

NY CLS CPLR R 4516

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New York

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Civil Practice Law And Rules (Arts. 1 — 100) >
Article 45 Evidence (§§ 4501 — 4551)

R 4516. Proof of age of child

Whenever it becomes necessary to determine the age of a child, he may be produced and exhibited to enable the court or jury to determine his age by a personal inspection.

History

Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

Notes

Prior Law:

Earlier statutes: CPA § 334; CCP § 961–a.

Advisory Committee Notes:

This rule is the same as former § 334 with minor language changes and with the omission of the final phrase which read “and such court may direct an examination by one or more physicians, whose opinion shall also be competent evidence upon the question of such age.” The advisory committee recognizes the virtue of a general power to appoint experts but did not propose such a rule in view of its basic decision not to provide an integrated code of evidence. Cf. Report of the Commission on the Administration of Justice in New York State 296–97 (1934); NY Law Rev

Comm'n Rep 797–98 (1936); Uniform Rules of Evidence, Rules 59, 61; NY Co Sup Ct Rules, Special Rule for Medical Examinations in Personal Injury Actions; Cal Code Civ Proc § 1871; SD Code §§ 36.0109, 36.0118 (Supp 1952); RI Gen Laws c. 537, § 20 (1938); Model Expert Testimony Act §§ 1–10. The former provision was so narrow in scope as to be practically useless in civil cases, and it was defective since it made no provision for the payment of the doctor's fees. See, e. g., *International Fastener Co. v Francis Mfg. Co.* 204 App Div 526, 198 NY Supp 455 (4th Dept), *affd* without opinion, 236 NY 673, 142 NE 330 (1923); cf. *Arkansas State Game & Fish Comm. v Kizer*, 222 Ark 673, 262 SW2d 265 (1953). But cf. *Dinsel v Pennsylvania R.R.* 144 F Supp 880 (WD Pa 1956); Fed R Civ P 53(a), 54(d); Annot, 39 ALR2d 1380 (1955). The phrase was not needed for criminal cases—where it was most likely to be used in statutory rape cases—since it was repeated in § 817 of the Penal Law.

Notes to Decisions

1. In general

Civil rule of evidence regarding the age of a child witness, found at N.Y. C.P.L.R. § 4516, applied to defendant's sexual abuse prosecution under N.Y. Crim. Proc. Law § 60.10; the victim's testimony regarding her age was corroborated by the fact that it was readily apparent from her appearance that she was under 11 years old. *People v Petrie*, 3 A.D.3d 665, 771 N.Y.S.2d 242, 2004 N.Y. App. Div. LEXIS 311 (N.Y. App. Div. 3d Dep't 2004).

Research References & Practice Aids

Jurisprudences:

35 NY Jur 2d Criminal Law § 3410. .

58 NY Jur 2d Evidence and Witnesses § 400. .

58A NY Jur 2d Evidence and Witnesses § 737. .

13 Am Jur Legal Forms 2d, Parent and Child, Forms 191:11.– 191:14.

1 Am Jur Proof of Facts 315., Age.

Law Reviews:

Civil jury trial: your proof. 42 NYSB J 52.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4516, Proof of Age of Child.

Matthew Bender's New York Evidence:

1 Bender's New York Evidence § 112.03. Types of Real Evidence.

Hierarchy Notes:

NY CLS CPLR, Art. 45

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