

1.02. Purpose and Construction

In recognition of the absence of a New York statutory code of evidence, the objective of the Guide to NY Evidence [GNYE] is to bring together in one place, for the benefit of the bench and bar, New York’s existing statutory and common law rules of evidence, setting forth each rule with a note on the sources for that rule.

Given that most of New York’s evidentiary rules are not codified and that the New York Court of Appeals provides the controlling interpretation of the New York State constitution, statutes and common law, the GNYE places particular emphasis on and adheres to the controlling precedents of the New York Court of Appeals.

The GNYE is not intended to alter the existing law of New York evidence and shall not be construed as doing so or as precluding change in the law when appropriate.

Note

It bears emphasis that the GNYE sets forth the existing law of New York evidence at the moment of publication and that the law of evidence is continuously subject to change. Most notably, perhaps, because New York’s law of evidence relies primarily on the common law of evidence, it is best to remember, as former Chief Judge of the Court of Appeals Stanley Fuld explained:

“The common law of evidence is constantly being refashioned by the courts of this and other jurisdictions to meet the demands of modern litigation. . . . Absent some strong public policy or a clear act of pre-emption by the Legislature, rules of evidence should be fashioned to further, not frustrate, the truth-finding function of the courts”

(Fleury v Edwards, 14 NY2d 334, 341 [1964, Fuld, J., concurring]; *see People v Conyers*, 52 NY2d 454, 460 [1981] [“the rule announced in our decision today (dealing with pretrial silence) represents a simple recognition of our judicial

responsibility to formulate rules of evidence to protect the integrity of the truth-finding process”].)

As a result, the Committee on Evidence will periodically examine the state of the law of evidence and update this Guide as necessary. Any revision of a rule will be explained in the Note to the rule.

Finally, as set forth in the rule, “the GNYE places particular emphasis on and adheres to the controlling precedents of the New York Court of Appeals.” To the extent possible, therefore, the Guide employs the language of the Court of Appeals. In the occasional instance where no controlling Court of Appeals precedent exists, Appellate Division precedent uniformly followed by the courts may form the basis for a rule. In instances where the law of New York converges with other evidence codes, such as the 1982 and 1991-92 Proposed Code of Evidence for New York prepared by the New York State Law Revision Commission, the Uniform Rules of Evidence, or the Federal Rules of Evidence, language from those rules may be used in this Guide.