

Table of Contents

Chapter 1: Trial Calendar and Pretrial Information Exchange	1
1-1 TRIAL CALENDAR	1
1-1:1 New Jersey Court Rule 4:36-3. Trial Calendar	1
1-1:2 Discussion.....	2
1-2 FAILURE TO APPEAR AT TRIAL.....	3
1-3 DESIGNATION OF TRIAL COUNSEL UNDER RULE 4:25-4	5
1-3:1 New Jersey Court Rule 4:25-4. Designation of Trial Counsel	5
1-3:2 Discussion.....	5
1-3:3 Practice Point.....	6
1-4 ATTORNEY AS WITNESS.....	6
1-4:1 RPC 3.7 - Lawyer as Witness	6
1-4:2 Discussion.....	6
1-4:3 Practice Point.....	7
1-5 ATTORNEY CONFERENCES; EXCHANGE OF INFORMATION	7
1-5:1 New Jersey Court Rule 4:25-7. Attorney Conferences; Exchange of Information.....	7
1-5:2 Discussion.....	8
1-5:3 Misuse of Rule 4:25-7	10
1-5:4 Practice Point.....	14
1-5:5 New Jersey Court Rule 4:25-8. Motions in Limine.....	14
1-5:6 Discussion.....	16
Chapter 2: Selecting a Jury	17
2-1 DEMAND FOR JURY TRIAL	17
2-1:1 New Jersey Court Rule 4:35-1. Demand for Jury Trial	17
2-1:2 Discussion.....	18
2-1:3 Amendments to Pleadings	19

2-2	NUMBER OF JURORS.....	19
2-2:1	New Jersey Court Rule 1:8-2. Number of Jurors.....	19
2-3	ALTERNATE JURORS	22
2-4	NUMBER OF JURORS DECIDING VERDICT	23
2-5	PETIT JUROR LIST	24
2-5:1	New Jersey Court Rule 1:8-5. Availability of Petit Jury List.....	24
2-5:2	Discussion.....	24
2-6	VOIR DIRE QUESTIONS UNDER DIRECTIVE #4-07	25
2-6:1	Background Questions.....	26
2-6:2	Biographical Questions.....	26
2-6:3	Omnibus Qualification Questions	27
2-6:4	Open-Ended Questions	28
2-6:5	Case Categories.....	30
2-6:6	Criminal Cases.....	30
2-7	ADDITIONAL VOIR DIRE QUESTIONS.....	31
2-7:1	New Jersey Court Rule 1:8-3. Conference with Court on Juror Questions	31
2-7:2	Practice Point.....	31
2-8	WHO CONDUCTS VOIR DIRE.....	33
2-8:1	New Jersey Court Rule 1:8-3. Examination of Jurors; Challenges	33
2-8:2	Discussion.....	34
2-9	PEREMPTORY CHALLENGES	34
2-9:1	New Jersey Court Rule 1:8-3. Examination of Jurors; Challenges	34
2-9:2	Discussion.....	35
2-9:3	Practice Point.....	37
2-10	REMOVAL FOR CAUSE.....	38
2-11	FORCED USE OF PEREMPTORY CHALLENGE.....	39
2-12	THE INATTENTIVE JUROR	39
2-13	ORDER OF EXERCISING OF PEREMPTORY CHALLENGES.....	40
2-13:1	New Jersey Court Rule 1:8-3(e). Order of Exercising of Peremptory Challenges.....	40
2-14	JUDGE VERSUS JURY DECISION-MAKING	41
2-15	CHANGE OF VENUE WHERE PRETRIAL PUBLICITY PREJUDICES JURY	41

2-15:1	New Jersey Court Rule 4:3-3. Change of Venue in the Superior Court.....	41
2-15:2	Discussion.....	42
2-15:3	Practice Point.....	44
Chapter 3: Jury Note Taking and Jury Questions.....		45
3-1	JUROR NOTE TAKING	45
3-1:1	New Jersey Court Rule 1:8-8. Materials to be Submitted to the Jury; Note-Taking.....	45
3-1:2	Model Civil Jury Charge 1.15. Note-Taking by Jurors	45
3-1:3	Practice Point.....	46
3-2	JUROR QUESTIONS	46
3-2:1	New Jersey Court Rule 1:8-8. Materials to be Submitted to the Jury; Note-Taking; Juror Questions.....	46
3-2:2	Discussion.....	47
3-2:3	Model Civil Jury Charge 1.23. Preliminary Instructions Regarding Juror’s Questions.....	48
3-2:4	Practice Point.....	49
Chapter 4: Opening Statement.....		51
4-1	NEW JERSEY COURT RULE 1:7-1. OPENING STATEMENT.....	51
4-1:1	Order of Opening	51
4-1:2	Purpose and Scope of Opening.....	51
4-1:3	Examples of Improper Opening Statements	52
4-1:4	Curative Instructions	53
4-1:5	Practice Point.....	55
Chapter 5: Preliminary Hearing.....		57
5-1	NEW JERSEY RULE OF EVIDENCE 104(A). PRELIMINARY QUESTIONS.....	57
5-1:1	New Jersey Rule of Evidence 104. Hearing.....	57
5-1:2	Fulfilling Conditions of Evidence Rules	57
5-1:3	Burden	58
5-1:4	Where Preliminary Hearing Is Held	59
5-1:5	Rules of Evidence Do Not Apply	60
5-1:6	Provisional Admissibility	60
5-1:7	Practice Point.....	62

Chapter 6: Conditional Evidence.....	63
6-1 NEW JERSEY RULE OF EVIDENCE 104(B). RELEVANCE THAT DEPENDS ON A FACT	63
6-1:1 Discussion.....	63
6-1:2 Practice Point.....	64
Chapter 7: Judicial Notice	65
7-1 RULES REGARDING JUDICIAL NOTICE	65
7-1:1 New Jersey Rule of Evidence 201. Judicial Notice of Law and Adjudicative Facts	65
7-1:2 New Jersey Rule of Evidence 202. Judicial Notice in Proceedings Subsequent to Trial	66
7-2 OVERVIEW	67
7-3 PURPOSE.....	67
7-4 PROCEDURE FOR INVOKING JUDICIAL NOTICE.....	68
7-5 WHEN JUDICIAL NOTICE IS MANDATORY OR DISCRETIONARY	69
7-6 EFFECT OF JUDICIAL NOTICE.....	69
7-7 EXAMPLES OF JUDICIALLY NOTICED FACTS	69
7-8 TIME TO REQUEST JUDICIAL NOTICE.....	72
7-9 WHERE JUDICIAL NOTICE HAS BEEN REJECTED.....	72
7-10 SUBSEQUENT PROCEEDINGS AND APPEALS.....	73
7-11 PRACTICE POINT	74
Chapter 8: Presumptions.....	75
8-1 INTRODUCTION	75
8-2 RULES.....	75
8-2:1 New Jersey Rule of Evidence 301. Effect of Presumption	75
8-2:2 New Jersey Rule of Evidence 302. Choice of Law.....	76
8-2:3 New Jersey Rule of Evidence 303. Presumptions Against Defendant in Criminal Proceedings	76
8-3 EFFECTS OF PRESUMPTIONS.....	77
8-4 THE BURDEN DOES NOT SHIFT	77
8-5 WHERE CONTRARY EVIDENCE IS INTRODUCED THE FACT MUST BE DECIDED BY THE FACT FINDER.....	78
8-6 OFFICIAL COMMENT TO NEW JERSEY RULE OF EVIDENCE 301.....	79

8-7	INFERENCE VERSUS PRESUMPTION	79
8-7:1	Res Ipsa Loquitur	81
8-7:2	Model Civil Jury Charge 5.10D. Res Ipsa Loquitur	82
8-8	PROOFS NECESSARY TO PROVE OR DISPROVE	
	A PRESUMPTION	83
8-9	STATUTORY PRESUMPTIONS	85
8-10	PRESUMPTIONS CREATED BY CASE LAW	85
8-11	PRESUMPTIONS IN CRIMINAL CASES	87
8-12	PRACTICE POINT	88
8-13	SHIFTING OF BURDEN	89

**Chapter 9: Relevance, Exclusionary Rules, Limiting Instructions,
and Stipulations..... 91**

9-1	RELEVANCE RULES.....	91
9-1:1	New Jersey Rule of Evidence 401. Definition of “Relevant Evidence”	91
9-1:2	New Jersey Rule of Evidence 402. Relevant Evidence Generally Admissible	91
9-2	DISCUSSION.....	91
9-3	EXCLUSIONARY RULES.....	92
9-3:1	New Jersey Rule of Evidence 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.....	92
9-3:2	New Jersey Rule of Evidence 407. Subsequent Remedial Measures	95
9-3:3	New Jersey Rule of Evidence 408. Settlement Offers and Negotiations	98
9-3:4	New Jersey Rule of Evidence 411. Liability Insurance	100
9-3:5	New Jersey Rule of Evidence 409. Payment of Medical and Similar Expenses	102
9-3:6	Practice Point	102
9-3:7	Other Exclusionary Rules	102
9-4	LIMITING INSTRUCTIONS.....	103
9-4:1	New Jersey Rule of Evidence 105. Limited Admissibility	103
9-4:2	When to Ask for an Instruction on Limited Admissibility	105
9-5	STIPULATIONS	106

9-5:1	New Jersey Rule of Evidence 101(a)(4). Undisputed Facts.....	106
9-5:2	Discussion.....	106
Chapter 10: Character Evidence.....		109
10-1	INTRODUCTION	109
10-2	RULES.....	109
10-2:1	New Jersey Rule of Evidence 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes Evidence	109
10-2:2	New Jersey Rule of Evidence 405. Methods of Proving Character.....	110
10-2:3	New Jersey Rule of Evidence 406. Habit; Routine Practice.....	110
10-2:4	New Jersey Rule of Evidence 608. Evidence of Character for Truthfulness or Untruthfulness.....	111
10-3	CHARACTER TRAIT AT ISSUE.....	112
10-4	ATTACK ON CREDIBILITY	114
10-5	SPECIFIC INSTANCES OF CONDUCT	115
10-5:1	New Jersey Rule of Evidence 405(b). Specific Instances of Conduct.....	115
10-5:2	Federal Rule of Evidence 608. Evidence of Character and Conduct of Witness.....	116
10-6	METHODS TO PROVE CHARACTER.....	116
10-6:1	Opinion Witness	117
10-6:2	Reputation Evidence.....	118
10-7	EVIDENCE OF HABIT	119
10-8	PRIOR WRONGS	122
10-8:1	The <i>Cofield</i> Four-Part Analysis	123
10-8:2	Other Wrongs Deemed Admissible	126
10-8:3	Other Wrongs Deemed Inadmissible.....	128
10-8:4	Limited Instruction Given to Jury	130
10-9	PRIOR ACCIDENT EVIDENCE.....	131
10-10	CONVICTION OF A CRIME	132
10-10:1	New Jersey Rule of Evidence 609. Impeachment by Evidence of Conviction of Crime.....	132
10-10:2	Federal Rule of Evidence 609. Impeachment by Evidence of Conviction of Crime	139
10-10:3	Practice Point.....	140

10-11	SUMMARY	140
Chapter 11: Privileges.....		143
11-1	INTRODUCTION	143
11-2	PRIVILEGES NARROWLY CONSTRUED	143
11-3	ATTORNEY-CLIENT PRIVILEGE	144
11-3:1	New Jersey Rule of Evidence 504. Lawyer-Client Privilege	144
11-3:2	Discussion.....	145
11-3:3	Attorney Client Privilege Between Persons Represented by the Same Attorney	146
11-3:4	Litigation Control Group	147
11-3:4.1	Rule of Professional Conduct 1.13. Organization as the Client.....	147
11-3:4.2	Rule of Professional Conduct 4.2. Communication With Person Represented by Counsel	147
11-3:4.3	Rule of Professional Conduct 4.3. Dealing With Unrepresented Person; Employee of Organization	148
11-3:4.4	Discussion.....	148
11-3:4.5	Practice Point	150
11-3:5	Attorney-Client Privilege Not Absolute.....	150
11-4	WORK PRODUCT PRIVILEGE	152
11-4:1	New Jersey Court Rule 4:10-2(c). Scope of Discovery; Treating Physician; Trial Preparation; Materials.	152
11-4:2	New Jersey Court Rule 4:10-2(d)(1). Scope of Discovery; Treating Physician; Trial Preparation; Experts.	153
11-4:3	Discussion.....	153
11-4:3.1	Draft Expert Reports	157
11-4:4	Practice Point.....	157
11-5	COMMON INTEREST RULE	158
11-6	PHYSICIAN-PATIENT PRIVILEGE	160
11-6:1	New Jersey Rule of Evidence 506. Patient and Physician Privilege	160
11-6:2	Discussion.....	163

11-6:3	Interviewing a Treating Physician	164
11-6:4	Calling a Treating Physician as an Expert	165
11-7	PSYCHOLOGIST PRIVILEGE.....	166
11-7:1	New Jersey Rule of Evidence 505. Psychologist Privilege.....	166
11-7:2	Discussion.....	166
11-8	MENTAL HEALTH SERVICE PROVIDER PRIVILEGE	168
11-8:1	New Jersey Rule of Evidence 534. Mental Health Service Provider - Patient Privilege.....	168
11-8:2	Discussion.....	173
11-9	MARITAL PRIVILEGE	174
11-9:1	New Jersey Rule of Evidence 509. Marital Privilege— Confidential Communications	174
11-9:2	New Jersey Rule of Evidence 501. Privilege of Accused...	175
11-9:3	Discussion.....	175
11-10	SELF-CRITICAL ANALYSIS PRIVILEGE	178
11-10:1	The Patient Safety Act	179
11-11	LITIGATION PRIVILEGE	181
11-12	JUDICIAL IMMUNITY	184
11-13	FAIR COMMENT PRIVILEGE	186
11-14	DELIBERATIVE PROCESS PRIVILEGE.....	186
11-15	EXECUTIVE PRIVILEGE.....	188
11-16	CRIMINAL INVESTIGATION RECORDS.....	188
11-17	OTHER OPRA RULINGS.....	189
11-18	FEE AWARD UNDER OPRA.....	190
11-19	COMMON-LAW RIGHT OF ACCESS	190
11-20	VAUGHN INDEX.....	192
11-21	ATTORNEYS FEES NOT ALLOWED UNDER COMMON-LAW RIGHT OF ACCESS	192
11-22	SELF-INCRIMINATION.....	193
11-22:1	New Jersey Rule of Evidence 503. Self-Incrimination	193
11-22:2	New Jersey Rule of Evidence 501. Privilege of Accused...	194
11-22:3	Discussion.....	194
11-23	RELIGIOUS BELIEFS.....	195
11-23:1	New Jersey Rule of Evidence 512. Religious Beliefs.....	195
11-23:2	New Jersey Rule of Evidence 610. Religious Beliefs or Opinions	195
11-24	OTHER PRIVILEGES.....	196
11-25	PIERCING A PRIVILEGE.....	196

11-26	WAIVER OF PRIVILEGE.....	197
11-26:1	New Jersey Rule of Evidence 530. Waiver of Privilege by Contract or Previous Disclosure; Limitations	197
11-26:2	Discussion.....	199
11-26:3	Inadvertent Disclosure of Privileged Information.....	201
11-26:3.1	Rule of Professional Conduct 4.4. Respect for Rights of Third Persons	201
11-26:3.2	New Jersey Court Rule 4:10-2(e)(2). Information Produced.....	201
11-26:3.3	Discussion.....	202
11-26:4	Practice Point.....	203
11-27	TAX RETURNS ARE NOT PRIVILEGED BUT CAN ONLY BE DISCLOSED FOR GOOD CAUSE	203
Chapter 12: Lack of Personal Knowledge.....		205
12-1	NEW JERSEY RULE OF EVIDENCE 602. LACK OF PERSONAL KNOWLEDGE.....	205
12-2	DISCUSSION.....	205
Chapter 13: Order of Interrogation and Presentation of Proofs.....		209
13-1	NEW JERSEY RULE OF EVIDENCE 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION.....	209
13-2	CONTROL BY COURT.....	210
13-2:1	Cumulative Evidence	210
13-3	SCOPE OF CROSS-EXAMINATION	210
13-3:1	Restrictions on Cross-Examination.....	212
13-4	PRACTICE POINT	213
13-5	ASKING ADVERSARY LEADING QUESTIONS.....	214
13-6	OBLIGATION TO DISCLOSE CHANGE IN TESTIMONY AT TRIAL	215
13-7	REOPENING PROOFS	215
13-8	PRACTICE POINT	216
13-9	CONTINUANCE OF A TRIAL	216
13-9:1	The Surprise Witness	217
13-9:2	Deposition at Mid-Trial.....	218
Chapter 14: Refreshing Recollection and Past Recollection Recorded.....		219
14-1	REFRESHING RECOLLECTION	219

14-1:1	New Jersey Rule of Evidence 612. Writing Used to Refresh Memory.....	219
14-1:2	Items That Can Be Used to Refresh Recollection.....	219
14-1:3	Procedure to Refresh Recollection	220
14-1:4	Requirements to Refresh Recollection	220
14-1:5	Objections to Refreshing Recollection	221
14-1:6	Impeachment by Adversary	222
14-1:7	Memory Refreshed Before Trial.....	222
14-2	PAST RECOLLECTION RECORDED	223
14-2:1	New Jersey Rule of Evidence 803(c)(5). Recorded Recollection	223
14-2:2	Requirements for Admission.....	223
14-2:3	Practice Point.....	224
Chapter 15: Questioning and Calling of Witnesses by the Trial Judge		227
15-1	NEW JERSEY RULE OF EVIDENCE 614. CALLING AND INTERROGATION OF WITNESSES BY COURT.....	227
15-2	INTRODUCTION	227
15-3	JUDGE'S QUESTIONS.....	228
15-4	JUDGE CALLING OWN WITNESSES	229
15-5	CAUTION: JUDGE MUST NOT OVERSTEP JUDICIAL ROLE	230
15-6	PRACTICE POINT.....	231
15-7	COURT MUST NOT IMPEACH THE INTEGRITY OF COUNSEL IN THE PRESENCE OF THE JURY	231
Chapter 16: Sequestration of Witnesses		233
16-1	SEQUESTRATION RULES	233
16-1:1	New Jersey Rule of Evidence 615. Sequestration of Witnesses.....	233
16-1:2	Federal Rule of Evidence 615. Excluding Witnesses	233
16-2	POLICY.....	233
16-3	STANDARD FOR GRANTING.....	234
16-4	EXCEPTIONS TO SEQUESTRATION	234
16-4:1	Party.....	234
16-4:2	Witness	234
16-4:3	Designated Representative	235
16-4:4	Analogous Federal Rule of Evidence.....	235
16-5	SEQUESTRATION OF WITNESSES AT DEPOSITIONS	235
16-5:1	New Jersey Court Rule 4:10-3. Protective Orders.....	235

16-5:2	Discussion.....	236
16-5:3	Practice Point.....	236
Chapter 17: Attacking Credibility		237
17-1	NEW JERSEY RULE OF EVIDENCE 607. WITNESS IMPEACHMENT, SUPPORT AND NEUTRALIZATION	237
17-2	ATTACKING A WITNESS' CREDIBILITY	237
17-3	PRESENTING EVIDENCE OF A PRIOR INJURY OR CONDITION	239
17-4	NECESSITY OF DISCLOSURE OF EXTRINSIC EVIDENCE USED TO IMPEACH CREDIBILITY	241
17-4:1	Practice Point.....	242
17-5	IMPEACHING YOUR OWN WITNESS	242
17-6	PRACTICE POINT	244
17-7	IMPEACHING ONE'S WITNESS UNDER THE FEDERAL RULES OF EVIDENCE	245
17-7:1	Federal Rule of Evidence 607. Who May Impeach	245
17-7:2	Discussion.....	246
17-8	DISCUSSIONS BETWEEN A PARTY AND COUNSEL BEFORE COMPLETION OF THE PARTY'S TRIAL TESTIMONY	246
17-8:1	Practice Point.....	246
17-9	MALINGERING OR SYMPTOM MAGNIFICATION EVIDENCE	247
Chapter 18: Prior Inconsistent Statement Used to Impeach the Witness		249
18-1	NEW JERSEY RULE OF EVIDENCE 613. PRIOR STATEMENTS OF WITNESSES	249
18-2	GENERAL	249
18-3	NEUTRALIZATION.....	250
18-4	PRIOR WRITTEN STATEMENT	251
18-5	PRIOR ORAL STATEMENT.....	252
18-6	PRIOR DEPOSITION TESTIMONY	252
18-7	PRACTICE POINT	254
18-8	OPPORTUNITY TO EXPLAIN THE INCONSISTENCY	254
18-9	RELIABILITY	256
18-10	EXCLUSION OF SURPRISE INCONSISTENT STATEMENT.....	256
18-11	COLLATERAL IMPEACHMENT EVIDENCE	257

Chapter 19: Prior Inconsistent Statements Admitted for Their Truth.....	259
19-1 NEW JERSEY RULE OF EVIDENCE 803(A)(1). HEARSAY EXCEPTIONS NOT DEPENDENT ON DECLARANT'S UNAVAILABILITY - PRIOR STATEMENT OF WITNESS	259
19-2 DISCUSSION.....	259
19-3 NOT SUBSTANTIVE EVIDENCE IF YOU CALL WITNESS UNLESS REQUIREMENTS ARE FULFILLED.....	260
19-4 FEDERAL RULES OF EVIDENCE	261
19-4:1 Federal Rule of Evidence 801(d). Statements That Are Not Hearsay.....	261
19-4:2 Discussion.....	261
 Chapter 20: Prior Consistent Statements and Vouching	 263
20-1 RULES.....	263
20-1:1 New Jersey Rule of Evidence 607. Witness Impeachment, Support and Neutralization.....	263
20-1:2 New Jersey Rule of Evidence 803(a)(2). Hearsay Exceptions Not Dependent on Declarant's Unavailability	263
20-2 PRIOR CONSISTENT STATEMENT OF WITNESS TO BOLSTER TESTIMONY INADMISSIBLE	264
20-3 PRIOR CONSISTENT STATEMENT TO BOLSTER WITNESS AFTER HIS CREDIBILITY HAS BEEN ATTACKED IS ADMISSIBLE	264
20-4 USING OTHER WITNESSES TO BOLSTER TESTIMONY IS PROHIBITED	265
20-5 PRACTICE POINT	265
 Chapter 21: Expert Testimony	 267
21-1 INTRODUCTION	267
21-2 WHEN EXPERT TESTIMONY IS REQUIRED AND WHEN THE COMMON KNOWLEDGE DOCTRINE APPLIES.....	267
21-2:1 New Jersey Rule of Evidence 702. Testimony by Experts....	267
21-2:2 The Common Knowledge Doctrine	268
21-2:3 Beyond the Ken of Jurors	272
21-2:4 Practice Point.....	274
21-3 WHAT QUALIFICATIONS ARE REQUIRED FOR AN EXPERT	275

21-3:1	New Jersey Medical Care Access and Responsibility and Patients First Act	282
21-3:2	Practice Point.....	285
21-4	IMPEACHING AN EXPERT WITNESS.....	285
21-4:1	Model Civil Jury Charge 1.13C. Optional Charge Concerning Fee Paid to Expert	285
21-5	THE NET OPINION RULE	286
21-5:1	Motion to Dismiss Expert Testimony as a Net Opinion....	286
21-5:2	Striking of Expert Reports Related to Preexisting Injuries.....	292
21-5:3	Practice Point: Countering the Net Opinion Motion	294
21-6	HYPOTHETICAL QUESTIONS.....	295
21-6:1	New Jersey Rule of Evidence 705. Disclosure of Facts or Data Underlying Expert Opinion; Hypotheses Not Necessary	295
21-6:2	Discussion.....	296
21-6:3	Practice Point.....	296
21-7	RELIABILITY OF EXPERT OPINION	297
21-7:1	General Acceptance Test.....	297
21-7:2	General Acceptance Test Is Rejected in Toxic Tort Cases.....	297
	21-7:2.1 Discussion of the <i>Rubanick</i> Decision	297
	21-7:2.2 Discussion of the <i>Landrigan</i> Decision	300
21-7:3	The <i>Kemp</i> Test: Expansion of <i>Rubanick</i> and <i>Landrigan</i> to Other Areas of Expertise	301
21-7:4	Proof of Reliability.....	302
21-7:5	New Jersey Court Rule 104 Hearing	303
21-7:6	Practice Point.....	305
21-7:7	Application of <i>Kemp</i> Standard	306
21-7:8	Practice Point.....	312
21-8	FEDERAL RULE OF EVIDENCE 702. TESTIMONY BY EXPERT WITNESSES.....	313
21-9	THE SUPREME COURT’S ADOPTION OF THE DAUBERT FACTORS.....	314
21-9:1	Application to Civil Cases.....	314
21-9:2	Application to Criminal Cases.....	317
21-10	JUROR DISCRETION ON EXPERT TESTIMONY	317
21-10:1	Model Civil Jury Charge 1.13. Expert Testimony.....	318
21-11	PRACTICE POINT	318

21-12	TRIAL EXPERT’S USE OF HEARSAY IN FORMULATING OPINIONS	319
21-12:1	New Jersey Rule of Evidence 703; Experts’ Use of Hearsay.....	319
21-12:2	Use of Other Expert’s Reports.....	321
21-12:3	Complexity of Underlying Expert Opinion.....	322
21-12:4	<i>Agha v. Feiner</i> Circumscribes the Use of the Reports of Non-Testifying Experts	323
21-12:5	Model Civil Jury Charge 1.13. Expert Testimony.....	325
21-12:6	Practice Point.....	325
21-12:7	Admissibility of Expert Opinions Found in Records or Reports.....	326
21-12:7.1	New Jersey Rule of Evidence 808. Expert Opinion Included in a Hearsay Statement Admissible Under an Exception.....	326
21-12:7.2	Routine Diagnostic Tests.....	327
21-12:7.3	More Than Average Difficulty of Interpretation.....	328
21-13	EXPERTS AND THE LEARNED TREATISE RULE	329
21-13:1	Traditional Rule.....	329
21-13:2	Expanded Rule; New Jersey Rule of Evidence 803(c)(18). Learned Treatises.....	329
21-13:3	Procedure to Admit Learned Treatise	330
21-13:4	Sample Examination for Admission of Learned Treatise	330
21-13:5	Model Civil Jury Charge 1.13D. Optional Charge Concerning Statements From Publications	332
21-13:6	Practice Point.....	332
21-14	AN EXPERT CANNOT TESTIFY BEYOND THE FOUR CORNERS OF THE EXPERT REPORT	333
21-14:1	Relevant Rules	333
21-14:1.1	New Jersey Court Rule 4:10-2(d). Trial Preparation; Experts	333
21-14:1.2	New Jersey Court Rule 4:17-4. Form, Service and Time of Answers	333
21-14:1.3	New Jersey Court Rule 4:10-2(d). Trial Preparation; Experts	333

	21-14:1.4	New Jersey Rule of Evidence 705. Disclosure of Facts or Data Underlying Expert Opinion; Hypotheses Not Necessary	334
	21-14:2	The Four Corners Rule	334
	21-14:3	Practice Point.....	337
21-15		EXPERT’S TESTIMONY ON THE ULTIMATE ISSUE	338
	21-15:1	New Jersey Rule of Evidence 704. Opinion on Ultimate Issue.....	338
	21-15:2	Discussion.....	338
	21-15:3	Practice Point.....	341
21-16		DUAL EXPERT AND FACTUAL WITNESS.....	341
21-17		PRACTICE POINT	343
21-18		FACTUAL WITNESS WITH EXPERT KNOWLEDGE	344
21-19		PROOF STANDARD FOR ADMISSION OF EXPERT TESTIMONY	345
21-20		PROCEDURE TO SEEK TO SERVE LATE EXPERT REPORT AND ADMIT EXPERT TESTIMONY AT TRIAL.....	345
	21-20:1	New Jersey Court Rule 4:24-1(c). Time for Completion of Discovery.....	345
	21-20:2	New Jersey Court Rule 4:17-7. Amendment of Answers	346
	21-20:3	Discussion.....	346
21-21		EXPERT’S UNAVAILABILITY FOR TRIAL	348
	21-21:1	New Jersey Court Rule 4:36-3(c). Trial Calendar	348
	21-21:2	Discussion.....	348
	21-21:3	Practice Point.....	349
21-22		LAY EXPERT TESTIMONY	350
	21-22:1	New Jersey Rule of Evidence 701. Opinion Testimony of Lay Witnesses.....	350
	21-22:2	Prerequisites.....	351
	21-22:3	Pure Lay Witness Testimony	351
	21-22:4	Knowledge Based on Experience and Work on Project....	353
	21-22:5	Lay Witnesses With Specialized Knowledge	353
	21-22:6	Where Lay Expert Testimony Crosses the Line Into Expert Testimony.....	354
	21-22:7	Model Jury Charge 1.13. Expert Testimony	355
	21-22:8	Practice Point.....	356
21-23		USE OF ANOTHER PARTY’S EXPERT AT TRIAL.....	357
	21-23:1	Introduction.....	357

21-23:2	Use of an Expert Who Was Only Consulted and Whose Report Was Not Served on the Other Side	358
21-23:2.1	New Jersey Court Rule 4:10-2(d)(3). Trial Preparation; Experts	358
21-23:2.2	Discussion	358
21-23:3	Withdrawal of Expert After That Expert's Report Has Been Served and After the Deposition of the Expert Has Been Taken	359
21-23:3.1	New Jersey Court Rule 4:10-2(d). Trial Preparation; Experts	359
21-23:3.2	New Jersey Court Rule 4:10-2(d)(2). Trial Preparation; Experts	359
21-23:3.3	Discussion	359
21-23:3.4	Practice Point	361
21-23:4	Use of the Testimony of Another Party's Treating Physician or Factual Expert	361
21-23:4.1	Practice Point	362
21-23:5	Videotape Depositions Pursuant to New Jersey Court Rule 4:14-9	363
21-23:5.1	New Jersey Court Rule 4:14-9(e). Use.	363
21-23:5.2	Discussion	363
21-23:5.3	Practice Point	364
21-23:6	Summary	365
21-24	RELIANCE ON STATUTES AND REGULATIONS IN LIEU OF EXPERT TESTIMONY	365
21-25	AUTHORITIES DIVIDED ON ADVERSE INFERENCE CHARGE ON EXPERT TESTIMONY	366
21-26	MALPRACTICE CLAIMS AGAINST PROFESSIONALS	368
21-26:1	Affidavit of Merit Statute, New Jersey Statute 2A:53A-27. Affidavit Required in Certain Actions Against Licensed Persons	368
21-26:2	Vicarious Liability Claims	371
21-26:3	Common Knowledge Cases	371
21-26:4	Other Exceptions to Affidavit of Merit	373
21-26:5	Statement in Lieu of Affidavit	373
21-26:6	Equitable Doctrines Ameliorating the Draconian Effect of the AMS	375
21-26:6.1	<i>Ferriera</i> Hearing	375

	21-26:6.2	Designating Specialty in Answer	376
	21-26:6.3	Substantial Compliance	377
	21-26:6.4	Extraordinary Circumstances.....	377
Chapter 22: Use of Depositions and Prior Testimony at Trial.....			379
22-1	INTRODUCTION		379
22-2	UNAVAILABILITY		379
	22-2:1	Generally	379
	22-2:2	Rules.....	380
	22-2:2.1	New Jersey Court Rule 4:16-1(c). Use of Depositions.....	380
	22-2:2.2	New Jersey Rule of Evidence 804(b)(1)(A). Testimony in Prior Proceedings.....	380
	22-2:2.3	New Jersey Rule of Evidence 804(a)(4). Definition of Unavailable.....	381
	22-2:3	Definition of Unavailability	381
	22-2:4	Diligence in Procuring Witness to Testify.....	382
	22-2:5	Time to Determine Unavailability.....	384
	22-2:6	Practice Point.....	384
	22-2:7	Stipulation Regarding Admissibility	384
	22-2:8	New Jersey Court Rule 4:16-1(c). Exceptional Circumstances Rule	385
22-3	ADVERSE INFERENCE CHARGE.....		386
22-4	DEPOSITION OF PARTY.....		386
	22-4:1	Reading of Adversary's Deposition Into Evidence.....	386
	22-4:1.1	New Jersey Court Rule 4:16-1. Use of Depositions.....	386
	22-4:1.2	New Jersey Rule of Evidence 803(b)(1). Statement by Party-Opponent.....	387
	22-4:1.3	Discussion.....	387
	22-4:2	Completeness Doctrine Rules	388
	22-4:2.1	New Jersey Court Rule 4:16-1(d). Use of Depositions.....	388
	22-4:2.2	New Jersey Rule of Evidence 106. Remainder of or Related Writings or Recorded Statements.....	388
	22-4:3	Practice Point.....	388

22-4:4	Effect of Notice in Lieu of Subpoena in Reading Depositions.....	390
22-4:5	The Effect of Settlement on the Reading of a Party’s Deposition Into Evidence	390
22-5	CORPORATION OR OTHER BUSINESS ENTITY	
	AS ADVERSARY	392
22-5:1	Officer or Director	392
22-5:2	Applicable Rules	392
	22-5:2.1 General Rule on Depositions of Business Entities: New Jersey Court Rule 4:16-1(b).....	392
	22-5:2.2 Designated Deponent on Behalf of Corporation or Other Entity: New Jersey Court Rule 4:14-2(c)	392
	22-5:2.3 Managing or Authorized Agent: New Jersey Court Rule 4:16-1(b).....	393
22-5:3	Absence of Employees “Procured” by Offering Party	394
22-6	VICARIOUS ADMISSIONS	395
22-6:1	New Jersey Rule of Evidence 803(b). Statement by Party-Opponent.....	395
22-6:2	New Jersey Rule of Evidence 803(b)(4). Statements Made Within Scope of Agency or Employment.....	396
22-6:3	New Jersey Rule of Evidence 803(b)(3). Statement by Authorized Person.....	396
22-6:4	Practice Point.....	397
22-7	JOINING ADDITIONAL PARTIES	397
22-7:1	Risk of Losing Prior Deposition Testimony	397
22-7:2	Practice Point.....	398
22-8	USE OF PRIOR DEPOSITION OR OTHER TESTIMONY: THE “SIMILAR MOTIVE” REQUISITE	398
22-8:1	New Jersey Rule of Evidence 804(b)(1)(A). Testimony in Prior Proceedings.....	398
22-8:2	New Jersey Rule of Evidence 804(b)(1)(B). Testimony in Prior Proceedings.....	398
22-8:3	Application	399
22-8:4	Practice Point.....	400
22-8:5	Committee Comment to New Jersey Rule of Evidence 804.....	401
22-9	DE BENE ESSE DEPOSITIONS.....	401
22-9:1	Introduction.....	401

22-9:2	Procedure.....	402
	22-9:2.1 New Jersey Court Rule 4:14-9(f). Objections....	402
	22-9:2.2 Discussion.....	402
22-9:3	Objective.....	403
22-10	VIDEOTAPE DEPOSITIONS	404
	22-10:1 Parties and Lay Witnesses.....	404
	22-10:2 Experts.....	404
22-11	USE OF DEPOSITION TO IMPEACH A PARTY OR WITNESS.....	404
	22-11:1 New Jersey Court Rule 4:16-1. Use of Depositions.....	404
	22-11:2 Collateral Impeachment by Use of Other Witness’ Deposition	405
	22-11:3 Exceptions to Use of Depositions as Collateral Impeachment: Adoptive and Vicarious Admissions.....	406
	22-11:3.1 Adoptive Admissions; New Jersey Rule of Evidence 803(b)(2). Statement by Party-Opponent	406
	22-11:3.2 Vicarious Admissions; New Jersey Rule of Evidence 803(b)(3). Statement by Party-Opponent	407
22-12	DEPOSITIONS OF EXPERTS	408
	22-12:1 New Jersey Court Rule 4:10-2(d). Deposing Expert	408
	22-12:2 New Jersey Court Rule 4:14-9. Videotaping Experts’ Depositions.....	408
	22-12:3 Redaction of Videotape Testimony	410
	22-12:4 New Jersey Rule of Evidence 804(b)(1)(C). Preference for Local Experts	410
22-13	DEPOSITIONS BEFORE ACTION—PERPETUATION OF TRIAL TESTIMONY	411
22-14	CONCLUSION	412
Chapter 23: Use of Interrogatory Answers at Trial and Requests for Admissions.....		
		413
23-1	NEW JERSEY COURT RULE 4:17-8. USE, FILING AND EFFECT OF INTERROGATORIES	413
23-2	GENERALLY	413
23-3	WHEN INTERROGATORY ANSWERS ARE DEEMED TO BE AN ADOPTIVE ADMISSION	414

23-3:1	New Jersey Rule of Evidence 803(b). Statement by Party-Opponent.....	414
23-3:2	Discussion.....	414
23-4	EFFECT OF SETTLEMENT ON ADMISSION OF INTERROGATORY ANSWERS.....	417
23-5	PRACTICE POINT.....	417
23-6	REQUESTS FOR ADMISSIONS.....	418
23-6:1	New Jersey Court Rule 4:22-1. Request for Admission	418
23-6:2	New Jersey Court Rule 4:22-2. Effect of Admission.....	419
	23-6:2.1 Discussion.....	419
Chapter 24: Hearsay.....		421
24-1	INTRODUCTION	421
24-2	DEFINITION OF HEARSAY	422
24-2:1	New Jersey Rule of Evidence 801. Definitions	422
24-2:2	New Jersey Rule of Evidence 802. Hearsay Rule.....	422
24-2:3	Discussion.....	422
24-3	WHETHER DECLARANT IS A WITNESS AT TRIAL.....	422
24-4	NON-HEARSAY STATEMENTS	423
24-4:1	For What Purpose?	423
24-4:2	Not Admitted for the Truth of the Matter	423
24-5	NEW JERSEY RULE OF EVIDENCE 803(C)(3), FORMERLY KNOWN AS “RES GESTAE,” STATEMENTS NOT DEPENDENT ON DECLARANT’S AVAILABILITY.....	428
24-6	PRACTICE POINT	431
24-7	RELIABILITY	431
24-8	PRACTICE POINT	432
24-9	HEARSAY RULES WHICH RELATE TO OTHER RULES OF EVIDENCE	432
24-9:1	New Jersey Rule of Evidence 803(a). Prior Statements of Witnesses.....	432
24-9:2	New Jersey Rule of Evidence 803(b). Statement by Party-Opponent.....	432
24-9:3	New Jersey Rule of Evidence 803(c)(21). Reputation as to Character.....	433
24-9:4	New Jersey Rule of Evidence 803(c)(22). Judgments of Previous Convictions of Crime.....	433
24-9:5	New Jersey Rule of Evidence 803(c)(18). Expert Testimony.....	433

24-9:6	New Jersey Rule of Evidence 803(c)(5). Recorded Recollection; New Jersey Rule of Evidence 612. Refreshing Recollection	433
24-10	SPECIFIC HEARSAY EXCEPTIONS	433
24-10:1	New Jersey Rule of Evidence 803(b). Party Admissions and Vicarious Admissions	434
24-10:2	New Jersey Rule of Evidence 803(c)(6). Business Entries	436
	24-10:2.1 Computer Data and Printouts.....	439
	24-10:2.2 E-Mails	442
24-10:3	New Jersey Rule of Evidence 803(c)(8). Public Records	442
24-10:4	State Medical Examiners Act and New Jersey Rule of Evidence 803(c)(9)	445
24-10:5	New Jersey Rule of Evidence 803(c)(7). Absence of an Entry in Records of Regularly Conducted Activity; New Jersey Rule of Evidence 803(c)(10). Absence of Public Record or Entry.....	447
24-10:6	New Jersey Rule of Evidence 803(c)(5). Recorded Recollection	449
24-10:7	New Jersey Rule of Evidence 808. Expert Opinions in Records	449
24-10:8	New Jersey Rule of Evidence 803(c)(1). Present Sense Impression	451
24-10:9	New Jersey Rule of Evidence 803(c)(2). Excited Utterance	452
24-10:10	New Jersey Rule of Evidence 803(c)(4). Medical Diagnosis or Treatment	454
24-10:11	New Jersey Rule of Evidence 803(c)(25). Statement Against Interest.....	456
24-10:12	New Jersey Rule of Evidence 804(b)(6). Trustworthy Statements by Deceased Declarants; New Jersey Statute 2A:81-2. Transactions With Decedent, Proof Required	457
24-10:13	New Jersey Rule of Evidence 804(b)(1). Prior Testimony	460
24-10:14	New Jersey Rule of Evidence 805. Hearsay Within Hearsay	461

24-10:15	New Jersey Rule of Evidence 804(b)(9). Forfeiture by Wrongdoing.....	463
24-11	STATEMENTS ADMISSIBLE UNDER ALTERNATE EXCEPTIONS	464
24-12	REDACTION	464
24-13	NOTICE REQUIREMENT	465
24-13:1	New Jersey Rule of Evidence 807. Discretion of Court to Exclude Evidence Under Certain Exceptions	465
24-13:2	Practice Point.....	465
24-14	NEW JERSEY RULE OF EVIDENCE 804. HEARSAY EXCEPTIONS: DECLARANT UNAVAILABLE	466
24-15	WHERE HEARSAY IS ADMISSIBLE WHERE NO EXCEPTION IS APPLICABLE.....	467
24-16	FEDERAL RULE OF EVIDENCE 807. RESIDUAL EXCEPTION	468
24-17	PRACTICE POINT	469
24-18	ATTACKING THE CREDIBILITY OF THE HEARSAY DECLARANT.....	469
24-18:1	New Jersey Rule of Evidence 806. Attacking and Supporting Credibility of Declarant.....	469
24-18:2	Discussion.....	470
24-18:3	Practice Point.....	471
24-19	LIMITED APPLICATION OF COURT RULE 1:1-2	471
Chapter 25: Authentication of Trial Exhibits		473
25-1	RULES.....	473
25-1:1	New Jersey Rule of Evidence 901. Requirement of Authentication or Identification.....	473
25-1:2	New Jersey Rule of Evidence 1001. Definitions	473
25-1:3	New Jersey Rule of Evidence 801. Definitions	473
25-2	INTRODUCTION	474
25-3	DEMONSTRATIVE EVIDENCE	474
25-4	CONDITIONAL ADMISSIBILITY	474
25-5	BURDEN OF PROOF	475
25-6	APPLICATION OF AUTHENTICATION RULES	475
25-6:1	Authentication of Photographs, Videotapes, DVD Simulations.....	476
25-6:1.1	Photographs of Damaged Vehicles.....	477

25-6:2	Letters.....	478
25-6:3	Authentication of Telephone Conversations	479
25-6:4	Cell Phone Evidence	480
25-6:5	Social Media.....	481
25-6:6	New Jersey Rule of Evidence 903. Testimony of Subscribing Witness Unnecessary.....	482
25-6:7	New Jersey Rule of Evidence 1005. Public Records	483
25-6:8	Business Records	484
25-7	ORIGINALS AND DUPLICATES: THE BEST EVIDENCE RULE.....	485
25-7:1	Rules.....	485
25-7:1.1	New Jersey Rule of Evidence 1001. Definitions	485
25-7:1.2	New Jersey Rule of Evidence 1002. Requirement of Original.....	485
25-7:1.3	New Jersey Rule of Evidence 1003. Admissibility of Duplicates.....	485
25-7:1.4	New Jersey Rule of Evidence 1004. Admissibility of Other Evidence of Contents.....	486
25-7:1.5	Discussion.....	486
25-7:2	Authentication of Document Which Has Been Lost.....	489
25-8	SELF-AUTHENTICATING DOCUMENTS.....	490
25-8:1	New Jersey Rule of Evidence 902. Self-Authentication	490
25-8:2	Discussion.....	492
25-8:3	Practice Point.....	493
25-9	NEW JERSEY RULE OF EVIDENCE 1006. SUMMARIES	493
25-10	SAMPLE TESTIMONY TO AUTHENTICATE SUMMARY	495
25-11	CHAIN OF CUSTODY	497
25-12	ADMITTING OTHER PARTS OF A WRITING.....	497
25-12:1	New Jersey Rule of Evidence 106. Remainder of or Related Writings or Recorded Statements.....	497
25-12:2	Discussion.....	498
25-13	AUTHENTICATING EXHIBIT BY ADMISSION OF PARTY	499
25-13:1	New Jersey Rule of Evidence 1007. Testimony or Written Statement of Party	499
25-13:2	Discussion.....	499

25-14	ROLE OF JUDGE AND JURY IN AUTHENTICATING DOCUMENTS	499
25-14:1	New Jersey Rule of Evidence 1008. Functions of Court and Jury	499
25-14:2	Discussion.....	500
25-15	PRACTICE POINT	500
25-16	AMENDMENT TO INTERROGATORY ANSWERS AND WHETHER THE COURT WILL ADMIT EVIDENCE AT TRIAL	500
25-17	NEW JERSEY WIRETAPPING AND ELECTRONIC SURVEILLANCE CONTROL ACT, N.J.S.A 2A: 156A-1 ET SEQ.	502
25-17:1	Introduction.....	502
25-17:2	Authentication	502
25-17:3	Applicability of the Wiretapping Act.....	503
25-17:3.1	Where One of the Parties Is a Participant in the Conversation	503
25-17:3.2	Conversation Taped Between Two Persons Other Than the Person Taping the Conversation	503
25-17:3.3	Videotaping Is Not Covered by the Wiretapping Act.....	503
25-17:3.4	E-Mails and Other Electronic Data Stored in a Computer Accessible to Both Parties	504
25-17:3.5	Sanctions for Violating the Act	506
25-17:3.6	Summary.....	506
Chapter 26: The Parol Evidence Rule.....		507
26-1	INTRODUCTION	507
26-2	DEFINITION.....	507
26-3	APPLICATION OF THE PAROL EVIDENCE RULE	507
26-4	COURT VERSUS JURY DECISION-MAKING.....	508
26-5	FRAUD IN THE INDUCEMENT	509
26-6	OTHER DEFENSES.....	510
26-7	THE PAROL EVIDENCE RULE DOES NOT APPLY TO SUBSEQUENT AGREEMENTS	511
26-8	PRACTICE POINT	511

Chapter 27: Trial Objections.....	513
27-1 HOW TO MAKE AND PRESERVE OBJECTIONS FOR APPEAL	513
27-1:1 New Jersey Court Rule 1:7-2. Objections	513
27-1:2 New Jersey Court Rule 2:10-2. Notice of Trial Errors	513
27-1:3 Discussion.....	514
27-2 HOW TO MAKE A RECORD ON EXCLUDED EVIDENCE	514
27-2:1 New Jersey Court Rule 1:7-3. Record of Excluded Evidence.....	514
27-2:2 Discussion.....	515
27-3 TYPES OF OBJECTIONS	516
27-4 WHEN TO OBJECT	517
27-5 CUMULATIVE ERRORS	518
27-6 INVITED ERROR	519
27-7 PRACTICE POINTS.....	521
27-8 MOTION FOR MISTRIAL	522
 Chapter 28: Closing Statement	 523
28-1 NEW JERSEY COURT RULE 1:7-1(B). CLOSING STATEMENT.....	523
28-2 ORDER OF CLOSING STATEMENTS	523
28-3 GREAT LATITUDE ALLOWED	523
28-4 PROMISES MADE TO THE JURY	524
28-5 RESTRICTIONS ON STATEMENTS IN CLOSINGS.....	524
28-6 CURATIVE INSTRUCTIONS AND OBJECTIONS.....	529
28-7 REPLAY OF VIDEOTAPE TESTIMONY AT THE CLOSING	531
28-8 PERCENTAGES OF FAULT	531
28-9 STATEMENTS AS TO DAMAGES	532
28-9:1 Unliquidated Damages	532
28-9:2 New Jersey Court Rule 1:7-1(b). Time-Unit Rule.....	532
28-9:3 Liquidated Damages—Economic Losses	533
28-9:4 Summary	534
 Chapter 29: Jury Charge and Verdict Sheet.....	 535
29-1 NEW JERSEY COURT RULE 1:8-7. REQUESTS TO CHARGE THE JURY; CHARGE CONFERENCE, OBJECTIONS	535

29-2	INSTRUCTIONS TO JURORS	536
29-3	OBJECTIONS TO JURY CHARGE.....	537
29-4	MODEL CIVIL JURY CHARGES.....	537
29-4:1	False in One; False in All Jury Charge Model Civil Jury Charge 1.12	538
29-4:2	Jury Charges on Damages.....	539
29-4:2.1	Model Civil Charge 1.12O Damages	539
29-4:2.2	Jury Charge on Disability, Impairment and Loss of the Enjoyment of Life, Pain and Suffering.....	540
29-4:3	Jury Charge on the New Jersey Comparative Negligence Act	542
29-4:4	Adverse Inference Charge	544
29-4:4.1	Model Civil Jury Charge 1.18. Witness: Failure of a Party to Produce.....	544
29-4:4.2	Discussion.....	545
29-4:4.3	Practice Point.....	547
29-4:5	Practice Point.....	547
29-5	JUDGE'S COMMENTS ON EVIDENCE	548
29-6	NEW JERSEY COURT RULE 4:39-1. SPECIAL VERDICTS	549
29-7	NEW JERSEY COURT RULE 4:39-2. GENERAL VERDICT ACCOMPANIED BY ANSWER TO INTERROGATORIES.....	550
29-7:1	General Verdicts	550
29-7:2	Interrogatories	550
29-8	MODEL CIVIL JURY INTERROGATORIES	553
29-8:1	Model Civil Jury Charge 7.32. Interrogatories on Negligence Case.....	553
29-8:2	Model Civil Jury Charge 8.21. Jury Verdict Sheet in Automobile Accident Case, Including Seat Belt Defense	554
29-8:3	Model Civil Jury Charge 5.33A. Sample Verbal Threshold Interrogatories Under New Jersey Statute 39:6A-8	556
29-8:4	Model Civil Jury Charge 8.10. Sample Damage Verdict Sheet for a Personal Injury Case	557
29-8:5	Model Civil Jury Charge 2.21. Sample Jury Interrogatories in Discrimination Case	557
29-9	MATERIALS IN THE JURY ROOM.....	558

29-9:1	New Jersey Court Rule 1:8-8. Materials to be Submitted to the Jury (Exhibits and Lists; Jury Instructions).....	558
29-9:2	Exhibits and Documents Allowed in the Jury Room.....	559
29-10	REPLAY OF WITNESS TESTIMONY.....	560
29-11	SEQUESTRATION OF JURORS AND JURORS’ VIOLATION OF COURT INSTRUCTIONS.....	562
29-11:1	New Jersey Court Rule 1:8-6. Sequestration of Juries.....	562
29-11:2	Third Circuit Model Civil Jury Charge 1.3, Preliminary Instructions—Conduct of the Jury.....	567
29-12	REOPENING TRIAL AFTER DELIBERATIONS BEGIN.....	568
29-13	NEW JERSEY COURT RULE 1:8-9. RETURN OF VERDICT.....	569
29-13:1	Number of Jurors Necessary for a Verdict.....	569
29-13:2	Presumption of Correctness of a Jury Verdict.....	570
29-14	DISMISSAL OF JURORS AFTER DELIBERATIONS HAVE BEGUN WHERE JURY IS DEADLOCKED.....	570
29-15	DEADLOCKED JURY—THE “ALLEN CHARGE”.....	571
29-15:1	Criminal Case.....	571
29-15:2	Model Criminal Jury Charge.....	572
29-15:3	Civil Cases.....	572
29-15:3.1	Model Civil Jury Charges.....	572
29-15:4	Practice Point.....	573
29-16	PERIOD OF TIME THE JURY DELIBERATES BEFORE RENDERING A VERDICT.....	574
29-17	POLLING OF THE JURY.....	574
29-17:1	New Jersey Court Rule 1:8-10. Polling of Jury.....	574
29-18	QUOTIENT AND COMPROMISE VERDICTS.....	575
29-18:1	Practice Point.....	576
29-19	MOLDING THE VERDICT IN NEGLIGENCE CASES.....	576
29-19:1	Contributory and Comparative Negligence.....	576
29-19:2	Discussion.....	578
29-20	POST-VERDICT INTERVIEW OF JURORS PROHIBITED.....	578
29-20:1	New Jersey Court Rule 1:16-1. Interviewing Jurors Subsequent to Trial.....	578
29-21	SUMMONING JURORS BACK FOR POTENTIAL BIAS.....	580
29-22	INCONSISTENT VERDICTS.....	581

Chapter 30: Trial Motions	585
30-1 INTRODUCTION	585
30-2 MOTION FOR DIRECTED VERDICT	586
30-2:1 New Jersey Court Rule 4:37-2. Involuntary Dismissal; Effect Thereof	586
30-3 MOTION FOR JUDGMENT.....	588
30-3:1 New Jersey Court Rule 4:40-1. Motion for Judgment at Trial	588
30-4 MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT.....	588
30-4:1 New Jersey Court Rule 4:40-2. Motion for Judgment Notwithstanding the Verdict	588
30-4:2 Standard	589
30-4:3 Asking the Court to Submit a Case to Jury Before the Court Grants Judgment	590
30-5 MOTION FOR NEW TRIAL.....	590
30-5:1 New Jersey Court Rule 4:49-1. Motion for New Trial	590
30-5:2 Standard	593
30-6 MOTION FOR REMITTITUR AND ADDITUR.....	594
30-6:1 Case Law before the Supreme Court’s Decision in <i>Oriente v. Jennings</i>	594
30-6:1.1 Motion for Remittitur Before <i>Oriente</i>	595
30-6:1.2 Motion for Additur Before <i>Oriente</i>	603
30-7 REVISIONS TO REMITTITUR AND ADDITUR PROMULGATED BY <i>ORIENTALE</i>	603
30-8 EXAMPLES OF DECISIONS ON REMITTITUR AND ADDITUR.....	605
30-9 PUNITIVE DAMAGES AND REMITTITUR OR ADDITUR	606
30-10 PRACTICE POINT	607
30-11 MOTION FOR RELIEF FROM JUDGMENT OR ORDER.....	608
30-11:1 New Jersey Court Rule 4:50. Relief from Judgment or Order	608
30-11:1.1 New Jersey Court Rule 4:50-1. Grounds of Motion	608
30-11:1.2 New Jersey Court Rule 4:50-2. Time of Motion	608

	30-11:1.3	New Jersey Court Rule 4:50-3. Effect of Motion	609
	30-11:2	Motion Requirements	609
	30-11:3	Practice Point	613
30-12	APPELLATE COURT RULES RELATING TO TRIAL MOTIONS		613
	30-12:1	Against Weight of Evidence, New Jersey Court Rule 2:10-1	613
	30-12:2	Trial Motions Toll Time to Appeal	613
	30-12:3	New Jersey Court Rule 2:4-3. Tolling of Time for Appeal and Certification	614
30-13	PRACTICE POINT		614
Chapter 31: Punitive Damages			617
31-1	PASSAGE OF THE PUNITIVE DAMAGES ACT		617
31-2	PLEADING OF PUNITIVE DAMAGES		617
31-3	STANDARD OF PROOF		617
31-4	FACTORS TO BE CONSIDERED BY THE JURY		618
31-5	BIFURCATED TRIALS		618
31-6	CAP ON PUNITIVE DAMAGES.....		618
31-7	PURPOSE OF PUNITIVE DAMAGES		619
31-8	DISCRETION OF THE TRIAL JUDGE TO REDUCE THE PUNITIVE DAMAGES AWARD		619
31-9	RECORD REFERRED FOR CRIMINAL INVESTIGATION		619
31-10	A FINDING OF FRAUD WILL NOT NECESSARILY RESULT IN PUNITIVE DAMAGES.....		619
Chapter 32: Spoliation of Evidence			621
32-1	ELEMENTS OF A SPOILIATION ACTION		621
32-2	NEGLIGENT SPOILIATION HAS NOT YET BEEN RECOGNIZED AS A CAUSE OF ACTION.....		623
32-3	RULE 4:23-2(B) SANCTIONS IMPOSED		624
32-4	ADVERSE INFERENCE CHARGE.....		624
32-5	TIMING OF DISCOVERY OF SPOILIATION		625
32-6	BIFURCATION OF TRIAL		626
32-7	WHEN DEFENDANT IS THE SPOLIATOR.....		627
32-8	WHEN PLAINTIFF IS THE SPOLIATOR		629

32-9	SPOLIATION BY THIRD PARTIES	630
32-10	ESSENTIAL PURPOSES SANCTIONS ARE DESIGNED TO ACHIEVE.....	630
32-11	OTHER REMEDIES AGAINST SPOLIATORS	631
32-12	THE ULTIMATE SANCTION: DISMISSAL OF THE CASE	631
32-13	SANCTIONS AGAINST ATTORNEY	633
	32-13:1 Rule of Professional Conduct 3.4. Fairness to Opposing Party and Counsel	633
32-14	APPLICATION OF A SPOILIATION DEFENSE TO CRIMINAL CASES	634
32-15	DEFEATING A CLAIM OF SPOILIATION OF EVIDENCE.....	635
32-16	PRACTICE POINT	637
Chapter 33: Offer of Judgment.....		641
33-1	INTRODUCTION	641
33-2	OFFER OF JUDGMENT RULE	641
	33-2:1 New Jersey Court Rule 4:58-1. Time and Manner of Making and Accepting Offer	641
	33-2:2 New Jersey Court Rule 4:58-2. Consequences of Non-Acceptance of Claimant’s Offer.....	642
	33-2:3 New Jersey Court Rule 4:58-3. Consequences on Non-Acceptance of Offer of Party Not a Claimant	643
	33-2:4 New Jersey Court Rule 4:58-4. Multiple Claims; Multiple Parties	644
	33-2:5 New Jersey Court Rule 4:58-5. New Trial	647
	33-2:6 New Jersey Court Rule 4:58-6. Applications for Fee; Limitations	647
	33-2:7 New Jersey Court Rule 4:58-7. Acceptance of Offer Not Deemed a Judgment; Payment of Accepted Offer.....	647
33-3	PURPOSE OF THE OFFER OF JUDGMENT RULE.....	648
33-4	SERVING, FILING AND ACCEPTING THE OFFER OF JUDGMENT	649
33-5	CONSEQUENCES OF NON-ACCEPTANCE OF A CLAIMANT’S OFFER OF JUDGMENT.....	650
33-6	CONSEQUENCES OF NON-ACCEPTANCE OF A NON-CLAIMANT’S OFFER OF JUDGMENT	650

33-7	INSTANCES WHERE THE COURT WILL DISALLOW OR REDUCE THE EFFECT OF AN OFFER OF JUDGMENT	651
33-7:1	Practice Point.....	652
33-8	FEE APPLICATION.....	652
33-8:1	Deadline for Filing Fee Application.....	652
33-8:2	Form of Fee Application	653
33-8:3	Date When Allowances Commence	653
33-8:4	No Duplicative Fees.....	653
33-8-5	An Offer of Judgment Will Be Awarded Where There Is a Contingency Fee Agreement	653
33-9	MANDATORY NATURE OF OFFER OF JUDGMENT RULE....	654
33-10	APPLICATION OF OFFER OF JUDGMENT RULE IN APPEALS.....	655
33-11	HISTORY OF THE OFFER OF JUDGMENT RULE	655
33-12	MAKING MORE THAN ONE OFFER OF JUDGMENT	656
33-13	MAKING AN OFFER OF JUDGMENT IN MULTIPLE PARTY CASES.....	656
33-14	ALTERING OFFER OF JUDGMENT RULE: HIGH-LOW AGREEMENTS.....	657
33-15	FEDERAL RULE OF CIVIL PROCEDURE 68.....	658
33-15:1	Federal Rule of Civil Procedure 68. Offer of Judgment ...	658
33-15:2	Discussion.....	659
33-16	OFFER OF JUDGMENT RULE COMPARED TO FRIVOLOUS LAWSUIT RULE	659
33-17	PRACTICE POINT	660
Chapter 34: Video Transmission of Trial Testimony.....		663
34-1	LAY TRIAL TESTIMONY BY VIDEO TRANSMISSION	663
34-2	FACTORS CONSIDERED IN DECIDING IF REMOTE TESTIMONY PERMITTED	664
34-3	ADDITIONAL CONDITIONS JUDGE MAY IMPOSE ABOUT ADMISSIBILITY OF REMOTE TESTIMONY	664
34-4	PRACTICE POINT	665
Chapter 35: Judge Recusal.....		667
35-1	CODE OF JUDICIAL CONDUCT	667
35-2	AVOIDING THE APPEARANCE OF IMPROPRIETY	667
35-3	<i>EX PARTE</i> COMMUNICATIONS PROHIBITED WITH EXCEPTIONS.....	668

35-4	DUTY TO SIT WHERE APPROPRIATE.....	668
35-5	THE TRIAL JUDGE RULES ON THE RECUSAL MOTION	668
35-6	“JUDGE-SHOPPING” PROHIBITED.....	669
Chapter 36: Appellate Standards in Reviewing Jury Verdict and Trial Court Decisions		671
36-1	APPEAL OF DISMISSAL OF COMPLAINT	671
36-2	APPEAL OF ORDER GRANTING OF SUMMARY JUDGMENT	672
36-3	APPEAL OF TRIAL COURT’S INTERPRETATION OF A CONTRACT.....	672
36-4	APPEAL OF STATUTORY INTERPRETATION.....	673
36-5	APPEAL OF EVIDENTIARY RULINGS.....	673
36-6	APPEAL OF WHETHER THE TRIAL COURT PROPERLY ADMITTED OR EXCLUDED EXPERT TESTIMONY	673
36-7	APPEAL OF JURY INSTRUCTIONS	674
36-8	APPEAL OF JURY VERDICT.....	674
36-9	APPEAL OF TRIAL COURT’S DECISION IN A NON-JURY TRIAL	675
36-10	PRACTICE POINT	676
Table of Cases.....		677
Table of Rules, Statutes, and Jury Instructions		749
Index		757