

NOTICE TO THE BAR

RULES OF EVIDENCE – ADOPTION OF AMENDMENTS TO N.J.R.E. 803(c)(25) and N.J.R.E. 804(b)(3)


(TO BE EFFECTIVE JULY 1, 2024)

Pursuant to N.J.S.A. 2A:84A-35, attached is the Supreme Court's September 15, 2023 Order amending N.J.R.E. 803(c)(25) and N.J.R.E. 804(b)(3) (Hearsay – Statement Against Interest) subject to the terms of N.J.S.A. 2A:84A-36. The effective date of these amendments will be July 1, 2024.

The Supreme Court amended N.J.R.E. 803(c)(25) and N.J.R.E. 804(b)(3) to require that statement against interest hearsay is admissible into evidence only when the declarant (the person who made the statement) is unavailable to testify. N.J.R.E. 803(c)(25) currently provides that this type of hearsay is admissible in evidence even when the declarant is available to testify but is not called to do so. The amendments will bring New Jersey in line with the federal government and overwhelming majority of other states and is accomplished by relocating this hearsay exception from New Jersey Rule of Evidence 803(c)(25) to New Jersey Rule of Evidence 804(b)(3).

The rule proposals were presented and discussed at a Judicial Conference on September 7, 2023 in accordance with the requirements of N.J.S.A. 2A:84A-34. The proposals were previously announced by a Notice to the Bar dated July 31, 2023.

The Court Order notes that the effective date of the new Rules is July 1, 2024. The action of the Court is subject to the terms of N.J.S.A. 2A:84A-36.



Glenn A. Grant
Administrative Director of the Courts

Dated: September 15, 2023

SUPREME COURT OF NEW JERSEY

Pursuant to N.J.S.A. 2A:84A-33 through 2A:84A-36, it is ORDERED that the attached amendments to **N.J.R.E. 803 (“Hearsay Exceptions Not Dependent on Declarants’ Unavailability”)** and **N.J.R.E. 804 (“Hearsay Exceptions: Declarant Unavailable”)** of the New Jersey Rules of Evidence are adopted to be effective July 1, 2024.

For the Court,



Chief Justice

Dated: September 15, 2023

N.J.R.E. 803. Hearsay Exceptions Not Dependent on Declarants' Unavailability

The following statements are not excluded by the hearsay rule:

(a) ... no change

(b) ... no change

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

(1) through (24) ... no change

(25) Statement Against Interest. *Relocated to N.J.R.E. 804(b)(3).* [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 a defendant in a criminal proceeding only if the defendant was the declarant.]

Note: Adopted September 15, 1992 to be effective July 1, 1993; amended June 30, 1993 to be effective July 1, 1993; caption and text amended September 16, 2019 to be effective July 1, 2020; deleted from N.J.R.E. 803 and relocated with amendments as N.J.R.E. 804(b)(3) September 15, 2023 to be effective July 1, 2024.

(26) through (27) ... no change

* * *

N.J.R.E. 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) Statement Against Interest. A statement that a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary, pecuniary, or social interest, or had so great a tendency to invalidate the declarant's claim against another or to expose the declarant to civil or criminal liability. Such a statement is admissible against a defendant in a criminal proceeding only if the defendant was the declarant.

(4) through (9) ... no change

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; paragraph (a) caption and text amended, paragraph (b) caption amended, paragraphs (b)(1) and (b)(4) caption and text amended, paragraphs (b)(2), (b)(6), (b)(7), (b)(9) caption amended September 16, 2019 to be effective July 1, 2020; paragraph (b)(3) relocated as amended from N.J.R.E. 803(c)(25) September 15, 2023 to be effective July 1, 2024.