

## 1.01. Scope of the Guide

**Unless a statute or decisional law prescribes a special rule of evidence for a particular civil or criminal proceeding, this Guide is intended to set forth the evidentiary rules applicable to proceedings in all courts of the State of New York.**

### Note

This rule sets forth the current practice in New York courts regarding the application of New York's rules of evidence.

Statutes setting forth the governing procedures for various courts and proceedings include the following:

Civil Practice Law and Rules: CPLR 101 (“The civil practice law and rules shall govern the procedure in civil judicial proceedings in all courts of the state and before all judges, except where the procedure is regulated by inconsistent statute”); CPLR 105 (d) (“[c]ivil judicial proceeding” is a “prosecution, other than a criminal action, of an independent application to a court for relief”); CPLR article 45 (“Evidence”).

Criminal Procedure Law: CPL 60.10 (“Unless otherwise provided by statute or by judicially established rules of evidence applicable to criminal cases, the rules of evidence applicable to civil cases are, where appropriate, also applicable to criminal proceedings”).

Surrogate's Court Procedure Act: SCPA 102 (“The CPLR and other laws applicable to practice and procedure apply in the surrogate's court except where other procedure is provided by this act”) (*see Matter of Martin*, 80 Misc 17, 26 [Sur Ct, NY County 1913] [“The rules of evidence applied in this court . . . are now uniform with the rules applied in other tribunals of the state”]).

Family Court Act: Family Court Act § 165 (a) (“Where the method of procedure in any proceeding in which the family court has jurisdiction is not prescribed by this act, the procedure shall be in accord with rules adopted by the administrative board of the judicial conference or, if none has been adopted, with the provisions of the civil practice act to the extent they are suitable to the proceeding involved”). (*See also Matter of Schwartz v Schwartz*, 23 AD2d 204, 206 [1st Dept 1965] [“the determination of when it is ‘appropriate’ to apply the provisions of the CPLR to the numerous and

unusual situations which will arise in the Family Court will depend upon the circumstances of the cases as they arise”].)

This Guide does not attempt to describe all proceedings in which a particular evidentiary rule may be inapplicable as a result of statutory law. Examples of some of the judicial proceedings in which the rules of evidence, in whole or part, are deemed inapplicable include: CPL 400.30 (4) (exclusionary rules of evidence inapplicable in hearings determining the amount of fines); CPL 710.60 (4) (hearsay admissible in suppression hearings); Correction Law § 168-n (3) (as set forth in *People v Mingo*, 12 NY3d 563 [2009], “reliable hearsay” is admissible when determining a sex offender registration level); Mental Hygiene Law § 81.12 (court may waive the rules of evidence for good cause in Mental Hygiene Law art 81 appointment of a guardian proceeding); UJCA 1804 (rules of evidence inapplicable in small claims hearings).

Some statutes set forth specific evidentiary rules to be applied in certain proceedings, including: CPL 180.60 (proceedings upon a felony complaint); CPL 400.21 (second felony offender hearing); CPL 410.70 (revocation of probation hearing); Domestic Relations Law § 144 (admissions in an action for annulment); Family Court Act § 531 (corroboration in paternity proceedings); Family Court Act § 624 (termination of parental rights); Family Court Act § 834 (proceedings involving family offenses); Family Court Act § 915 (confidentiality of statements made in conciliation proceedings); Family Court Act § 1046 (a) (vii) (specified privileges inapplicable in child protective proceeding).

Other statutes provide the rules of evidence are to apply to certain proceedings: CPL 190.30 (grand jury proceedings); Family Court Act § 439 (proceedings conducted by support magistrates); Mental Hygiene Law § 10.07 (c) (CPLR art 45 applies in Mental Hygiene Law art 10 proceedings).

It should also be noted that the Court of Appeals has held that in certain proceedings the constitutional due process requirement may affect the admission of evidence. (*E.g. Matter of State of New York v Floyd Y.*, 22 NY3d 95, 106 [2013] [“A requirement that evidence meet a test of reliability and substantial relevance is necessary to protect the important liberty interests at stake in (Mental Hygiene Law) article 10 proceedings”]; *People v Robinson*, 89 NY2d 648 [1997] [a defendant’s constitutional right to due process requires the admission of hearsay evidence consisting of grand jury testimony when the declarant has become unavailable to testify at trial and the hearsay is material, exculpatory and has sufficient indicia of reliability].)