

Rule 103. Rulings on Evidence

(a) 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

(1) *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

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

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error.

(b) Record of offer and ruling. The court 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. Upon request of any party, the court shall place its ruling on the record. The court may direct the making of an offer in question and answer form.

(c) 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.

(d) Error. Nothing in this rule precludes taking notice of errors in fundamental law or of plain errors affecting substantial rights although they were not brought to the attention of the court.

(Amended effective January 1, 1990; amended effective September 1, 2006.)

Committee Comment - 1989

Rule 103(a) codifies the existing practice in Minnesota. Only error affecting substantial rights is actionable. Minn. R. Civ. P. 61 and Minn. R. Crim. P. 31.01. The rule does not define what is meant by substantial rights but leaves this for case by case decision. Although there are many cases applying this standard no clear cut definition of substantial rights has emerged. The normal procedure in these cases appears to be an examination of the effect of the alleged error upon the trial as a whole for determination as to whether or not the error was prejudicial. See J. Hetland and O. Adamson, Minnesota Practice Rule 61 (1970) and cases cited therein. In criminal cases, certain constitutional errors require automatic reversal, see State v. Schmit, 273 Minn. 78, 88, 139 N.W.2d 800, 807 (1966), whereas others must be harmless beyond a reasonable doubt, Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705, 710, 711 (1967), and see State ex rel. Kopetka v. Tahash, 281 Minn. 52, 56, 160 N.W.2d 399, 402 (1968). See also C. Wright, Federal Practice and Procedure, section 856, rule 52 (1969), and cases cited therein. In cases involving nonconstitutional errors, where the error has the effect of depriving the defendant of a fair trial, the court has applied the reasonable doubt standard, State v. White, 295 Minn. 217, 226, 203 N.W.2d 852, 859 (1973); and something akin to the automatic reversal standard, see, e.g., State v. Flowers, 262 Minn. 164, 169, 114 N.W.2d 78, 81 (1962); State v. Reardon, 245 Minn. 509, 513, 514, 73 N.W.2d 192, 195 (1955). However, in cases involving error of a less grievous type, presumably error not affecting the fairness of the trial process, the Court has inquired into whether it is likely that the error played a substantial part in influencing the jury to convict. State v. Caron, 300 Minn. 123, 127, 128, 218 N.W.2d 197, 200 (1974). See State v. Van Alstine, Minn., 232 N.W.2d 899, 905 (1975); State v. Fields, Minn., 237 N.W.2d 634, 635 (1976); State v. Wilebski, Minn., 238 N.W.2d 213, 215 (1976).

The rule continues the existing practice of requiring not only a timely objection, but a specific objection unless the context of the question makes the grounds for objection obvious. See Kenney v. Chicago Great Western Ry., 245 Minn. 284, 289, 71 N.W.2d 669, 672, 673, certiorari denied 350 U.S. 903, 76 S. Ct. 182, 100 L.Ed. 793 (1955); Adelman v. Elk River Lumber Co., 242 Minn. 388, 393, 394, 65 N.W.2d 661, 666 (1954). Under current practice, a motion in limine to strike or prohibit the introduction of evidence operates as a timely objection and obviates the requirement of any further objection with respect to such evidence. If the Court excludes evidence, an offer of proof must be made to preserve the issue for review unless the substance of the evidence is apparent from its context. See Auger v. Rofshus, 267 Minn. 87, 91, 125 N.W.2d 159, 162 (1963); Wozniak v. Luta, 258 Minn. 234, 241, 103 N.W.2d 870, 875 (1960); Minn. R. Civ. P. 43.03, see also Minn. R. Civ. P. 46, 59.01(6), and Minn. R. Crim. P. 26.03 subd 14(1).

Rule 103(b)

This rule is adapted from Minn. R. Civ. P. 43.03. In order to determine on review whether or not a substantial right of a party was affected by the exclusion of evidence the reviewing court must have some information as to the nature of the excluded testimony. Parties are entitled to have the rulings of the court placed on the record if they so request. The rule gives the court authority to require that the offer of proof be in question and answer form to provide an accurate record for review. It would also be permissible to allow cross-examination of the witness making the offer of proof.

Rule 103(c)

*The rule gives the court the discretion in the conduct of the trial to employ procedures that would minimize the possibility of inadmissible evidence being suggested to the jury. It puts to rest the issue that was unresolved in *In re McConnell*, 370 U.S. 230, 82 S. Ct. 1288, 8 L.Ed.2d 434 (1962) as to whether or not questions on which an offer of proof is based must be asked to a witness in the presence of the jury.*

Rule 103(d)

*This subdivision (d) makes it clear that the rule is not meant to affect the application of the "plain error" rule or the application of Minn. R. Civ. P. 51 with respect to error in fundamental law contained in instructions to the jury. Plain error is a federal term which has recently been adopted in Minn. R. Crim. P. 31.02. See *State ex rel. Rasmussen v. Tahash*, 272 Minn. 539, 550, 551, 141 N.W.2d 3, 11 (1965). The Minnesota Supreme Court has not formally recognized the plain error rule in civil cases although in several cases they have addressed issues on appeal that were not properly preserved by a timely specific objection. E.g., *Rosenfeld v. Rosenfeld*, Minn., 249 N.W.2d 168 (1976); *Jones v. Peterson*, 279 Minn. 241, 156 N.W.2d 733 (1968); *Magistad v. Potter*, 227 Minn. 570, 36 N.W.2d 400 (1949).*

Committee Comment - 2006

Rule 103(a)

*This amendment in Rule 103(a) is taken from the corresponding Fed. R. Evid. 103 and would codify existing practice in Minnesota. See Minn. R. Evid. 103(a) comm. cmt. -- 1989 ("Under current practice, a motion in limine to strike or prohibit the introduction of evidence operates as a timely objection and obviates the requirement of any further objection with respect to such evidence."); *Myers v. Winslow R. Chamberlain Co.*, 443 N.W.2d 211, 216 (Minn. App. 1989) (ruling that objections on the record in chambers need not be repeated at trial to preserve the issue for review). But see *State v. Litzau*, 650 N.W.2d 177, 183 (Minn. 2002) ("Ordinarily, a party need not renew an objection to the admission of evidence to preserve a claim of error for appeal following a ruling*

on a motion in limine. If, however, excluded evidence is offered at trial because the court has changed its initial ruling, the objection should be renewed at trial.") (citation omitted).

The federal rule refers to preserving the claim of error "for appeal." In civil cases in Minnesota to preserve the evidentiary ruling for appeal, in addition to a timely and specific objection, the claim also must be included in a motion for new trial. Sauter v. Wasemiller, 389 N.W.2d 200, 201-02 (Minn. 1986).

The amendment does not prevent an attorney from making an offer of proof where appropriate, or from renewing an objection. Repetitive, cumulative objections should be avoided, but occasionally the context at trial is more developed and may be different from what was anticipated at the time of the former ruling, justifying a renewed objection and perhaps a different ruling.