

Table of Contents

CHAPTER 1. ROLE OF THE ATTORNEY

- § 1:1 General
- § 1:2 Good faith pleading—Effect of signing
- § 1:3 General conduct of attorney
- § 1:4 Attorney/client privilege

CHAPTER 2. ATTORNEY AS PROFESSIONAL

- § 2:1 Need for counsel to be admitted to practice law
- § 2:2 Attorney's fees and compensation

CHAPTER 3. ETHICAL OBLIGATIONS

- § 3:1 Conflicts of interest in civil matters
- § 3:2 Withdrawal of counsel
- § 3:3 Discipline of attorney for improper conduct
- § 3:4 Other professional misconduct (RPC 8.4)

CHAPTER 4. ROLE OF COUNSEL: INITIAL CONSIDERATIONS

- § 4:2 Attorney as zealous advocate/candor to the court
- § 4:3 Communicate with client
- § 4:4 Issues related to trial proceedings

CHAPTER 5. PLEADINGS

- § 5:1 Pleadings—General requirements
- § 5:3 Frivolous litigation (affidavits of merit)
- § 5:4 Fictitious names
- § 5:6 Entire controversy doctrine

CHAPTER 6. WITNESSES IN ANTICIPATION OF TRIAL

- § 6:1 Compelling attendance of witnesses
- § 6:8 Use of interpreter
- § 6:9 Informer's privilege

CHAPTER 7. EXPERTS: CONSULTING IN PREPARATION FOR TRIAL

- § 7:1 Rule 4:10–2(d)(1)
- § 7:2 The expert report as an adoptive admission

- § 7:6 An expert's report and the permissible scope of the expert's testimony
- § 7:9 Discovery of non-testifying experts: Rule 4:10–2(d)(3)

CHAPTER 8. MILITARY STATUS

- § 8:1 Federal Servicemembers Civil Relief Act
- § 8:2 The Uniform Services and Reemployment Rights Act (USERRA)
- § 8:3 New Jersey Soldier's and Sailor's Relief Act of 1979 (NJSA 38:23C-20)
- § 8:5 Other issues under the federal and state acts

CHAPTER 9. JUDICIAL RESPONSIBILITIES

- § 9:1 Conduct and demeanor of judges
- § 9:2 Judge's control of examination of witnesses
- § 9:4 Rulings on admissibility of evidence
- § 9:5 Restricting use of admitted evidence
- § 9:6 Exclusion of improper evidence
- § 9:10 Judge as trier of facts

CHAPTER 10. CONTEMPT

- § 10:1 Power of court to address contempt
- § 10:2 Direct and indirect contempt
- § 10:3 Traditional distinctions: Civil and criminal contempt—Coercive as compared to punitive sanctions
- § 10:4 Acts constituting contempt
- § 10:5 Procedure and contempt
- § 10:6 Punishment for contempt

CHAPTER 11. PUBLICITY AND MEDIA COVERAGE

- § 11:1 Exclusion of public and press
- § 11:4 Conduct of attorneys

CHAPTER 12. JURISDICTION/VENUE

- § 12:1 Court selection (Law Division/Chancery)
- § 12:2 Transfer between Law and Chancery Divisions
- § 12:4 Venue: Where laid
- § 12:5 Venue: Corporate parties
- § 12:6 Venue: Exceptions in multicounty vicinages

CHAPTER 13. DEFAULT JUDGMENT

- § 13:1 Entry of default
- § 13:2 Entry of default judgment
- § 13:3 Relief from default judgment

CHAPTER 14. ALTERNATIVE DISPUTE PROGRAMS/MEDIATION

- § 14:1 Best practices

TABLE OF CONTENTS

- § 14:2 Arbitration proceedings
- § 14:3 Mediation proceedings
- § 14:4 Enforcing arbitration award

CHAPTER 15. USE OF PRETRIAL DISCOVERY AT TRIAL

- § 15:1 Best practices and discovery deadlines
- § 15:2 Answers to interrogatories
- § 15:3 Deficient answers to interrogatories and use of sanctions
- § 15:4 Use of depositions at trial
- § 15:5 Spoliation
- § 15:6 Requests for admissions

CHAPTER 16. PROTECTIVE ORDERS

- § 16:1 Presumption of access to information
- § 16:2 Protective orders in state court actions
- § 16:3 Protection of government records
- § 16:4 Request to seal proceedings
- § 16:7 HIPAA's preemption requirement

CHAPTER 17. E-DISCOVERY

- § 17:1 Preserving electronic evidence
- § 17:2 Discovery and production of electronic evidence
- § 17:3 Spoliation of electronic evidence; sanctions

CHAPTER 18. DISPOSITIVE MOTIONS PRIOR TO TRIAL

- § 18:1 Failure to state a cause of action/claim
- § 18:2 Failure to comply with discovery order
- § 18:3 Failure to make discovery
- § 18:4 Involuntary dismissals
- § 18:5 Miscellaneous dismissals
- § 18:6 Summary judgments

CHAPTER 19. LAW OF THE CASE

- § 19:1 General principles of the law of the case doctrine
- § 19:5 Interlocutory orders

CHAPTER 20. INTERLOCUTORY APPEAL

- § 20:1 General issues regarding interlocutory orders
- § 20:4 Appeals of "final judgments" to the Appellate Division
- § 20:5 Appeals to the Appellate Division from courts of limited jurisdiction, etc
- § 20:6 Emergent appeals

CHAPTER 21. OFFER OF JUDGMENT

- § 21:1 Purpose of the offer of judgment rule
- § 21:2 Rule 4:58-1: Time and manner of making and accepting the offer of judgment
- § 21:3 Rule 4:58-2: Consequences of non-acceptance of claimant's offer
- § 21:4 Rule 4:58-3: Consequences of non-acceptance of offer of party not a claimant
- § 21:5 Rule 4:58-4: Multiple claims; multiple parties
- § 21:7 Rule 4:58-5: New trial *[Retitled]*
- § 21:8 Rule 4:58-6: Application for fee; limitations *[New]*
- § 21:9 Rule 4:58-7: Acceptance of offer not deemed a judgment: payment of accepted offer *[New]*

CHAPTER 22. MOTIONS IN LIMINE

- § 22:1 General principles
- § 22:2 Exclusion of testimony
- § 22:3 Exclusion of evidence
- § 22:4 Clarifications of the parties' burdens
- § 22:5 In limine hearings

CHAPTER 23. EFFECT OF SETTLEMENT BEFORE/DURING TRIAL

- § 23:2 Precluding the empty chair defense
- § 23:3 Contribution among joint tortfeasors
- § 23:6 Defendants considered joint tortfeasors despite different theories of liability
- § 23:13 Difficulty in apportionment of damages and burden of proof

CHAPTER 24. JURY SELECTION

- § 24:1 Right to fair and impartial jury
- § 24:2 Method of summoning jurors
- § 24:3 Grounds for challenging array
- § 24:4 Discrimination because of sex, race, etc
- § 24:5 Conduct of voir dire examination, generally
- § 24:6 Selection of alternate jurors
- § 24:7 Exemptions from jury service
- § 24:8.50 Reduction of bias in the exercise of peremptory challenges *[New]*

CHAPTER 25. OPENING STATEMENT

- § 25:1 Right to make an opening statement

CHAPTER 26. ORDER AND BURDEN OF PROOF/PERSUASION

- § 26:1 Right to open and close
- § 26:3 Rebuttal testimony
- § 26:5 Burden of persuasion
- § 26:6 Civil cases, generally

TABLE OF CONTENTS

- § 26:7 Burden of proof in wrongful death cases
- § 26:8 Claims against trusts and estates
- § 26:9 Burden of proving fraud
- § 26:11 Burden on defendant in civil cases

CHAPTER 27. ANTICIPATED EVIDENCE ISSUES: GENERAL

- § 27:1 Use of de bene esse depositions at trial
- § 27:2 Witnesses omitted from answers to interrogatories
- § 27:3 Amending pleadings to conform to proofs
- § 27:4 Jury view of premises
- § 27:5 Disqualification under Dead Man's Act, in general

CHAPTER 28. PRIVILEGES

- § 28:1 Nature of privileged communications
- § 28:2 Communications between husband and wife [N.J.R.E. 501 and 509]
- § 28:3 Requirements for privilege to exist between husband and wife
- § 28:4 Claiming and waiving marital privilege
- § 28:5 Privileged communications between attorney and client [N.J.R.E. 504]
- § 28:6 Existence of attorney and client relationship [N.J.R.E. 504]
- § 28:7 Confidential nature of communication [N.J.R.E. 504]
- § 28:8 Claiming and waiving attorney-client privilege [N.J.R.E. 504]
- § 28:9 Termination of attorney-client privilege
- § 28:10 Psychologist and clients [N.J.R.E. 505]
- § 28:11 Physician-patient privilege [N.J.R.E. 506]
- § 28:13 Privileged communications to journalist [N.J.R.E. 508]
- § 28:14 Marriage and family therapist privilege [N.J.R.E. 510]
- § 28:15 Privileged communications to clergy [N.J.R.E. 511]
- § 28:16 Privilege with respect to religious belief [N.J.R.E. 512]
- § 28:18 Trade secret privilege [N.J.R.E. 514]
- § 28:19 Official information privilege [N.J.R.E. 515]
- § 28:20 Privilege as to identity of informer [N.J.R.E. 516]
- § 28:22 General rules pertaining to waiver

CHAPTER 29. ADMISSIONS

- § 29:1 Admissions by party opponent
- § 29:2 Admissions by agents, employees and representatives of party
- § 29:3 Admissibility of criminal judgment and guilty pleas in subsequent proceedings
- § 29:4 Authorized and adoptive admissions
- § 29:5 Judicial admissions
- § 29:8 Offers of compromise as admissions
- § 29:9 Actions of party after accident as admission

CHAPTER 30. PRESUMPTIONS

- § 30:2 Irrebuttable presumptions
- § 30:3 Rebuttable presumptions
- § 30:4 Inferences

- § 30:8 Inferences arising from conduct of party
- § 30:9 Presumption of delivery of letter
- § 30:10 Presumptions about individuals
- § 30:12 Presumptions about gifts and services
- § 30:13 Presumptions created by statute
- § 30:14 Presumption of constitutionality of statute or ordinance
- § 30:15 Evidence to rebut a presumption

CHAPTER 31. HEARSAY

- § 31:1 Introduction
- § 31:3 Specific hearsay exceptions
- § 31:4 Prior statement of witnesses: N.J.R.E. 803(a)(1) and (2)
- § 31:5 Prior identification of parties: N.J.R.E. 803(a)(3)
- § 31:6 Statement by party-opponent: N.J.R.E. 803(b)
- § 31:7 Spontaneous and contemporaneous statements: N.J.R.E. 803(c)(1) and (2)
- § 31:8 Statements of then existing mental, emotional, or physical condition of declarant: N.J.R.E. 803(c)(3)
- § 31:9 Medical records as business records: N.J.R.E. 803(c)(4) and (6)
- § 31:12 Business entries; records of regularly conducted activity: N.J.R.E. 803(c)(6)
- § 31:13 Judicial discretion to exclude writings under certain exceptions [N.J.R.E. 807]
- § 31:14 Public officials' reports and official records; vital statistics: N.J.R.E. 803(c)(8) to (10) (12), and (14) to (15)
- § 31:17 Facts underlying judgments in criminal cases: N.J.R.E. 803(c)(22)
- § 31:18 Declarations against interest: N.J.R.E. 804(b)(3) [*Retitled*]
- § 31:19 "Vouching in"; judgments against persons entitled to indemnity: N.J.R.E. 803(c)(26)
- § 31:20 Particular statements by children: N.J.R.E. 803(c)(27)
- § 31:21 Former testimony: N.J.R.E. 804
- § 31:24 Dead declarants' trustworthy statements: N.J.R.E. 804(b)(6)
- § 31:25 Included hearsay: N.J.R.E. 805
- § 31:26 Credibility of declarant: N.J.R.E. 806

CHAPTER 32. OTHER EVIDENCE ISSUES

- § 32:1 Admissibility of circumstantial evidence
- § 32:2 Weighing probative value under N.J.R.E. 403
- § 32:3 Evidence of offers of settlement or compromise
- § 32:5 Proof of habit or routine practice
- § 32:6 Custom or practice as applied in a contract case; parol evidence
- § 32:7 Character trait for care or skill
- § 32:9 Evidence of liability insurance
- § 32:10 Use of depositions at trial
- § 32:11 Physical and mental examinations
- § 32:12 Intelligence and psychological tests
- § 32:13 Income tax returns
- § 32:16 Proof of value of personal property
- § 32:17 Proof of time and speed

TABLE OF CONTENTS

§ 32:19 Proof of reputation of neighborhood

CHAPTER 33. REAL AND DEMONSTRATIVE EVIDENCE

- § 33:3 Tangible articles in same condition
- § 33:4 Admissibility of photographs
- § 33:5 Admissibility of motion pictures/video
- § 33:7 Admissibility of sound recordings
- § 33:8 Admissibility of maps, drawings, diagrams and displays
- § 33:11 Experiments and tests

CHAPTER 34. DOCUMENTS

- § 34:1 Documentary evidence, in general
- § 34:2 When authentication of documentary evidence is excused
- § 34:3 Authentication of private writings
- § 34:4 Authentication of attested documents
- § 34:5 Authentication of recorded documents
- § 34:7 Authentication of court papers and records
- § 34:9 Best evidence rule
- § 34:10 Use of secondary evidence
- § 34:12 Secondary evidence of bulky records
- § 34:14 Secondary evidence of public records
- § 34:15 Copies as primary or secondary evidence
- § 34:17 Authentication of family bible and church records
- § 34:18 Authentication of ancient documents
- § 34:20 Establishing contents of document by oral evidence
- § 34:21 Admissibility of photographs

CHAPTER 35. WITNESSES AT TRIAL

- § 35:1 Compelling attendance of witnesses
- § 35:4 Sequestration of witnesses
- § 35:5 Swearing the witnesses
- § 35:7 Informer's privilege
- § 35:8 Competency of witness, in general
- § 35:9 Objecting to competency
- § 35:10 Competency of child to testify
- § 35:13 Religious beliefs
- § 35:14 Competency of experts

CHAPTER 36. DIRECT EXAMINATION OF WITNESSES

- § 36:1 Materiality of questions asked on direct examination
- § 36:2 Calling and examination of witnesses by court
- § 36:3 Foundation for a witness' testimony
- § 36:4 Relevancy of questions asked on direct examination
- § 36:9 Leading questions
- § 36:11 Impeachment of one's own witness
- § 36:12 Neutralization of one's own witness
- § 36:13 Extent of privilege against self-incrimination

- § 36:14 Invoking privilege against self-incrimination
- § 36:15 Testimony that tends to incriminate witness
- § 36:17 Inspection of person of accused or witness
- § 36:19 Waiver of privilege against self-incrimination
- § 36:20 Use of lie detector tests

CHAPTER 37. CROSS-EXAMINATION OF WITNESSES

- § 37:1 Right to cross-examine witnesses
- § 37:2 Scope of cross-examination
- § 37:3 Cross-examination of collateral matters
- § 37:4 Form of questions on cross-examination
- § 37:7 Additional matters proper on cross-examination
- § 37:8 Testing witness's knowledge and accuracy
- § 37:9 Right to recall witness for further cross-examination

CHAPTER 38. IMPEACHMENT OF WITNESSES

- § 38:2 Impeachment of expert witnesses
- § 38:3 Impeachment on collateral issues
- § 38:4 Laying foundation for impeachment
- § 38:5 Use of prior inconsistent statements for impeachment
- § 38:6 Credibility of witnesses, generally
- § 38:8 Use of character evidence for impeachment
- § 38:10 Admissibility of prior convictions for impeachment purposes
- § 38:11 Use of improperly obtained statement to impeach witness

CHAPTER 39. RE-EXAMINATION OF WITNESSES

- § 39:1 Scope of redirect examination
- § 39:2 Form and content of questions on redirect examination
- § 39:3 Explaining and correcting testimony on redirect examination
- § 39:4 Rehabilitating the witness

CHAPTER 40. EXPERTS AT TRIAL/OPINION EVIDENCE

- § 40:1 Competency and qualifications of experts
- § 40:2 Trial court's discretion to admit expert testimony
- § 40:3 Testimony in form of an opinion—Non-expert opinion
- § 40:4 Fact distinguished from opinion and the net opinion rule
- § 40:5 Opinions concerning ultimate issue
- § 40:6 Non-expert opinion, in general
- § 40:7 Matters as to which expert witness may or must testify
- § 40:8 Matters as to which medical expert may or must testify
- § 40:9 Precluding expert opinion not disclosed in discovery
- § 40:11 *Frye*, *Daubert* and miscellaneous scientific tests
- § 40:12 Contents of hypothetical questions and cross-examination of experts

TABLE OF CONTENTS

**CHAPTER 41. OBJECTIONS—PRESERVING
ISSUES FOR APPEAL**

- § 41:2 Timeliness of objection
- § 41:3 Plain error exception
- § 41:4 Stating grounds for objection
- § 41:5 Motion to strike inadmissible evidence
- § 41:6 Offer of proof

CHAPTER 42. DAMAGES

- § 42:1 Damages, in general
- § 42:3 Nominal damages
- § 42:4 Liquidated damages and penalties
- § 42:5 Foreseeability of damages
- § 42:6 Duty to mitigate damages
- § 42:7 Damages for future effects of injury
- § 42:8 Damages for aggravation of a pre-existing injury

**CHAPTER 43. DAMAGES IN SPECIFIC
CASES**

- § 43:1 Damages in personal injury cases
- § 43:2 Damages for family expenses
- § 43:3 Damages for emotional injuries; negligent and intentional
infliction of emotional distress
- § 43:4 Damages to personal property
- § 43:5 Damages in wrongful death cases
- § 43:6 Damages for loss of consortium
- § 43:8 Damages in eminent domain proceedings
- § 43:9 Measure of damages in other cases
- § 43:10 Treatment of other payments received by plaintiff
- § 43:11 The collateral source rule; no fault act and unsatisfied claim
and judgment fund law
- § 43:12 Interest

CHAPTER 44. PUNITIVE DAMAGES

- § 44:1 Common law standard and the punitive damages act
- § 44:2 Standard of proof
- § 44:3 Determination of damages
- § 44:4 Amount of damage award
- § 44:6 Due process implications *[Retitled]*

CHAPTER 45. DIRECTED VERDICT

- § 45:1 Authority to direct verdict
- § 45:3 Determining right to directed verdict
- § 45:4 Amending pleadings to conform to proofs
- § 45:5 Negligence, contributory negligence, and willful and wanton
misconduct—Questions of law or fact

CHAPTER 46. CLOSING ARGUMENT

- § 46:2 Court's control of closing arguments

- § 46:3 General rules governing closing statements
- § 46:5 Argument about unliquidated damages
- § 46:6 Comments on conduct of opposition
- § 46:8 Use of charts, diagrams and video tapes in summation

CHAPTER 47. JURY INSTRUCTIONS

- § 47:1 General requirements for jury instructions, including timing
- § 47:2 Requests to charge and jury interrogatories
- § 47:3 Charges to jury
- § 47:4 Failure to object to jury charge
- § 47:5 Charges on circumstantial evidence
- § 47:6 Instructions in civil cases, generally
- § 47:7 Instructions in automobile cases
- § 47:8 Instructions concerning statutes
- § 47:9 Instructions to deadlocked juries
- § 47:11 Instructions upon replacement of a juror

CHAPTER 48. CONDUCT OF JURY

- § 48:2 Jurors reading newspaper accounts of trial
- § 48:3 Improper communications with jurors before and during trial
and during deliberations
- § 48:6 Substitution of juror during deliberations
- § 48:7 Rules governing arriving at a verdict
- § 48:8 Improper conduct of jurors
- § 48:9 Communications with jury after verdict

CHAPTER 49. VERDICT

- § 49:1 General provisions relating to verdicts
- § 49:2 Objections to form of verdict
- § 49:3 Apportionment and molding of verdicts
- § 49:6 Construction of general verdicts with special interrogatories

CHAPTER 50. JUDGMENT

- § 50:1 Entry of judgment
- § 50:2 Duty of clerk to enter judgment
- § 50:3 Effect of entry of judgment
- § 50:5 Inclusion of interest in judgment
- § 50:6 Allowance of court costs
- § 50:7 Judgment notwithstanding verdict, motion for a new trial,
motions to alter or amend judgments
- § 50:8 Declaratory judgments
- § 50:10 Foreign judgments
- § 50:11 Correction of erroneous judgments

CHAPTER 51. POST-TRIAL MOTIONS

- § 51:1 Judgment notwithstanding verdict
- § 51:2 New trial
- § 51:3 Additur & remittitur as alternatives to a new trial on damages

TABLE OF CONTENTS

CHAPTER 52. FEES/COSTS

- § 52:2 Recovery of attorneys' fees
- § 52:3 Recovery of interest in judgment
- § 52:4 Offer of compromise

CHAPTER 53. MISTRIAL

- § 53:1 Nature of mistrial
- § 53:2 Grounds for declaring mistrial
- § 53:4 Insufficient grounds for declaring mistrial

CHAPTER 54. BENCH TRIALS

- § 54:1 General functions and powers of courts
- § 54:2 Conduct and demeanor of judges
- § 54:3 Waiver of right to jury trial
- § 54:5 Evidence determinations by the trial judge
- § 54:6 Proof excused if fact is judicially noticed
- § 54:7 Making record of facts judicially noticed
- § 54:8 Judicial notice of laws
- § 54:9 Judicial notice of facts concerning court
- § 54:11 Other facts judicially noticed
- § 54:12 Facts not judicially noticed
- § 54:13 Decision of the court & scope of appellate review

CHAPTER 55. INTERIM RELIEF

- § 55:1 Introduction
- § 55:2 Preliminary injunction standard
- § 55:4 General application of the Crowe standard
- § 55:6 Pendente lite cases
- § 55:7 Stays of judgment

**CHAPTER 56. ADMINISTRATIVE LAW
HEARINGS**

- § 56:2 Contested cases
- § 56:3 Discovery
- § 56:4 Motion practice
- § 56:6 Residuuum rule

Table of Laws and Rules

Table of Cases