification as a condition precedent to admissibility is satisfied by] authenticating or identifying an item of evidence, the proponent must present evidence sufficient to support a finding that the [matter] item is what its proponent claims.



NJRE 1005. Public Records

The proponent may use a copy to prove the contents of an official record.,, or of a writing [authorized to be] that was recorded or filed [and actually recorded or filed,] in a public office as authorized by law. if these conditions are met:

(a) the record or writing [if] is otherwise admissible;

(b) and the copy [may be proved by a copy,] is certified as correct in accordance with Rule 902, or testified to be correct by a witness who has compared it with the original.

[If [a] no such copy [which complies with the foregoing cannot] can be obtained by [the exercise of] reasonable diligence, then the proponent may use other evidence to prove of the contents [maybe admitted].

Garden State CLE Presents:

12 Angry Credits



New Rules of Evidence for 2020



Lesson Plan

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