

**TITLE 225**  
**RULES OF EVIDENCE**

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**Committee Preface**

The Comments to these rules were prepared by the Ad Hoc Committee on Evidence for the convenience of the Bench and Bar. They have not been adopted by the Supreme Court of Pennsylvania, and they do not have precedential significance.

The Comments were designed to identify the sources for the rules, to compare the Pennsylvania Rules of Evidence to the Federal Rules of Evidence, and to explain the differences. The Comments are not intended to interpret the rules or to be an analysis of current case law, nor are they intended to be an annotation to the rules or a treatise on the intricacies of evidence law.

Although the Pennsylvania rules closely follow the format of the Federal Rules, the guiding principle was generally to preserve the substance of Pennsylvania’s common law of evidence. Whenever a rule departs from prior Pennsylvania law, the Comments usually identify the departure.

**Source**

The provisions of this Title 225 adopted May 8, 1998, effective October 1, 1998, 28 Pa.B. 2369, unless otherwise noted.

**ARTICLE I. GENERAL PROVISIONS**

Rule	
101.	Scope and Citation of the Rules.
102.	Purpose and Construction.
103.	Rulings on Evidence.
104.	Preliminary Questions.
105.	Limited Admissibility.
106.	Remainder of or Related Writings or Recorded Statements.

**Rule 101. Scope and Citation of the Rules.**

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

(b) *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—2005**

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. 1915.11(b) (court interrogation of a child), and other domestic relations matters, see, e.g., Pa.R.C.P. 1930.3 (testimony by electronic means). 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. Pa.R.C.P. 1305.

**Source**

The provisions of this Rule 101 amended December 30, 2005, effective February 1, 2006, 36 Pa.B. 384. Immediately preceding text appears at serial pages (285593) to (285594).

**Rule 102. Purpose and Construction.**

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

**Comment**

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

**Rule 103. Rulings on Evidence.**

(a) *Effect of Erroneous Ruling.* Error may not be predicated upon a ruling that admits or excludes evidence unless

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection, motion to strike or motion in limine appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of Proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or by motion in limine or was apparent from the context within which the evidence was offered.

Once the Court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(b) *Record of Offer and Ruling.* The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) *Hearing of Jury*. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

**Comment**

Paragraph 103(a) differs from F.R.E. 103(a) in that the Federal rule says, “Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and” (emphasis added). The italicized words have been deleted because they are inconsistent with prior Pennsylvania case law in criminal cases. In criminal cases, the accused is entitled to relief for an erroneous ruling unless the court is convinced 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. 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) does not change the existing rule.

Paragraphs (a)(1) and (a)(2) are consistent with prior Pennsylvania case law. See *Dilliplaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974); *Commonwealth v. Clair*, 458 Pa. 418, 326 A.2d 272 (1974). Paragraphs (a)(1) and (a)(2) are similar to F.R.E. 103(a)(1) and (a)(2). The term “motion in limine” has been added and the last three words have been changed. 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. A ruling on a motion in limine on the record is sufficient to preserve the issue for appeal, without renewal of the objection or offer at trial. The change in language is intended to make clear that the requirement that offers of proof be made is applicable to testimonial and other types of evidence.

Pa.R.E. 103(a) was amended in 2001 by adding the second paragraph. The amendment, which is identical to the amendment to F.R.E. 103(a) that became effective December 1, 2000, is consistent with prior Pennsylvania case law. See *Bell v. City of Philadelphia*, 491 A.2d 1396 (Pa. Super 1985). It is also consistent with the second paragraph of this Comment.

Paragraphs (b) and (c) are identical to F.R.E. 103(b) and (c) and are consistent with Pennsylvania practice.

F.R.E. 103(d) permits a court to grant relief for “plain errors affecting substantial rights although they were not brought to the attention of the court.” This paragraph has been deleted because it is inconsistent with paragraphs (a)(1) and (a)(2) and with prior Pennsylvania case law as established in *Dilliplaine* and *Clair*.

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001; effective January 1, 2002.

*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).

**Source**

The provisions of this Rule 103 amended November 2, 2001, effective January 1, 2002, 31 Pa.B. 6381. Immediately preceding text appears at serial page (276569).

**Rule 104. Preliminary Questions.**

(a) *Questions of Admissibility Generally*. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) *Relevancy Conditioned on Fact.* When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) *Hearing of Jury.* Hearings on the admissibility of evidence alleged to have been obtained in violation of the defendant's rights shall in all cases be conducted outside the presence of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

(d) *Testimony by Accused.* The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

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

#### Comment

Paragraph 104(a) is identical to F.R.E. 104(a). The first sentence is consistent with prior Pennsylvania case law. See *Commonwealth v. Chester*, 526 Pa. 578, 587 A.2d 1367 (1991).

The second sentence of paragraph 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 evidence 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.

Paragraph 104(b) is identical to F.R.E. 104(b) and appears to be consistent with prior Pennsylvania case law. See *Commonwealth v. Carpenter*, 472 Pa. 510, 372 A.2d 806 (1977).

The first sentence of paragraph 104(c) differs from the first sentence of F.R.E. 104(c) in that the Federal Rule says "Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury." The first sentence of Pa.R.E. 104(c) has been changed to be 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.

The second sentence of paragraph 104(c) is identical to the second sentence of F.R.E. 104(c). Paragraph 104(c) says that hearings on other preliminary matters, both criminal and civil, shall be conducted outside the jury's presence when required by the interests of justice. Certainly, the court should conduct a hearing outside the presence of the jury when the court believes that it is necessary to prevent the jury from hearing prejudicial information.

In *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998), a case involving child witnesses, 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.

The right of an accused to have his or her testimony on a preliminary matter taken outside the presence of the jury, a right that the rule expressly recognizes, does not appear to have been discussed in prior Pennsylvania case law.

Paragraph 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 only with regard to a preliminary matter, he or she may not be cross-examined as to other matters. Although there is no Pennsylvania authority on this point, it appears that this rule is consistent with Pennsylvania practice. This approach is consistent with paragraph 104(c) in that it is designed to preserve the defendant’s right not to testify generally in the case.

Paragraph 104(e) differs from F.R.E. 104(e) to clarify the meaning of this paragraph. See 21 Wright and Graham, *Federal Practice and Procedure* § 5058 (1977). This paragraph is consistent with prior Pennsylvania case law.

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; Comment revised March 29, 2001, effective April 1, 2001.

*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).

**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. Immediately preceding text appears at serial pages (310271) to (310272) and (327979).

**Rule 105. Limited Admissibility.**

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court upon request shall, or on its own initiative may, restrict the evidence to its proper scope and instruct the jury accordingly.

**Comment**

This rule differs from F.R.E. 105 in that the language “or on its own initiative may” has been added. This rule is consistent with Pennsylvania law. In addition to the approach taken by Pa.R.E. 105, there are other ways to deal with evidence that is admissible as to one party or for one purpose, but not admissible as to another party or for another purpose. For example, the evidence may be redacted. See *Commonwealth v. Johnson*, 474 Pa. 410, 378 A.2d 859 (1977). Or, a severance may be an appropriate remedy. 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; *McShain v. Indemnity Ins. Co. of North America*, 338 Pa. 113, 12 A.2d 59 (1940).

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; Comment revised March 10, 2000, effective immediately.

*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).

**Source**

The provisions of this Rule 105 amended March 10, 2000, effective immediately, 30 Pa.B. 1639. Immediately preceding text appears at serial pages (245738) to (245739).

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

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

**Comment**

This rule is identical to F.R.E. 106. It is consistent with Pennsylvania law. See *Pedretti v. Pittsburgh Rys. Co.*, 417 Pa. 581, 209 A.2d 289 (1965). A similar principle is expressed in Pa.R.C.P. 4020(a)(4), which states: “If only part of a deposition is offered in evidence by a party, any other party may require him 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 portions of a writing or recorded statement that are taken out of context. This rule gives the adverse party the right 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 original portion.

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