

New Jersey Rules of Evidence

Article VI. Witnesses

N.J.R.E. 601. General Rule of Competency

Every person is competent to be a witness unless (a) the court finds that the proposed witness is incapable of expression so as to be understood by the 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) as otherwise provided by these rules or by law.

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. 602. Lack of Personal Knowledge

A witness may testify to a matter 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 consist of the witness' own testimony. This rule does not apply to expert testimony under Rule 703.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; amended September 15, 2004 to be effective July 1, 2005; caption and text amended September 16, 2019 to be effective July 1, 2020.

N.J.R.E. 603. Oath or Affirmation

Before testifying a witness shall be required to take an oath or make an affirmation or declaration to tell the truth under the penalty provided by law. No witness may be barred from testifying because of religious belief or lack of such belief.

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

N.J.R.E. 604. Interpreters

The court shall determine the qualifications of a person testifying as an interpreter. An interpreter shall take an oath or make an affirmation or declaration to interpret accurately and shall be subject to all provisions of these rules relating to witnesses.

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. 605. Restriction on Judge as a Witness

The judge presiding at the trial may not testify as a witness in that trial. A party need not object to preserve the issue.

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. 606. Restriction on Juror as a Witness

A member of the jury may not testify as a witness before the jury on which the juror is serving.

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

N.J.R.E. 607. Witness Impeachment, Support, and Neutralization

(a) For the purpose of attacking or supporting the credibility of a witness, any party, including the party calling the witness, may examine the witness and introduce extrinsic evidence relevant to the issue of credibility, subject to the exceptions in (a)(1) and (2).

(1) This provision is subject to Rules 405 and 608.

(2) The party calling a witness may not neutralize the witness' testimony by a prior contradictory statement unless (i) the statement is in a form admissible under Rule 803(a)(1), or (ii) the court finds that the party calling the witness was surprised.

(b) A prior consistent statement shall not be admitted to support the credibility of a witness except: (1) to rebut an express or implied charge against the witness of recent fabrication or of improper influence or motive, and (2) as otherwise provided by the law of evidence.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; caption amended, text amended and designated as paragraphs (a), and (b) September 16, 2019 to be effective July 1, 2020.

N.J.R.E. 608. Evidence of a Witness' Character for Truthfulness or Untruthfulness

(a) A witness' credibility may be attacked or supported by evidence in the form of opinion or reputation that relates to the witness' character for truthfulness or untruthfulness, provided that evidence of truthful character is admissible only after the witness' character for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) (1) In a criminal case, a witness' character for truthfulness may be attacked by evidence that the witness made a prior false accusation against any person of a crime similar to the crime with which defendant is charged if the judge preliminarily determines, by a hearing pursuant to Rule 104(a), that the witness knowingly made the prior false accusation.

(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 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, and

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

(3) 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.

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

N.J.R.E. 609. Impeachment by Evidence of Conviction of Crime

(a) In General.

(1) For the purpose of attacking the credibility of any witness, the witness' conviction of a crime, subject to Rule 403, shall be admitted unless excluded by the court pursuant to paragraph (b) of this rule.

(2) (A) Except as provided in subparagraph (a)(2)(B) of this Rule, such conviction may be proved by examination, production of the record thereof, or by other competent evidence.

(B) In a criminal proceeding when the defendant is the witness, and

(i) the prior conviction is the same or similar to one of the offenses charged, or

(ii) the court determines that admitting the nature of the offense poses a risk of undue prejudice to a defendant,

the prosecution may only introduce evidence of the defendant's prior convictions limited to the degree of the crimes, the dates of the convictions, and the sentences imposed, excluding any evidence of the specific crimes of which defendant was convicted, unless the defendant waives any objection to the non-sanitized form of the evidence.

(b) Use of Prior Conviction Evidence After Ten Years.

(1) If, on the date the trial begins, more than ten years have passed since the witness' conviction for a crime or release from confinement for it, whichever is later, then evidence of the conviction is admissible only if the court determines that its probative

value outweighs its prejudicial effect, with the proponent of that evidence having the burden of proof.

(2) In determining whether the evidence of a conviction is admissible under subparagraph (b)(1) of this rule, the court may consider:

- (i) whether there are intervening convictions for crimes or offenses, and if so, the number, nature, and seriousness of those crimes or offenses,
- (ii) whether the conviction involved a crime of dishonesty, lack of veracity or fraud,
- (iii) how remote the conviction is in time,
- (iv) the seriousness of the crime.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; text amended and designated as paragraph (a), paragraph (a) caption added, new paragraph (b) caption and text added September 16, 2013 to be effective July 1, 2014; paragraphs (a) and (b) amended September 16, 2019 to be effective July 1, 2020.

N.J.R.E. 610. Religious Beliefs or Opinions

Evidence of a witness' religious beliefs or opinions is not admissible to attack or support the witness' credibility.

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. 611. Mode and Order of Interrogation and Presentation

(a) Control by Court; Purposes. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

(b) **Scope of Cross-examination.** Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness' credibility. The court may allow inquiry into additional matters as if on direct examination.

(c) **Leading Questions.** Leading questions should not be used on direct examination except as 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.

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

N.J.R.E. 612. Writing Used to Refresh Memory

(a) Except as otherwise provided by law in criminal proceedings, if a witness while testifying uses a writing to refresh the witness' memory for the purpose of testifying, an adverse party is entitled to have the writing produced at the hearing for inspection and use in cross-examining the witness. The adverse party shall also be entitled to introduce in evidence those portions which relate to the testimony of the witness but only for the purpose of impeaching the witness. If it is claimed that the writing contains material not related to the subject of the testimony, the court shall examine the writing in camera and excise any unrelated portions.

(b) If the witness has used a writing to refresh the witness' memory before testifying, the court in the interest of justice may accord the adverse party the same right to the writing as that party would have if the writing had been used by the witness while testifying.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; text amended and designated as paragraphs (a) and (b) September 16, 2019 to be effective July 1, 2020.

N.J.R.E. 613. Prior Statements of Witnesses

(a) Examining Witness Concerning Prior Statement. When examining a witness about the witness' prior statement, whether written or not, a party need not show it or disclose its contents to the witness. But the party must, upon request, 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. Extrinsic evidence of a witness' prior inconsistent statement may 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).

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; paragraphs (a) and (b) captions and text amended September 16, 2019 to be effective July 1, 2020.

N.J.R.E. 614. Calling and Interrogation of Witnesses by Court

(a) Calling. The court may call a 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.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; caption amended, text amended and designated paragraph (a) with caption added, new paragraphs (b) and (c) adopted September 16, 2019 to be effective July 1, 2020.

N.J.R.E. 615. Sequestration of Witnesses

At the request of a party or on the court's own motion, the court may, in accordance with law, enter an order sequestering witnesses.

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