

CHAPTER 911

EVIDENCE — MISCELLANEOUS RULES

911.01 Applicability of rules of evidence.

911.02 Title.

NOTE: Extensive comments by the Judicial Council Committee and the Federal Advisory Committee are printed with chs. 901 to 911 in 59 Wis. 2d. The court did not adopt the comments but ordered them printed with the rules for information purposes.

911.01 Applicability of rules of evidence. (1) COURTS AND COURT COMMISSIONERS. Chapters 901 to 911 apply to the courts of the state of Wisconsin, including municipal courts and circuit, supplemental, and municipal court commissioners, in the proceedings and to the extent hereinafter set forth except as provided in s. 972.11. The word “judge” in chs. 901 to 911 means judge of a court of record, municipal judge, or circuit, supplemental, or municipal court commissioner.

(2) PROCEEDINGS GENERALLY. Chapters 901 to 911 apply generally to proceedings in civil and criminal actions.

(3) PRIVILEGES; OATH. Chapter 905 with respect to privileges applies at all stages of all actions, cases and proceedings; s. 906.03 applies at all stages of all actions, cases and proceedings except as provided in ss. 901.04 (1) and 911.01 (4), and ch. 908.

(4) RULES OF EVIDENCE INAPPLICABLE. Chapters 901 to 911, other than ch. 905 with respect to privileges or s. 901.05 with respect to admissibility, do not apply in the following situations:

(a) *Preliminary questions of fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the judge under s. 901.04 (1).

(b) *Grand jury; John Doe proceedings.* Proceedings before grand juries or a John Doe proceeding under s. 968.26.

(c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting[,] or revoking probation, modification of a sentence under s. 302.1135, adjustment of a bifurcated

sentence under s. 973.195 (1r), release to extended supervision under s. 302.113 (2) (b) or 304.06 (1) or discharge under s. 973.01 (4m); issuance of subpoenas or warrants under s. 968.375, arrest warrants, criminal summonses, and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1r) (c); or proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969; and proceedings under s. 165.76 (6) to compel provision of a biological specimen for deoxyribonucleic acid analysis.

NOTE: Par. (c) is shown as affected by 3 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). The comma in brackets is unnecessary. Corrective legislation is pending.

(d) *Small claims actions.* Proceedings under ch. 799, except jury trials.

(5) RESTITUTION HEARINGS. (a) In a restitution hearing under s. 973.20 (13), the rules of evidence are subject to waiver under s. 973.20 (14) (d).

(b) When hearing evidence as to the factors that determine a restitution order under s. 800.093, the rules of evidence are subject to waiver under s. 800.093 (8) (b).

History: Sup. Ct. Order, 59 Wis. 2d R1, R366 (1973); 1977 c. 305 s. 64; 1977 c. 345; 1979 c. 32 s. 92 (16); 1981 c. 183, 367, 390, 391; 1987 a. 208, 398; 1991 a. 40, 269; 2001 a. 61, 109; 2005 a. 434; 2009 a. 24, 28, 214, 261, 349; s. 13.92 (2) (i).

Judicial Council Committee’s Note, 1981: Sub. (4) (c) has been amended to exempt so-called McCredden hearings under s. 971.14 (1) (c) from the rules of evidence. [Bill 765–A]

911.02 Title. Chapters 901 to 911 may be known and cited as the Wisconsin Rules of Evidence.

History: Sup. Ct. Order, 59 Wis. 2d R1, R377 (1973).