

## TITLE XLIVA.

### Wisconsin Rules Of Evidence.

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#### CHAPTER 901

#### GENERAL PROVISIONS

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**901.01 Scope.** Chapters 901 to 911 govern proceedings in the courts of the state of Wisconsin except as provided in ss. 911.01 and 972.11.

*History:* Sup Ct Order, 59 W (2d) R9.

*Note:* Extensive comments by the Judicial Council Committee and the Federal Advisory Committee are printed with the rules in 59 W (2d). The court did not adopt the comments but ordered them printed with the rules for information purposes.

**901.02 Purpose and construction.** These sections 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.

*History:* Sup Ct. Order, 59 W (2d) R9

**901.03 Rulings on evidence.** (1) EFFECT OF ERRONEOUS RULING. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected; and

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

(b) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

(2) RECORD OF OFFER AND RULING. The judge 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. He may direct the making of an offer in question and answer form.

(3) 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.

(4) PLAIN ERROR. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the judge.

*History:* Sup Ct. Order, 59 W (2d) R9.

**901.04 Preliminary questions.** (1) 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 judge, subject to sub. (2) and ss. 971.31 (11) and 972.11 (2). In making the determination the judge is bound by the rules of evidence only with respect to privileges.

(2) RELEVANCY CONDITIONED ON FACT. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

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**(3) HEARING OF JURY.** Hearings on the admissibility of confessions and, in actions under s. 940.225, of the prior sexual conduct or reputation of a complaining witness, shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require.

**(4) TESTIMONY BY ACCUSED.** The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.

**(5) WEIGHT AND CREDIBILITY.** This section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

**History:** Sup. Ct. Order, 59 W (2d) R14; 1975 c. 184, 421.

See note to art. 1, sec. 8, citing *State v. Ewald*, 63 W (2d) 165, 216 NW (2d) 213.

Statements given police, without Miranda warnings, while defendant was injured and in bed, that he was the driver and had been drinking, while voluntary, were inadmissible, since at that time accusatorial attention had focused on him. *Scales v. State*, 64 W (2d) 485, 219 NW (2d) 286.

Discussion of totality of circumstances test as to a confession. *Brown v. State*, 64 W (2d) 581, 219 NW (2d) 373.

See note to 906.09, citing 63 Atty. Gen. 424.

**901.06 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 judge, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

**History:** Sup. Ct. Order, 59 W (2d) R21.

**901.07 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 him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

**History:** Sup. Ct. Order, 59 W (2d) R22.