

## **RULE 1:7. General Provisions For Trials**

### **1:7-1. Opening and Closing Statement**

**(a) Opening Statement.** Before any evidence is offered at trial, the State in a criminal action or the plaintiff in a civil action, unless otherwise provided in the pretrial order, shall make an opening statement. A defendant who chooses to make an opening statement shall do so immediately thereafter.

**(b) Closing Statement.** After the close of the evidence and except as may be otherwise ordered by the court, the parties may make closing statements in the reverse order of opening statements. In civil cases any party may suggest to the trier of fact, with respect to any element of damages, that unliquidated damages be calculated on a time-unit basis without reference to a specific sum. In the event such comments are made to a jury, the judge shall instruct the jury that they are argument only and do not constitute evidence.

Note: Source - R.R. 3:7-3, 4:44-1, 7:8-4; former rule redesignated as paragraph (a), paragraph (b) adopted and caption amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) amended July 27, 2006 to be effective September 1, 2006.

### **1:7-2. Objections**

For the purpose of reserving questions for review or appeal relating to rulings or orders of the court or instructions to the jury, a party, at the time the ruling or order is made or sought, shall make known to the court specifically the action which the party desires the court to take or the party's objection to the action taken and the grounds therefor. Except as otherwise provided by R. 1:7-5 and R. 2:10-2 (plain error), no party may urge as error any portion of the charge to the jury or omissions therefrom unless objections are made thereto before the jury retires to consider its verdict, but opportunity shall be given to make the objection in open court, in the absence of the jury. A party shall only be prejudiced by the absence of an objection if there was an opportunity to object to a ruling, order or charge.

Note: Source-R.R. 3:7-7(b), 3:7-8, 4:47, 4:52-1 (third and fourth sentences); amended July 13, 1994 to be effective September 1, 1994.

### **1:7-3. Record of Excluded Evidence**

If an objection to a question propounded to a witness is sustained by the court, the examining attorney may, out of the hearing of the jury (if there is a jury), make a specific offer of what is expected to be proved by the answer of the witness, and the court may add such other and further statement as clearly shows the character of the evidence, the form in which it was offered, and the ruling thereon. In actions tried without a jury the court shall upon request permit the evidence and any cross-examination relating thereto or evidence in rebuttal thereof to be taken down by the court reporter in full, or otherwise preserved, unless it clearly appears to the court that the evidence is not admissible on any ground or that the witness is privileged or unless the interest of justice otherwise requires. In actions tried with a jury the court may, in its discretion and in the absence of the jury, permit such taking and preservation of the excluded evidence.

Note: Source-R.R. 4:44-3; amended July 13, 1994 to be effective September 1, 1994.

### **1:7-4. Findings by the Court in Non-jury Trials and on Motions**

**(a) Required Findings.** The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by R. 3:29 The court shall thereupon enter or direct the entry of the appropriate judgment.

**(b) Motion for Amendment.** On motion made not later than 20 days after service of the final order or judgment upon all parties by the party obtaining it, the court may grant a rehearing or may, on the papers submitted, amend or add to its findings and may amend the final order or judgment accordingly, but the failure of a party to make such motion or to object to the findings shall not preclude that party's right thereafter to question the sufficiency of the evidence to support the findings. The motion to amend the findings, which may be made with a motion for a new trial, shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or on which it has erred. Motions for reconsideration of interlocutory orders shall be determined pursuant to R. 4:42-2.

Note: Source-R.R. 3:7-1(c), 4:53-1, 4:53-2, 8:7-2(c); caption and text amended November 1, 1985 to be effective January 2, 1986; caption and text amended November 5, 1986 to be effective January 1, 1987; amended November 7, 1988 to be effective January 2, 1989; caption and text amended July 14, 1992 to be effective September 1, 1992; amended and paragraphs (a) and (b) designated July 10, 1998 to be effective September 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000.

## **1:7-5. Trial Errors**

Any error or omission which does not prejudice a substantial right shall be disregarded by the trial court before, during and after trial. The trial court, however, at every stage of the action, including a timely application after trial, may notice any error of such a nature as to have been clearly capable of producing an unjust result, even though such error was not brought to its attention by a party.

Note: Source-R.R. 4:63-1, 4:63-2.

## **1:7-6. Non-public Business Records**

Where the original of a non-public business record has been produced at trial and a clear copy thereof is certified and offered to the court, the court, except for good cause shown, shall permit the copy to be marked into evidence and the original to be returned to its custodian. The parties may stipulate in advance as to the admissibility of such copy.

Note: Adopted November 27, 1974 to be effective April 1, 1975.