

NOTICE TO THE BAR

AMENDMENTS TO THE NEW JERSEY RULES OF EVIDENCE – FORFEITURE BY WRONGDOING EXCEPTION TO HEARSAY RULE (TO BE EFFECTIVE JULY 1, 2011)

Pursuant to N.J.S.A. 2A:84A-35, attached is the Supreme Court's Order of September 15, 2010 adopting amendments to N.J.R.E. 804 of the New Jersey Rules of Evidence. The amendment adopts a forfeiture-by-wrongdoing exception to the hearsay rule (N.J.R.E. 804(b)(9)) consistent with the Court's opinion in State v. Byrd, 198 N.J. 319 (2009). The amendment proposal was presented and discussed at a Judicial Conference on September 7, 2010 in accordance with the requirements of N.J.S.A. 2A:84A-34. The proposal, as recommended by the Supreme Court Committee on the Rules of Evidence, was previously announced by public notices dated August 2, 2010 and August 20, 2010.

The Court's Order notes that the effective date of the amendments is July 1, 2011. The action of the Court is subject to the terms of N.J.S.A. 2A:84A-36.

/s/ Mark Neary

Mark Neary, Supreme Court Clerk

Dated: September 15, 2010

SUPREME COURT OF NEW JERSEY

It is ORDERED that, pursuant to N.J.S.A. 2A:84-33 through 2A:84A-36, the attached amendment to N.J.R.E. 804 of the New Jersey Rules of Evidence is adopted to be effective July 1, 2011.

For the Court,
/s/ Stuart Rabner
Chief Justice

Dated: September 15, 2010

Rule 804. Hearsay Exceptions: Declarant Unavailable

(a) ... no change

(b) Hearsay exceptions. Subject to Rule 807, the following are not excluded by the hearsay rule if the declarant is unavailable as a witness.

(1) ... no change

(2) ... no change

(3) ... no change

(4) ... no change

(5) ... no change

(6) ... no change

(7) ... no change

(8) ... no change

(9) Forfeiture by wrongdoing. A statement offered against a party who has engaged, directly or indirectly, in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Note: Adopted September 15, 1992 to be effective July 1, 1993; paragraphs (a)(5) and (b)(8) deleted June 30, 1993 to be effective July 1, 1993; paragraphs (a) and (b) amended September 15, 2004 to be effective July 1, 2005; paragraph (b)(9) added September 15, 2010 to be effective July 1, 2011.