

TITLE 225

RULES OF EVIDENCE

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Source

The provisions of this Title 225 adopted May 8, 1998, effective October 1, 1998, 28 Pa.B. 2369; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620, unless otherwise noted.

ARTICLE I. GENERAL PROVISIONS

Rule	
101.	Scope; Adoption and Citation.
102.	Purpose.
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104.	Preliminary Questions.
105.	Limiting Evidence That is Not Admissible Against Other Parties or for Other Purposes.
106.	Remainder of or Related Writings or Recorded Statements.

Rule 101. Scope; Adoption and Citation.

(a) *Scope.* These rules of evidence govern proceedings in all courts of the Commonwealth of Pennsylvania's unified judicial system, except as otherwise provided by law.

(b) *Adoption and Citation.* These rules of evidence are adopted by the Supreme Court of Pennsylvania under the authority of Article V § 10(c) of the Constitution of Pennsylvania, adopted April 23, 1968. They shall be known as the Pennsylvania Rules of Evidence and shall be cited as "Pa.R.E."

Comment

Preface to Comments

The original Comments to the Pennsylvania Rules of Evidence were prepared by the Ad Hoc Committee on Evidence. The Comments accompanied the Pennsylvania Rules of Evidence that were adopted by the Pennsylvania Supreme Court on May 8, 1998. The Pennsylvania Rules of Evidence closely followed the format, language, and style of the Federal Rules of Evidence, but the guiding principle was to preserve the Pennsylvania law of evidence. The original Comments reflected this approach by identifying the Pennsylvania sources of the law. The original Comments also compared the Pennsylvania Rules to the Federal Rules for the convenience of the Bench and Bar.

The Federal Rules of Evidence were amended effective December 1, 2011. The goal of the Federal amendments was to make the rules more easily understood and to make the format and terminology more consistent, but to leave the substantive content unchanged. The Pennsylvania Rules of Evidence were rescinded and replaced on January 17, 2013, and become effective on March 18, 2013. They closely follow the format, language, and style of the amended Federal Rules of Evidence. The goal of the Pennsylvania Supreme Court's rescission and replacement of the Pennsylvania Rules of Evidence was likewise to make its rules more easily understood and to make the format and terminology more consistent, but to leave the substantive content unchanged. Once again, the guiding principle is to preserve the Pennsylvania law of evidence.

These Comments are prepared by the Pennsylvania Supreme Court's Committee on Rules of Evidence for the convenience of the Bench and Bar. The Comments have not been adopted by the Supreme Court and it is not intended that they have precedential significance.

Comment to Rule 101

A principal goal of these rules is to construct a comprehensive code of evidence governing court proceedings in the Commonwealth of Pennsylvania. However, these rules cannot be all-inclusive. Some of our law of evidence is governed by the Constitutions of the United States and of Pennsylvania. Some is governed by statute. Some evidentiary rules are contained in the Rules of Civil and Criminal Procedure and the rules governing proceedings before courts of limited jurisdiction. Traditionally, our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, bail hearings, grand jury proceedings, sentencing hearings, parole and probation hearings, extradition or rendition hearings, and others. Traditional rules of evidence have also been relaxed to some extent in custody matters, see, e.g., Pa.R.C.P. No. 1915.11(b) (court interrogation of a child), and other domestic relations matters, see, e.g., Pa.R.C.P. No. 1930.3 (testimony by electronic means).

Decisional law is applicable to some evidentiary issues not covered by these rules. This would include for example, the *corpus delicti* rule, see *Commonwealth v. Fears*, 575 Pa. 281, 836 A.2d 52 (2003); the collateral source rule, see *Boudwin v. Yellow Cab Co.*, 410 Pa. 31, 188 A.2d 259 (1963); and the parol evidence rule, see *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 854 A.2d 425 (2004). The Pennsylvania Rules of Evidence are not intended to supersede these other provisions of law unless they do so expressly or by necessary implication.

These rules are applicable in the courts of the Commonwealth of Pennsylvania's unified judicial system. In some respects, these rules are applicable in administrative proceedings. See, e.g., *Gibson v. W.C.A.B.*, 580 Pa. 470, 861 A.2d 938 (2004) (evidentiary rules 602, 701 and 702 applicable in agency proceedings in general, including Workers' Compensation proceedings). These rules are also applicable in compulsory arbitration hearings, with specific exceptions relating to the admissibility of certain written evidence and official documents. See Pa.R.C.P. No. 1305.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised December 30, 2005, effective February 1, 2006; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the December 30, 2005 revision of the Comment published with the Court's Order at 36 Pa.B. 384 (January 28, 2006).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Source

The provisions of this Rule 101 amended December 30, 2005, effective February 1, 2006, 36 Pa.B. 384; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (316995) to (316996).

Rule 102. Purpose.

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

Comment

This rule is identical to F.R.E. 102.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Source

The provisions of this Rule 102 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (316996).

Rule 103. Rulings on Evidence.

(a) *Preserving a Claim of Error.* A party may claim error in a ruling to admit or exclude evidence only:

- (1) if the ruling admits evidence, a party, on the record:
 - (A) makes a timely objection, motion to strike, or motion *in limine*; and
 - (B) states the specific ground, unless it was apparent from the context;
 or
- (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) *Not Needing to Renew an Objection or Offer of Proof.* Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) *Court's Statement About the Ruling; Directing an Offer of Proof.* The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) *Preventing the Jury from Hearing Inadmissible Evidence.* To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

Comment

Pa.R.E. 103(a) differs from F.R.E. 103(a). The Federal Rule says, "A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party. . . ." In Pennsylvania criminal cases, the accused is entitled to relief for an erroneous ruling unless the court finds beyond a reasonable doubt that the error is harmless. *See Commonwealth v. Story*, 476 Pa. 391, 383 A.2d 155 (1978). Civil cases are governed by Pa.R.C.P. No. 126 which permits the court to disregard an erroneous ruling "which does not affect the substantial rights of the parties." Pa.R.E. 103(a) is consistent with Pennsylvania law.

Pa.R.E. 103(a)(1) specifically refers to motions *in limine*. These motions are not mentioned in the Federal rule. Motions *in limine* permit the trial court to make rulings on evidence prior to trial or at trial but before the evidence is offered. Such motions can expedite the trial and assist in producing just determinations.

Pa.R.E. 103(b), (c) and (d) are identical to F.R.E. 103(b), (c) and (d).

F.R.E. 103(e) permits a court to “take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.” This paragraph has not been adopted because it is inconsistent with Pa.R.E. 103(a) and Pennsylvania law. See *Commonwealth v. Clair*, 458 Pa. 418, 326 A.2d 272 (1974); *Dilliplaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 1, 2002; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001 amendments to paragraph (a) published with the Court’s Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court’s Order at 43 Pa.B. 651 (February 2, 2013).

Source

The provisions of this Rule 103 amended November 2, 2001, effective January 1, 2002, 31 Pa.B. 6381; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (316996) and (341549).

Rule 104. Preliminary Questions.

(a) *In General.* The court must 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.

(b) *Relevance That Depends on a Fact.* When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) *Conducting a Hearing So That the Jury Cannot Hear it.* The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

- (1) the hearing involves evidence alleged to have been obtained in violation of the defendant’s rights;
- (2) a defendant in a criminal case is a witness and so requests; or
- (3) justice so requires.

(d) *Cross-Examining a Defendant in a Criminal Case.* By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) *Weight and Credibility.* Even though the court rules that evidence is admissible, this does not preclude a party from offering other evidence relevant to the weight or credibility of that evidence.

Comment

Pa.R.E. 104(a) is identical to F.R.E. 104(a).

The second sentence of Pa.R.E. 104(a) is based on the premise that, by and large, the law of evidence is a “child of the jury system” and that the rules of evidence need not be applied when the judge is the fact finder. The theory is that the judge should be empowered to hear any relevant evi-

dence to resolve questions of admissibility. This approach is consistent with Pennsylvania law. *See Commonwealth v. Raab*, 594 Pa. 18, 934 A.2d 695 (2007).

Pa.R.E. 104(a) does not resolve whether the allegedly inadmissible evidence alone is sufficient to establish its own admissibility. Some other rules specifically address this issue. For example, Pa.R.E. 902 provides that some evidence is self-authenticating. But under Pa.R.E. 803(25), the allegedly inadmissible evidence alone is not sufficient to establish some of the preliminary facts necessary for admissibility. In other cases the question must be resolved by the trial court on a case-by-case basis.

Pa.R.E. 104(b) is identical to F.R.E. 104(b).

Pa.R.E. 104(c)(1) differs from F.R.E. 104(c)(1) in that the Federal Rule says “the hearing involves the admissibility of a confession;” Pa.R.E. 104(c)(1) is consistent with Pa.R.Crim.P. 581(F), which requires hearings outside the presence of the jury in all cases in which it is alleged that the evidence was obtained in violation of the defendant’s rights.

Pa.R.E. 104(c)(2) and (3) are identical to F.R.E. 104(c)(2) and (3). Paragraph (c)(3) is consistent with *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998), a case involving child witnesses, in which the Supreme Court created a *per se* rule requiring competency hearings to be conducted outside the presence of the jury. In *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003), the Supreme Court held that a competency hearing is the appropriate way to explore an allegation that the memory of a child has been so corrupted or “tainted” by unduly suggestive or coercive interview techniques as to render the child incompetent to testify.

Pa.R.E. 104(d) is identical to F.R.E. 104(d). In general, when a party offers himself or herself as a witness, the party may be questioned on all relevant matters in the case. *See Agate v. Dunleavy*, 398 Pa. 26, 156 A.2d 530 (1959). Under Pa.R.E. 104(d), however, when the accused in a criminal case testifies with regard to a preliminary question only, he or she may not be cross-examined as to other matters. This is consistent with Pa.R.E. 104(c)(2) in that it is designed to preserve the defendant’s right not to testify in the case in chief.

Pa.R.E. 104(e) differs from F.R.E. 104(e) to clarify the meaning of this paragraph.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 29, 2001, effective April 1, 2001; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the March 29, 2001 revision of the Comment published with the Court’s Order at 31 Pa.B. 1995 (April 14, 2001).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court’s Order at 43 Pa.B. 651 (February 2, 2013).

Source

The provisions of this Rule 104 amended March 29, 2001, effective April 1, 2001, 31 Pa.B. 1993; amended March 29, 2005, effective May 2, 2005, 35 Pa.B. 2209; amended May 15, 2007, effective June 15, 2007, 37 Pa.B. 2492; amended January 23, 2009, effective immediately, 39 Pa.B. 410; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (341549) to (341551).

Rule 105. Limiting Evidence That is Not Admissible Against Other Parties or for Other Purposes.

If the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly. The court may also do so on its own initiative.

Comment

The first sentence of Pa.R.E. 105 is identical to F.R.E. 105. The second sentence was added to conform to Pennsylvania practice. There are other ways to deal with evidence that is admissible against one party but not another, or for one purpose but not another. For example, the evidence may

be redacted. *See Commonwealth v. Johnson*, 474 Pa. 410, 378 A.2d 859 (1977). In some cases, severance may be appropriate. *See Commonwealth v. Young*, 263 Pa. Super. 333, 397 A.2d 1234 (1979). Where the danger of unfair prejudice outweighs probative value the evidence may be excluded. *See Pa.R.E.* 403.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 10, 2000, effective immediately; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the March 10, 2000 revision of the Comment deleting “as amended” from the second sentence published with the Court’s Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court’s Order at 43 Pa.B. 651 (February 2, 2013).

Source

The provisions of this Rule 105 amended March 10, 2000, effective immediately, 30 Pa.B. 1639; rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial pages (341551) to (341552).

Rule 106. Remainder of or Related Writings or Recorded Statements.

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

Comment

This rule is identical to F.R.E. 106. A similar principle is expressed in Pa.R.C.P. No. 4020(a)(4), which states: “If only part of a deposition is offered in evidence by a party, any other party may require the offering party to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.”

The purpose of Pa.R.E. 106 is to give the adverse party an opportunity to correct a misleading impression that may be created by the use of a part of a writing or recorded statement that may be taken out of context. This rule gives the adverse party the opportunity to correct the misleading impression at the time that the evidence is introduced. The trial court has discretion to decide whether other parts, or other writings or recorded statements, ought in fairness to be considered contemporaneously with the proffered part.

Official Note: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the January 17, 2013 rescission and replacement published with the Court’s Order at 43 Pa.B. 651 (February 2, 2013).

Source

The provisions of this Rule 106 rescinded and replaced January 17, 2013, effective in sixty days, 43 Pa.B. 620. Immediately preceding text appears at serial page (341552).

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