

# **Table of Contents**

## **CHAPTER 1. MOTION IN LIMINE LAW**

### **PART I. OVERVIEW**

#### **A. IN LIMINE LAW AND PROCEDURE**

- § 1:1 Description and purpose of motion
- § 1:2 Authority for motion
- § 1:3 Typical use of motion
- § 1:4 —Limitations on use
- § 1:5 —Preservation of objections
- § 1:6 Timing of motion
- § 1:7 Scope of motion
- § 1:8 Procedural requirements
- § 1:9 —Caution regarding local rules
- § 1:10 Court record of ruling
- § 1:11 Objections

#### **B. DRAFTING SUGGESTIONS**

- § 1:12 Overview
- § 1:13 —File motions supported by facts
- § 1:14 —Be succinct

### **PART II. SAMPLES**

- § 1:15 Sample in limine brief
- § 1:16 Sample in limine order

## **CHAPTER 2. PREJUDICIAL EVIDENCE**

### **PART I. MOTION AUTHORITIES**

#### **A. MOTION TO EXCLUDE PREJUDICIAL EVIDENCE, GENERALLY**

- § 2:1 Suggested motion text
- § 2:2 Motion summary
- § 2:3 Supporting authorities—Exclusion of prejudicial evidence
- § 2:4 —Prejudice defined
- § 2:5 —“Emotional bias”
- § 2:6 Opposing authorities—Generally

§ 2:7 —Broad discretion

**B. MOTION TO EXCLUDE EVIDENCE THAT WILL  
WASTE COURT’S TIME**

§ 2:8 Suggested motion text

§ 2:9 Motion summary

§ 2:10 Supporting authorities—Exclusion of time-wasting  
evidence

§ 2:11 Opposing authorities

**C. MOTION TO EXCLUDE CONFUSING OR  
MISLEADING EVIDENCE**

§ 2:12 Suggested motion text

§ 2:13 Motion summary

§ 2:14 Supporting authorities—Exclusion of confusing or  
misleading evidence

§ 2:15 Opposing authorities

§ 2:16 —Limiting instruction

**D. MOTION TO EXCLUDE EVIDENCE USED TO  
CREATE AN EMOTIONAL BIAS**

§ 2:17 Suggested motion text

§ 2:18 Motion summary

§ 2:19 Supporting authorities—Exclusion of prejudicial  
evidence, generally

§ 2:20 —Exclusion of evidence intended to inflame jurors’  
emotions

§ 2:21 — —Jurors’ self interest as taxpayers

§ 2:22 — —“Golden rule” argument

§ 2:23 — —Evidence of poverty as motive

§ 2:24 Opposing authorities

**E. MOTION TO EXCLUDE OR LIMIT  
CUMULATIVE EVIDENCE**

§ 2:25 Suggested motion text

§ 2:26 Motion summary

§ 2:27 Supporting authorities—Exclusion of cumulative time-  
wasting evidence

§ 2:28 —Exclusion of cumulative evidence

§ 2:29 — —Articles and letters

§ 2:30 — —Credentials

§ 2:31 — —Number of witnesses

§ 2:32 — —Photographs

§ 2:33 — —Reports

## TABLE OF CONTENTS

- § 2:34 — —Witness testimony
- § 2:35 — —Videotape evidence
- § 2:36 —Repetitive testimony
- § 2:37 —Rebuttal testimony
- § 2:38 Opposing authorities—General authority
- § 2:39 —Number of witnesses
- § 2:40 —Videotape evidence
- § 2:41 —Photographs

## PART II. SAMPLE MOTIONS

- § 2:42 Motion to exclude confusing evidence
- § 2:43 Motion to exclude cumulative evidence
- § 2:44 Motion to exclude prejudicial evidence
- § 2:45 Motion to exclude evidence that will confuse the jury
- § 2:46 Motion to exclude evidence of defendant's poverty
- § 2:47 Opposition to motion to exclude prejudicial evidence
- § 2:48 Opposition to motion to exclude cumulative witness testimony
- § 2:49 Opposition to motion to exclude evidence that will confuse the jury

## CHAPTER 3. IRRELEVANT EVIDENCE

### PART I. MOTION AUTHORITIES

#### A. MOTION TO EXCLUDE IRRELEVANT EVIDENCE

- § 3:1 Suggested motion text
- § 3:2 Motion summary
- § 3:3 Supporting authorities—Exclusion of irrelevant evidence, generally
  - § 3:4 — —Matters not in dispute
  - § 3:5 — —No unlimited inquiry
  - § 3:6 — —Other states' laws
  - § 3:7 — —Outside pleadings
  - § 3:8 — —Prejudicial
  - § 3:9 — —Speculative evidence
  - § 3:10 — —Court's discretion
  - § 3:11 — —Too remote
- § 3:12 Opposing authorities

#### B. MOTION TO EXCLUDE EVIDENCE OF MATTERS NOT IN CONTROVERSY

- § 3:13 Suggested motion text
- § 3:14 Motion Summary

- § 3:15 Supporting authorities—Exclusion of irrelevant evidence, generally
- § 3:16 — —Admitted or uncontroverted matters
- § 3:17 — —Collateral issues
- § 3:18 — —Unpleaded issues
- § 3:19 Opposing authorities
- § 3:20 —Collateral issues
- § 3:21 —Estoppel: unpleaded issues
- § 3:22 —Where relevant to other issues
- § 3:23 —Admissibility of evidence despite uncontested issue

## **PART II. SAMPLE MOTIONS**

- § 3:24 Motion to exclude irrelevant evidence (immigration status)
- § 3:25 Motion to exclude evidence of physical conditions not at issue
- § 3:26 Motion to exclude irrelevant evidence (insurance case)
- § 3:27 Motion to exclude collateral and irrelevant evidence
- § 3:28 Motion to exclude evidence relating to unpleaded issues

## **CHAPTER 4. WRITINGS & PHYSICAL EVIDENCE**

### **PART I. MOTION AUTHORITIES**

#### **A. MOTION TO EXCLUDE EVIDENCE LACKING FOUNDATION**

- § 4:1 Suggested motion text
- § 4:2 Motion summary
- § 4:3 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:4 —Preliminary facts—Definition
- § 4:5 — —Determination out of jury presence
- § 4:6 — —Conditional admissibility of evidence
- § 4:7 — —Determining existence of preliminary facts
- § 4:8 —Improper foundation, generally
- § 4:9 — —Photographs
- § 4:10 — —Tape recordings
- § 4:11 — —Tests and experiments
- § 4:12 — —Videotapes and motion pictures
- § 4:13 — —Witness testimony—Experts
- § 4:14 — —Witness testimony—Lay
- § 4:15 — —Writings
- § 4:16 — —Medical reports
- § 4:17 — —Objects or things

## TABLE OF CONTENTS

- § 4:18 Opposing authorities—General
- § 4:19 —Conditional admissibility
- § 4:20 —Outside juror’s presence
- § 4:21 —Weight vs. admissibility

### B. MOTION TO EXCLUDE WRITINGS, GENERALLY

- § 4:22 Suggested motion text
- § 4:23 Motion summary
- § 4:24 Supporting authorities—“Writing” defined
- § 4:25 — —Inadequate foundation
- § 4:26 —Unauthenticated writings—General authentication  
requirement
- § 4:27 — —Exclusion of unauthenticated writings
- § 4:28 —Inadmissible hearsay—Generally
- § 4:29 — —Examples of inadmissible written hearsay
- § 4:30 —Inadmissible secondary evidence
- § 4:31 —Examples of writings held inadmissible
- § 4:32 Opposing authorities—Authentication
- § 4:33 — —Adequate foundations—Examples
- § 4:34 —Hearsay—Hearsay exceptions, generally
- § 4:35 —Secondary evidence
- § 4:36 —Lists

### C. MOTION TO EXCLUDE GRUESOME OR INFLAMMATORY PHOTOGRAPHS

- § 4:37 Suggested motion text
- § 4:38 Motion summary
- § 4:39 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 4:40 —Exclusion of irrelevant evidence, generally
- § 4:41 —Gruesome or inflammatory photographs
- § 4:42 —Purpose to inflame jurors’ emotions
- § 4:43 —Exclusion of photographs, generally
- § 4:44 —X-rays
- § 4:45 —Accident and crime scene photographs, generally
- § 4:46 —Other grounds
- § 4:47 Opposing authorities—Photographs, generally
- § 4:48 — —Adequate foundation
- § 4:49 — —Enlarged photographs
- § 4:50 —Gruesome photographs
- § 4:51 —X-rays
- § 4:52 —Accident and crime scene photographs
- § 4:53 —Less discretion to exclude at penalty phase

**D. MOTION TO EXCLUDE PREJUDICIAL FILM  
OR VIDEOTAPES**

- § 4:54 Suggested motion text
- § 4:55 Motion summary
- § 4:56 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 4:57 —Exclusion of videotape evidence
- § 4:58 —Other grounds
- § 4:59 Opposing authorities—Generally
- § 4:60 —Relevance
- § 4:61 —Cautionary admonition
- § 4:62 —Adequate foundation

**E. MOTION TO EXCLUDE PUBLISHED ARTICLES**

- § 4:63 Suggested motion text
- § 4:64 Motion summary
- § 4:65 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 4:66 —Exclusion of published articles—Cumulative
- § 4:67 — —Hearsay
- § 4:68 — —Prejudicial
- § 4:69 — —Other grounds
- § 4:70 Opposition authorities—Where relevant to issues
- § 4:71 —Nonhearsay

**F. MOTION TO EXCLUDE LETTERS**

- § 4:72 Suggested motion text
- § 4:73 Motion summary
- § 4:74 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 4:75 —Exclusion of letters—Generally
- § 4:76 — —Hearsay
- § 4:77 — —Irrelevant
- § 4:78 — —Cumulative
- § 4:79 — —Lack of foundation
- § 4:80 —Other grounds
- § 4:81 Opposing authorities—Generally
- § 4:82 —Exceptions to hearsay rule
- § 4:83 — —Business records exception
- § 4:84 — —Public records exception
- § 4:85 —Relevant
- § 4:86 —Inconsistent statement

**G. MOTION TO EXCLUDE MAPS, MODELS,  
CHARTS, EXHIBITS AND DEMONSTRATIVE  
EVIDENCE**

- § 4:87 Suggested Motion Text

## TABLE OF CONTENTS

§ 4:88	Motion Summary
§ 4:89	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 4:90	—Court’s discretion
§ 4:91	—Exclusion of maps, models or charts
§ 4:92	—Exhibits
§ 4:93	—Demonstrations
§ 4:94	—Illustrations and diagrams
§ 4:95	—Other grounds
§ 4:96	Opposing authorities—Illustrative purposes
§ 4:97	—Where accuracy not disputed
§ 4:98	—Relevant to issues
§ 4:99	—Discretion of court
§ 4:100	—Lists
§ 4:101	—Computer databases
§ 4:102	—Maps, models or charts, generally
§ 4:103	—Diagrams and illustrations
§ 4:104	—Demonstrations
§ 4:105	— — Demonstration of injury

### H. MOTION TO EXCLUDE IMPROPER MEDICAL RECORDS, REPORTS OR BILLS

§ 4:106	Suggested motion text
§ 4:107	Motion summary
§ 4:108	Supporting authorities—Exclusion of prejudicial matter, generally
§ 4:109	—Improper foundation, generally
§ 4:110	—Medical opinions—Improper hearsay evidence
§ 4:111	— — Opinions of others—Lack of personal knowledge
§ 4:112	—Patient medical history
§ 4:113	— — Improper hearsay
§ 4:114	—Billing records—Lack of foundation
§ 4:115	— — — Failure to pay medical bill
§ 4:116	—Discretion of court
§ 4:117	—Other grounds
§ 4:118	Opposition citations—Proper authentication
§ 4:119	—Opinions of others—Opinion used in formation of diagnosis and treatment
§ 4:120	— — Business records exception
§ 4:121	—Patient history—Observations of physician
§ 4:122	— — Relevant
§ 4:123	—Medical billing records—Reasonableness of charges

### I. MOTION TO EXCLUDE SOCIAL MEDIA EVIDENCE

§ 4:124	Suggested motion text
---------	-----------------------

- § 4:125 Motion summary
- § 4:126 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:127 —Exclusion of social media evidence—Generally
- § 4:128 — —Hearsay
- § 4:129 — —Lack of foundation or authentication
- § 4:130 —Other grounds
- § 4:131 Opposing authorities—Generally
- § 4:132 —Nonhearsay
- § 4:133 —Proper foundation or authentication

## **PART II. SAMPLE MOTIONS**

- § 4:134 Motion to exclude gruesome photographs
- § 4:135 Motion to admit videotape evidence
- § 4:136 Motion to exclude demonstration
- § 4:137 Motion to exclude written letter
- § 4:138 Motion to exclude plaintiff’s medical history
- § 4:139 Motion to exclude newspaper article
- § 4:140 Motion to exclude evidence of inflammatory and prejudicial photographs
- § 4:141 Motion to exclude demonstration of defendant’s tattoo
- § 4:142 Motion to exclude social media evidence
- § 4:143 Motion to exclude map
- § 4:144 Motion to exclude unauthenticated video recording
- § 4:145 Motion to exclude accident report
- § 4:146 Motion to exclude text messages
- § 4:147 Opposition to motion to exclude social media evidence
- § 4:148 Opposition to motion to exclude prejudicial photographs
- § 4:149 Opposition to motion to exclude text messages

## **CHAPTER 5. TESTS & SCIENTIFIC EVIDENCE**

### **PART I. MOTION AUTHORITIES**

#### **A. MOTION TO EXCLUDE TESTS, EXPERIMENTS AND RELATED TESTIMONY**

- § 5:1 Suggested motion text
- § 5:2 Motion summary
- § 5:3 Supporting authorities—Expert not qualified to testify on subject
- § 5:4 —Not generally accepted
- § 5:5 —Not made under substantially identical conditions
- § 5:6 —Not reliable
- § 5:7 —Scientific procedures not proper



## TABLE OF CONTENTS

- § 5:8 —Speculative or conjectural
- § 5:9 —Too many variables
- § 5:10 —Too time-consuming / collateral issues
- § 5:11 —Lack of foundation
- § 5:12 —Other grounds
- § 5:13 Opposing authorities—In general
- § 5:14 — —Court’s discretion
- § 5:15 —Identical conditions requirement
- § 5:16 —General acceptance—Published precedent
- § 5:17 — —Level of acceptance in scientific community
- § 5:18 —Weight vs. admissibility
- § 5:19 — —Careless testing
- § 5:20 —Qualification as expert
- § 5:21 —Opinion based on legitimate matters

### B. MOTION TO EXCLUDE JUNK SCIENCE AND RELATED EVIDENCE

- § 5:22 Suggested motion text
- § 5:23 Motion summary
- § 5:24 Supporting authorities—Exclusion of new scientific evidence—Generally
- § 5:25 —Hedonic damage evidence
- § 5:26 —“Truth-Serum” evidence
- § 5:27 —Polygraph evidence
- § 5:28 — —Refusal to take polygraph test
- § 5:29 —Psychological tests and syndromes—In general
- § 5:30 — —Rape trauma syndrome
- § 5:31 — — —Child sexual abuse accommodation syndrome
- § 5:32 — — —Pedophilia profile
- § 5:33 — —Electronic Penile Plethysmograph test
- § 5:34 —Hypnosis evidence
- § 5:35 —Voiceprint identification
- § 5:36 —Accident reconstruction evidence
- § 5:37 —Biomechanic evidence
- § 5:38 — —Low-speed impact cases
- § 5:39 —Statistical evidence—Exclusion of confusing evidence
- § 5:40 — —Disapproved statistics evidence, generally
- § 5:41 — —Statistics in civil cases
- § 5:42 — —Statistics in employment discrimination cases
- § 5:43 —Dog tracking
- § 5:44 —Battered women’s syndrome
- § 5:45 —Urine test results
- § 5:46 —Comparative bullet analysis
- § 5:47 Opposing authorities—In general
- § 5:48 — —Where Daubert test not required
- § 5:49 — —Approved tests

- § 5:50 —Hedonic damages
- § 5:51 —Truth serum
- § 5:52 —Polygraph evidence—Where used as proof of matter  
other than truth
- § 5:53 — —Where used for investigative purposes
- § 5:54 —Psychological tests—Compare: psychological tests vs.  
psychological opinion
- § 5:55 — —Rape trauma syndrome—Where not used to show  
rape occurred
- § 5:56 — —“Battered Woman Syndrome”
- § 5:57 —Hypnosis evidence—Hypnosis in criminal cases
- § 5:58 — —Exceptions to inadmissibility
- § 5:59 —Statistics evidence—General acceptance
- § 5:60 — —Weight vs. admissibility
- § 5:61 — —Compare: psychological profiling
- § 5:62 — —Judicial notice
- § 5:63 —Accident reconstruction and biomechanic evidence

## **PART II. SAMPLE MOTIONS**

- § 5:64 Motion to exclude evidence of statistical analysis
- § 5:65 Motion to exclude evidence of polygraph examination
- § 5:66 Motion to exclude evidence of hypnosis
- § 5:67 Motion to exclude expert testimony
- § 5:68 Motion to exclude expert testimony (credibility of  
witness)
- § 5:69 Motion to exclude biomechanic evidence

## **CHAPTER 6. DISCOVERY MOTIONS**

### **PART I. MOTION AUTHORITIES**

#### **A. MOTION FOR EVIDENTIARY SANCTIONS**

- § 6:1 Suggested motion text
- § 6:2 Motion summary
- § 6:3 Supporting authorities—General authority [C.R.  
37.02]—Misuse of discovery process
- § 6:4 — —Evidence sanction under CR 37.02(a)
- § 6:5 — —Issue sanction under CR 37.02(b)
- § 6:6 — —Terminating sanction under CR 37.02(c)
- § 6:7 — —When prior order unnecessary
- § 6:8 — —Willfulness requirement
- § 6:9 —Depositions [CR 30.01 to 30.07; 37.01, 37.02, 37.04  
]—Failure to comply with discovery order
- § 6:10 — —Evidence exclusion
- § 6:11 — —Harsher sanctions—Termination or default
- § 6:12 —Interrogatories [CR 33.01 to 33.03; 37.01, 37.02,  
37.04]—Failure to comply with discovery order

## TABLE OF CONTENTS

§ 6:13	— —Evidentiary sanctions
§ 6:14	— —Harsher sanctions—Dismissal
§ 6:15	—Production requests [CR 34.01 to 34.03; 37.01, 37.02, 37.04]—Failure to comply with discovery order
§ 6:16	— —Evidentiary sanctions
§ 6:17	— —Harsher sanctions—Termination or default
§ 6:18	—Mental and Physical Examinations [CR 35.01; 35.02; 37.02]—Failure to comply with discovery order
§ 6:19	— —Terminating sanctions
§ 6:20	—Requests for admission [CR 36.01; 36.02; 37.02]— Deeming non-responsive matters admitted
§ 6:21	— —Failure to comply with discovery order [CR 37.02; 37.03]
§ 6:22	— —Terminating sanctions
§ 6:23	—Failure to disclose identity of witnesses, generally
§ 6:24	— —Compare: faulty expert designations or declarations
§ 6:25	—Other grounds
§ 6:26	Opposing authorities—Generally
§ 6:27	— —Sanction should be appropriate to level of misconduct
§ 6:28	— —Reasonable alternative remedy
§ 6:29	— —Willfulness requirement
§ 6:30	—Depositions
§ 6:31	—Interrogatories
§ 6:32	—Requests for production
§ 6:33	—Matters deemed admitted
§ 6:34	—No prior order

### B. MOTION TO CONCLUSIVELY ESTABLISH ADMITTED MATTERS

§ 6:35	Suggested motion text
§ 6:36	Motion summary
§ 6:37	Supporting authorities—Conclusive establishment of admitted matters [CR 36.01]
§ 6:38	—Purpose of discovery
§ 6:39	Opposing authorities

### C. MOTION TO EXCLUDE EVIDENCE OF CLAIMS DENIED DURING DISCOVERY

§ 6:40	Suggested motion text
§ 6:41	Motion summary
§ 6:42	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 6:43	— —Unfair surprise
§ 6:44	— —Where privilege raised during discovery

- § 6:45 —Other grounds
- § 6:46 Opposing authorities

#### D. MOTIONS RE IMPROPER EXPERT WITNESS DISCLOSURE

- § 6:47 Suggested motion text
- § 6:48 Motion summary
- § 6:49 Supporting authorities—Expert witness disclosure [CR 26.02]
- § 6:50 —Deficient declaration
- § 6:51 — —Retained experts—Declaration required
- § 6:52 — —Non-retained experts—No declaration required
- § 6:53 —Undisclosed witness
- § 6:54 —Opinions not referenced at deposition
- § 6:55 Opposing authorities—Expert witness disclosure
- § 6:56 — —Continuance
- § 6:57 —Opposition to motion based on expert’s failure to reference opinions at deposition
- § 6:58 — —No obligation to volunteer information
- § 6:59 — —No effort to follow up by deposing party
- § 6:60 — —Compensation or prior testimony information
- § 6:61 — —Opportunity to re-depose experts

### PART II. SAMPLE MOTIONS

- § 6:62 Motion to exclude evidence of claim denied during discovery
- § 6:63 Motion to exclude testimony of expert witness
- § 6:64 Motion to exclude evidence of medical bills for services obtained after *[date]*
- § 6:65 Motion to exclude testimony of undisclosed witness
- § 6:66 Motion to exclude evidence produced beyond discovery deadline
- § 6:67 Motion to deem matters admitted
- § 6:68 Motion for sanction establishing facts
- § 6:69 Motion to exclude expert testimony relating to matters not disclosed during discovery
- § 6:70 Motion for evidentiary sanctions for failure to serve answers/objections to interrogatories
- § 6:71 Opposition to defendants’ motion to limit plaintiff’s expert’s opinions
- § 6:72 Motion for order rendering default judgment as discovery sanction

## **CHAPTER 7. CHARACTER EVIDENCE**

### **PART I. MOTION AUTHORITIES**

#### **A. OVERVIEW OF CHARACTER EVIDENCE**

- § 7:1 Admissible character evidence
- § 7:2 Character evidence subject to exclusion

#### **B. MOTION TO EXCLUDE CHARACTER EVIDENCE USED FOR IMPEACHMENT**

- § 7:3 Suggested motion text
- § 7:4 Motion summary
- § 7:5 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:6 —Exclusion of irrelevant evidence, generally
- § 7:7 —Exclusion of improper impeachment evidence, generally
- § 7:8 — —Alcohol consumption
- § 7:9 — —Investigations, arrests or misdemeanor convictions
- § 7:10 — —Drug use
- § 7:11 — —Convictions
- § 7:12 — —Fraudulent acts
- § 7:13 — —Good character of witness
- § 7:14 — —Religious belief
- § 7:15 — —Sexual preference or behavior
- § 7:16 — —Collateral issues
- § 7:17 — —Excluding evidence of expert’s bias
- § 7:18 — —Excluding evidence of bias
- § 7:19 —Other grounds
- § 7:20 Opposing authorities—Facts at issue
- § 7:21 —Witness perceptions
- § 7:22 —Impeachment, generally
- § 7:23 — —Witness veracity
- § 7:24 — —Witness bias
- § 7:25 — —Collateral matters
- § 7:26 —Alcohol related offenses
- § 7:27 —Religious beliefs
- § 7:28 —Good character—Opening the door doctrine

#### **C. MOTION TO EXCLUDE CHARACTER EVIDENCE USED TO PROVE CONDUCT**

- § 7:29 Suggested motion text
- § 7:30 Motion summary
- § 7:31 Supporting authorities—Exclusion of prejudicial evidence, generally

- § 7:32 —Exclusion of irrelevant evidence, generally
- § 7:33 —Exclusion of improper character evidence
- § 7:34 — —Care or skill in negligence cases
- § 7:35 — —Crimes evidence, generally
- § 7:36 —Other grounds
- § 7:37 Opposing authorities—Court’s discretion
- § 7:38 —Relevant to material issue
- § 7:39 —Witness impeachment
- § 7:40 —Trait at issue

#### D. MOTION TO EXCLUDE PRIOR CRIME EVIDENCE

- § 7:41 Suggested motion text
- § 7:42 Motion summary
- § 7:43 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:44 —Exclusion of irrelevant evidence, generally
- § 7:45 —Exclusion of crime Evidence, generally
- § 7:46 —Prior felony
- § 7:47 — —Balancing prejudicial impact of evidence
- § 7:48 — —Must reflect on credibility
- § 7:49 — —Moral turpitude
- § 7:50 — —Improper character evidence
- § 7:51 — —Remote convictions
- § 7:52 —Prior arrest or misdemeanor conviction
- § 7:53 — —Possession of firearm
- § 7:54 —Prior criminal plea—Nolo contendere and Alford pleas (non felony)
- § 7:55 —Uncharged offenses
- § 7:56 —Violent character
- § 7:57 —Collateral issues
- § 7:58 —Other grounds
- § 7:59 Opposing authorities—Impeachment expressly allowed regarding felonies
- § 7:60 —Moral turpitude crimes
- § 7:61 —Remoteness of conviction
- § 7:62 —Impeachment with prior qualifying conviction (criminal cases)
- § 7:63 — —Impeachment with prior convictions—Civil cases
- § 7:64 —Admissible plea evidence—Nolo contendere and Alford pleas
- § 7:65 — —Guilty plea
- § 7:66 —Uncharged offenses—Weight vs. admissibility
- § 7:67 —Violent character
- § 7:68 — —Similarity of incidents (relevance)
- § 7:69 —Capital cases—Penalty phase

## TABLE OF CONTENTS

### **PART II. SAMPLE MOTIONS**

- § 7:70 Motion to exclude evidence of alcoholism of percipient witness
- § 7:71 Motion to exclude evidence of prior felony conviction
- § 7:72 Motion to exclude evidence of witness' habit of intemperance
- § 7:73 Motion to exclude improper character evidence (marital infidelity)
- § 7:74 Motion to exclude evidence of religious beliefs
- § 7:75 Motion to exclude improper character evidence (juvenile adjudication)
- § 7:76 Motion to exclude improper character evidence (prescription drug abuse)
- § 7:77 Motion to exclude evidence of prior arrest of witness
- § 7:78 Motion to exclude evidence regarding witness's mental health
- § 7:79 Opposition to motion to exclude inflammatory evidence

### **CHAPTER 8. WITNESS EVIDENCE**

#### **PART I. MOTION AUTHORITIES**

##### **A. MOTION TO EXCLUDE IMPROPER EXPERT OPINION**

- § 8:1 Suggested motion text
- § 8:2 Motion summary
- § 8:3 Supporting authorities—Exclusion of improper opinion, generally
  - § 8:4 — —Inadequate foundation
  - § 8:5 — —Hypothetical questions
  - § 8:6 — —Inadmissible hearsay
  - § 8:7 — —Opinions of others
  - § 8:8 — —Statements of others
  - § 8:9 — —Treatises, documents & texts
  - § 8:10 — —Legal questions
  - § 8:11 — —Ultimate issues
  - § 8:12 — —Matters of common experience
  - § 8:13 — —Not reasonably relied upon by experts
  - § 8:14 — —Not perceived or personally known
  - § 8:15 — —Speculation or conjecture
  - § 8:16 — —Too many variables
  - § 8:17 — —Uncooperative witness
  - § 8:18 — —Usurping jury function
  - § 8:19 — —Irrelevant matters
  - § 8:20 — —Improper profile evidence
  - § 8:21 — —Outside area of specialty or expertise

- § 8:22 —Cumulative testimony
- § 8:23 —Other grounds
- § 8:24 Opposing authorities—Generally
- § 8:25 —Hearsay
- § 8:26 — —Statements of others
- § 8:27 — —Treatises, documents and text
- § 8:28 —Hypothetical questions
- § 8:29 —Ultimate issues
- § 8:30 —Uncooperative witness
- § 8:31 —Expert’s perceptions
- § 8:32 —Cumulative testimony

#### B. MOTION TO EXCLUDE TESTIMONY OF NON-QUALIFIED EXPERT

- § 8:33 Suggested motion text
- § 8:34 Motion summary
- § 8:35 Supporting authorities—Exclusion of non-qualified experts
- § 8:36 —Improper qualifications: examples
- § 8:37 —Other grounds
- § 8:38 Opposing authorities—Generally

#### C. MOTION TO EXCLUDE LAY WITNESS TESTIMONY

- § 8:39 Suggested motion text
- § 8:40 Motion summary
- § 8:41 Supporting authorities—Exclusion of non-expert opinion
- § 8:42 — —Causation
- § 8:43 — —Legal opinions
- § 8:44 — —Lay experiments
- § 8:45 —Other grounds
- § 8:46 Opposing authorities—Perceptions of witness
- § 8:47 — —Sanity
- § 8:48 —Helpful to clear understanding
- § 8:49 —Medical malpractice cases—“Common knowledge” exception

#### D. MOTION TO EXCLUDE TESTIMONY OF INCOMPETENT WITNESS

- § 8:50 Suggested motion text
- § 8:51 Motion summary
- § 8:52 Supporting Authorities—Inability to express self or tell truth
- § 8:53 — —Children



## TABLE OF CONTENTS

- § 8:54 —Lack of mental competence / insanity
- § 8:55 —Lack of personal knowledge of subject matter
- § 8:56 —Other grounds
- § 8:57 Opposing authorities—General authority
- § 8:58 —Children
- § 8:59 —Mental competence / insanity
- § 8:60 —Lack of personal knowledge of subject matter

### E. MOTION TO EXCLUDE TESTIMONY OF JUDGE, ARBITRATOR, MEDIATOR, ATTORNEY OR JUROR

- § 8:61 Suggested motion text
- § 8:62 Motion summary
- § 8:63 Supporting authorities—Judge as witness
- § 8:64 —Attorney as witness
- § 8:65 —Juror as witness
- § 8:66 Opposing authorities—Attorney testimony—  
Uncontested matter
- § 8:67 — —Value of legal services
- § 8:68 — —Waiver
- § 8:69 — —Allowed to prevent a crime or injury
- § 8:70 — —Extraordinary circumstances—Irreparable harm
- § 8:71 —Judge or referee testimony

### F. MOTION TO EXCLUDE WITNESS FROM COURTROOM PRIOR TO TESTIFYING

- § 8:72 Suggested motion text
- § 8:73 Motion summary
- § 8:74 Supporting authorities—Exclusion of non-party  
witnesses from courtroom
- § 8:75 —Criminal cases
- § 8:76 Opposing authorities—Discretionary decision
- § 8:77 —Cannot exclude party
- § 8:78 —Essential to case
- § 8:79 —Purpose of rule

### G. MOTION TO EXCLUDE COMMENT ON EXERCISE OF PRIVILEGE (NOT TO TESTIFY)

- § 8:80 Suggested motion text
- § 8:81 Motion summary
- § 8:82 Supporting authorities—No-comment rule
- § 8:83 Opposing authorities—Allowable inferences
- § 8:84 —Civil consequences of silence
- § 8:85 —Waiver or failure to invoke
- § 8:86 —Overwhelming evidence

§ 8:87 —Intent

## H. MOTION TO EXCLUDE EVIDENCE OF NON-CALLED WITNESSES

- § 8:88 Suggested motion text
- § 8:89 Motion summary
- § 8:90 Supporting authorities—Exclusion of prejudicial evidence, generally
  - § 8:91 —Where witness was equally available to testify
  - § 8:92 —Where comments would invite speculation
  - § 8:93 —Where other adequate evidence
  - § 8:94 —Where reason for unavailability would be prejudicial
  - § 8:95 —Other grounds
- § 8:96 Opposition citations—Generally
  - § 8:97 —Non-calling of material witness
  - § 8:98 —Question of weight, not admissibility

## I. MOTION TO EXCLUDE HEARSAY EVIDENCE

- § 8:99 Suggested motion text
- § 8:100 Motion summary
- § 8:101 Supporting authorities—General authority for exclusion
  - § 8:102 —Purpose of rule
  - § 8:103 —Written hearsay—General authority for exclusion
  - § 8:104 — —Examples
  - § 8:105 — —Multiple hearsay
- § 8:106 Opposing authorities—Hearsay exceptions, generally
  - § 8:107 — —Purpose of exceptions to hearsay rule
  - § 8:108 —Non-hearsay evidence
  - § 8:109 —Non-assertive conduct
  - § 8:110 —Multiple hearsay
  - § 8:111 —Hearsay used to impeach witness credibility
  - § 8:112 —Broad discretion

## PART II. SAMPLE MOTIONS

- § 8:113 Motion to exclude speculative expert opinion
- § 8:114 Motion to exclude reference to non-called witnesses
- § 8:115 Motion to preclude non-chiropractor from giving opinion on necessity of chiropractic treatment
- § 8:116 Motion to exclude evidence of computerized valuations of plaintiff's business, with alternative motion for a *Daubert* hearing regarding the validity of the methodology
- § 8:117 Motion to exclude testimony and opinions of medical doctor

## TABLE OF CONTENTS

- § 8:118 Motion to exclude lay witness testimony (causation)
- § 8:119 Motion to exclude witness from courtroom prior to testifying
- § 8:120 Motion to exclude testimony of witness for lack of personal knowledge of subject matter
- § 8:121 Motion to exclude testimony of mediator
- § 8:122 Opposition to motion to exclude lay witness evidence
- § 8:123 Opposition to motion to exclude expert witness testimony (non-qualified)
- § 8:124 Motion to exclude testimony of incompetent witness

## CHAPTER 9. TRIAL PRESENTATION

### PART I. MOTION AUTHORITIES

#### A. MOTION TO PREVENT IMPROPER VOIR DIRE

- § 9:1 Suggested motion text
- § 9:2 Motion summary
- § 9:3 Supporting authorities—Improper voir dire
- § 9:4 —Preconditioning
- § 9:5 — —Preconditioning regarding dollar amount of damages
- § 9:6 —Educating jury on the law
- § 9:7 —Other grounds
- § 9:8 Opposing authorities—Generally
- § 9:9 —Lack of prejudice or bad faith (reference to insurance)

#### B. MOTION TO EXCLUDE IMPROPER ARGUMENT IN OPENING STATEMENT

- § 9:10 Suggested motion text
- § 9:11 Motion summary
- § 9:12 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 9:13 —Exclusion of prejudicial matter in opening statement
- § 9:14 —Other grounds
- § 9:15 Opposing authorities

#### C. MOTION TO BAR PREMATURE REBUTTAL TO AFFIRMATIVE DEFENSES

- § 9:16 Suggested motion text
- § 9:17 Motion summary
- § 9:18 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 9:19 —Order of proof
- § 9:20 Opposing authorities

**D. MOTION TO EXCLUDE REFERENCE TO LOST  
OR DESTROYED EVIDENCE**

- § 9:21 Suggested motion text
- § 9:22 Motion summary
- § 9:23 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 9:24 —Exclusion of lost or destroyed evidence
- § 9:25 — —Accidental destruction of evidence
- § 9:26 — —Intentional destruction or suppression of evidence
- § 9:27 — —A note on tort of spoliation of evidence
- § 9:28 —Other grounds
- § 9:29 Opposition citations—Generally
- § 9:30 —Other remedies

**E. MOTION TO EXCLUDE EVIDENCE OF  
DAMAGES IN BIFURCATED TRIAL**

- § 9:31 Suggested motion text
- § 9:32 Motion summary
- § 9:33 Supporting authorities—Statutory authority
- § 9:34 —Discretion and policy considerations
- § 9:35 —Other grounds
- § 9:36 Opposing authorities—Liability issues relevant to  
damages
- § 9:37 —Inappropriate matter

**F. MOTION TO PRECLUDE “GOLDEN RULE  
ARGUMENT”**

- § 9:38 Suggested motion text
- § 9:39 Motion summary
- § 9:40 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 9:41 —Rejection of “Golden Rule Argument”
- § 9:42 —Other grounds

**G. MOTION TO EXCLUDE IMPROPER  
TERMINOLOGY**

- § 9:43 Suggested motion text
- § 9:44 Motion summary
- § 9:45 Supporting authorities—Confusing evidence
- § 9:46 —Terms containing legal conclusions
- § 9:47 —Testimony on ultimate issues—Exclusion of ultimate  
issue evidence
- § 9:48 — —General admissibility of ultimate issue opinions  
[KRE 401]

## TABLE OF CONTENTS

- § 9:49 —Misused terms
- § 9:50 —Preconditioning jury
- § 9:51 —Usurping jury function
- § 9:52 —Meaning of statute
- § 9:53 Opposing authorities—Legal questions vs. ultimate issues
- § 9:54 — —Compare: legal conclusions (non-jury case)

### H. MOTION TO SUBMIT JUROR QUESTIONNAIRE

- § 9:55 Suggested motion text
- § 9:56 Motion summary
- § 9:57 Supporting authorities—Generally
- § 9:58 —Judicial economy
- § 9:59 Opposing authorities—Court’s discretion

## PART II. SAMPLE MOTIONS

- § 9:60 Motion to exclude reference to lost or destroyed evidence
- § 9:61 Motion to allow use of jury questionnaire during voir dire
- § 9:62 Motion to exclude mediation evidence
- § 9:63 Motion to preclude golden rule argument
- § 9:64 Motion to exclude evidence of damages in bifurcated trial
- § 9:65 Motion to prevent improper voir dire
- § 9:66 Motion to exclude improper argument during opening statement
- § 9:67 Motion to bar premature rebuttal to affirmative defense
- § 9:68 Opposition to motion for missing evidence instruction

## CHAPTER 10. PERSONAL INJURY MOTIONS

### PART I. MOTION AUTHORITIES

#### A. MOTION TO EXCLUDE EVIDENCE OF COLLATERAL SOURCE PAYMENTS

- § 10:1 Suggested motion text
- § 10:2 Motion summary
- § 10:3 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:4 —Exclusion of irrelevant evidence, generally
- § 10:5 —Exclusion of collateral source evidence, generally

- § 10:6 — —Gratuitous payments
- § 10:7 — —Medical or liability policy payments
- § 10:8 — —Disability benefits
- § 10:9 — —Workers compensation benefits
- § 10:10 — —Wage payments
- § 10:11 — —Tax benefit
- § 10:12 —Other grounds
- § 10:13 Opposing authorities—Exception: contract cases
- § 10:14 —Not “wholly independent” source
- § 10:15 — —Payments to co-tortfeasor
- § 10:16 —Relevant to issues in case
- § 10:17 — —Malingering
- § 10:18 — —Financial Hardship
- § 10:19 —Immunity
- § 10:20 —Payment not a collateral source

#### B. MOTION TO EXCLUDE EVIDENCE OF LIABILITY INSURANCE

- § 10:21 Suggested motion text
- § 10:22 Motion summary
- § 10:23 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 10:24 —Exclusion of irrelevant evidence, generally
- § 10:25 —Exclusion of Liability Insurance Evidence
- § 10:26 — —Evidence of defendant’s lack of insurance
- § 10:27 —Irrelevant
- § 10:28 —Other grounds
- § 10:29 Opposing authorities—Cross-examination
- § 10:30 —Where relevant to issues or otherwise admissible
- § 10:31 —Incidental reference to insurance
- § 10:32 —Non-prejudicial references to insurance
- § 10:33 —Admission of fault
- § 10:34 —To prove ownership or employment

#### C. MOTION TO EXCLUDE SETTLEMENT EVIDENCE

- § 10:35 Suggested motion text
- § 10:36 Motion summary
- § 10:37 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 10:38 —Exclusion of irrelevant evidence, generally
- § 10:39 —Exclusion of settlement evidence used to show  
liability
- § 10:40 — —Prior Settlements
- § 10:41 — —Settlement negotiations

## TABLE OF CONTENTS

- § 10:42 — —Settlement with co-defendants
- § 10:43 — —Where offer made prior to litigation
- § 10:44 — —Offer to compromise
- § 10:45 —Other Grounds
- § 10:46 Opposing Authorities—Purpose other than to show liability—Admission against interest
- § 10:47 — —Bias or prejudice
- § 10:48 — —Contract issues
- § 10:49 — —Impeachment
- § 10:50 — —Settlement with co-defendant: pro tanto reduction of verdict
- § 10:51 — —State of mind
- § 10:52 — —Settlement negotiation in insurance cases

### D. MOTION TO EXCLUDE EVIDENCE OF OTHER ACCIDENTS, CLAIMS OR LAWSUITS

- § 10:53 Suggested motion text
- § 10:54 Motion summary
- § 10:55 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:56 —Exclusion of irrelevant evidence, generally
- § 10:57 —Exclusion of prior-accident evidence—Absence of prior accidents
- § 10:58 — —Prior accident evidence used to prove negligence
- § 10:59 — —Lack of similarity: dangerous condition / defective products
- § 10:60 — —Irrelevant
- § 10:61 — —Unreliable or speculative
- § 10:62 —Exclusion of subsequent accident evidence—Generally
- § 10:63 —Other claims or lawsuits
- § 10:64 —Other grounds
- § 10:65 Opposing authorities—Evidence of prior accidents—Absence of prior accidents—Res ipsa loquiter
- § 10:66 — —Court’s discretion
- § 10:67 — —Similarity: dangerous condition / defective products
- § 10:68 — —Notice
- § 10:69 — —Relevant to issues in case (e.g., similar injuries)
- § 10:70 — —Prior accidents as basis for expert opinion
- § 10:71 — —Other possible exceptions—Impeachment
- § 10:72 —Evidence of subsequent accidents—Court’s discretion
- § 10:73 — —Dangerous condition
- § 10:74 — —Impeachment
- § 10:75 —Admissibility of other claims—Generally
- § 10:76 — —Proof of Bad Faith

§ 10:77 — —Proof of punitive damages

**E. MOTION TO EXCLUDE EVIDENCE OF  
SUBSEQUENT REPAIRS**

- § 10:78 Suggested motion text
- § 10:79 Motion summary
- § 10:80 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 10:81 —Exclusion of irrelevant evidence, generally
- § 10:82 —Exclusion of subsequent repair evidence—  
Inadmissible to show negligence
- § 10:83 —Other grounds
- § 10:84 Opposing authorities—Impeachment
- § 10:85 —Relevant to issues
- § 10:86 —Strict products liability

**F. MOTION TO EXCLUDE EVIDENCE OF  
STATUTE VIOLATION**

- § 10:87 Suggested motion text
- § 10:88 Motion summary
- § 10:89 Supporting authorities—Exclusion of prejudicial  
evidence, generally
- § 10:90 —Exclusion of irrelevant evidence, generally
- § 10:91 —Exclusion of traffic citation evidence, generally
- § 10:92 —Not proximate cause
- § 10:93 — —Prior traffic violations
- § 10:94 — —Statute inapplicable where party not within  
protected class
- § 10:95 —Other grounds
- § 10:96 Opposing authorities—Impeachment
- § 10:97 —Proximate cause
- § 10:98 — —Negligence per se—Presumption of negligence

**G. MOTION TO EXCLUDE EVIDENCE THAT  
DRIVER WAS UNLICENSED**

- § 10:99 Suggested motion text
- § 10:100 Motion summary
- § 10:101 Supporting authorities—Exclusion of evidence of  
license suspension or revocation
- § 10:102 —Not evidence of negligence
- § 10:103 —Other grounds
- § 10:104 Opposing authorities—Lack of prejudice
- § 10:105 —Relevant to issues

**H. MOTION TO EXCLUDE EVIDENCE OF  
FAILURE TO WEAR SEAT BELT**

- § 10:106 Suggested motion text



## TABLE OF CONTENTS

§ 10:107	Motion summary
§ 10:108	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:109	—Exclusion of irrelevant evidence, generally
§ 10:110	—Exclusion of seat-belt evidence
§ 10:111	— —Expert testimony required
§ 10:112	— —Exclusion in strict liability cases
§ 10:113	— —Defendant’s burden unchanged by seatbelt law
§ 10:114	—Other grounds
§ 10:115	Opposing authorities—Where use would have reduced injuries

### I. MOTION TO EXCLUDE EVIDENCE OF ALCOHOL CONSUMPTION

§ 10:116	Suggested motion text
§ 10:117	Motion summary
§ 10:118	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:119	—Exclusion of irrelevant evidence, generally
§ 10:120	—Exclusion of alcohol evidence, generally
§ 10:121	— —Lack of foundation—Proof of inebriation
§ 10:122	— — —Blood alcohol tests
§ 10:123	—Exclusion in automobile cases—Consumption by driver where no impairment
§ 10:124	— —Consumption by passenger
§ 10:125	— —Inebriation as causation of accident
§ 10:126	—Habit of general intemperance
§ 10:127	—Blood alcohol level and blood tests, generally
§ 10:128	— —Lack of foundation
§ 10:129	— —Irrelevant evidence
§ 10:130	—Other grounds
§ 10:131	Opposing authorities—Where relevant to issues—Driving under the influence of alcohol as proof of negligence
§ 10:132	—Admissible evidence of drinking habit—Where used for impeachment
§ 10:133	— —Drinking contemporaneous to incident

### J. MOTION TO EXCLUDE EVIDENCE OF PRIOR D.U.I.

§ 10:134	Suggested motion text
§ 10:135	Motion summary
§ 10:136	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:137	—Exclusion of irrelevant evidence, generally
§ 10:138	—Exclusion of crimes evidence used for impeachment—Generally

- § 10:139 — —Exclusion of arrests and misdemeanor convictions
- § 10:140 — —Exclusion of felony convictions where no crime of “moral turpitude”
- § 10:141 — —Where probative value outweighed by risk of undue prejudice
- § 10:142 —Exclusion of D.U.I. evidence where used to prove improper conduct—Generally
- § 10:143 —Other grounds
- § 10:144 Opposing authorities—Generally
- § 10:145 —Impeachment
- § 10:146 — —Use of felony convictions for impeachment expressly allowed
- § 10:147 — —D.U.I. as moral turpitude crime
- § 10:148 —Relevant to issues

#### K. MOTION TO EXCLUDE EVIDENCE OF PARTY’S HEALTH OR INJURIES WHERE NOT AT ISSUE

- § 10:149 Suggested motion text
- § 10:150 Motion summary
- § 10:151 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:152 —Exclusion of irrelevant evidence, generally
- § 10:153 —Exclusion of evidence of party’s health or injuries where not at issue
- § 10:154 —Other grounds
- § 10:155 Opposing authorities—Relevant to issues in case
- § 10:156 — —Demonstration of injury
- § 10:157 — —Other demonstrations

#### L. MOTION TO EXCLUDE ACCIDENT RECONSTRUCTION AND BIOMECHANIC EVIDENCE

- § 10:158 Suggested motion text
- § 10:159 Motion summary
- § 10:160 Supporting authorities—Excluding accident reconstruction evidence—Generally
- § 10:161 — —Incomplete facts / speculation
- § 10:162 — —Reliance on observations of others (hearsay)
- § 10:163 — —Improper foundation or qualification
- § 10:164 — —Point of impact determinations
- § 10:165 — —Reaction time determinations
- § 10:166 — —Vehicle speed determinations
- § 10:167 —Excluding biomechanic evidence
- § 10:168 — —Anthropomorphic dummies
- § 10:169 — —“Finite Element Analysis” tests

## TABLE OF CONTENTS

§ 10:170	— —“Pattern of Injury” tests
§ 10:171	—Low-speed impact automobile cases
§ 10:172	— —Excluding “Delta V” testimony
§ 10:173	— —Challenging “popping into a chair” testimony
§ 10:174	— —“Human crash test dummy” testimony
§ 10:175	— —Photographs depicting “no damage” to vehicles
§ 10:176	— —Other unreliable tests
§ 10:177	Opposition—Tests and scientific testimony, generally
§ 10:178	—Accident reconstruction evidence—Proper basis for opinion
§ 10:179	— —Competent facts / foundation
§ 10:180	— —Vehicle speed
§ 10:181	— —Skid mark analysis
§ 10:182	— —Stopping distances
§ 10:183	— —Point of impact
§ 10:184	— —Photographs depicting “no damage” to vehicles
§ 10:185	—Biomechanic evidence—Cases where admitted
§ 10:186	—A note on opposing motions to exclude low-impact tests

### M. MOTION TO EXCLUDE EVIDENCE OF PARTY’S FINANCIAL STATUS

§ 10:187	Suggested motion text
§ 10:188	Motion summary
§ 10:189	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:190	—Exclusion of irrelevant evidence, generally
§ 10:191	—Exclusion of financial status evidence, generally
§ 10:192	— —Plaintiff’s financial status
§ 10:193	— —Defendant’s financial status
§ 10:194	— —Wrongful death cases
§ 10:195	—Punitive damages cases
§ 10:196	—Other grounds
§ 10:197	Opposing authorities—Relevant to issues—Generally

### N. MOTION TO EXCLUDE TAX EVIDENCE

§ 10:198	Suggested motion text
§ 10:199	Motion summary
§ 10:200	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:201	—Exclusion of irrelevant evidence, generally
§ 10:202	—Exclusion of tax evidence—Tax implications on damages
§ 10:203	— —Failure to file a tax return
§ 10:204	—Wrongful death cases

- § 10:205 —Improper appeal to jurors as taxpayers
- § 10:206 —Other grounds
- § 10:207 Opposing authorities—Relevant to issues

#### O. MOTION TO EXCLUDE LIABILITY OR FAULT EVIDENCE

- § 10:208 Suggested motion text
- § 10:209 Motion summary
- § 10:210 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:211 —Exclusion of irrelevant evidence, generally
- § 10:212 —Admitted matters, generally
- § 10:213 —Admission of fault—Admissions made during settlement negotiations
- § 10:214 — —Inadmissible legal opinions by lay witnesses
- § 10:215 — —Sympathy or benevolence
- § 10:216 —Other grounds
- § 10:217 Opposing authorities—Relevance
- § 10:218 —Admission of fault

#### P. MOTION TO EXCLUDE IMPROPER DAMAGE EVIDENCE

- § 10:219 Suggested motion text
- § 10:220 Motion summary
- § 10:221 Supporting authorities—Unpleaded, undisputed or surprise claims—Unpleaded matters
- § 10:222 — —Undisputed matters
- § 10:223 — —Surprise claims
- § 10:224 — —Amounts in excess of stated damages
- § 10:225 —Speculative damages, generally
- § 10:226 — —Exclusion of evidence relating to speculative damages
- § 10:227 —Condemnation proceedings
- § 10:228 —Lost profits
- § 10:229 —Irrelevant
- § 10:230 Opposing authorities—Unpleaded or denied claims—Court’s discretion
- § 10:231 — —Estoppel
- § 10:232 — —Denied claims
- § 10:233 —Speculative damages—Generally
- § 10:234 — —Weight vs. admissibility
- § 10:235 — —“Reasonably certain” damages

#### Q. MOTION TO EXCLUDE EVIDENCE OF PARTY’S IMMIGRATION STATUS

- § 10:236 Suggested motion text

## TABLE OF CONTENTS

§ 10:237	Motion summary
§ 10:238	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:239	—Exclusion of irrelevant evidence, generally
§ 10:240	— —Unpleaded issues
§ 10:241	—Immigration status is irrelevant to issue of liability

## PART II. SAMPLE MOTIONS

§ 10:242	Motion to exclude evidence of collateral source payments
§ 10:243	Motion to exclude evidence of defendant's liability
§ 10:244	Motion to admit evidence of laboratory testing regarding firearm residue
§ 10:245	Motion to exclude surveillance video
§ 10:246	Motion to exclude evidence of subsequent remedial measures
§ 10:247	Motion to exclude evidence of statute violation
§ 10:248	Motion to exclude evidence of failure to pay taxes
§ 10:249	Motion to exclude settlement evidence
§ 10:250	Motion to exclude liability insurance evidence
§ 10:251	Motion to exclude evidence of plaintiff's financial status
§ 10:252	Motion to exclude evidence of defendant's prior DUI
§ 10:253	Motion to exclude evidence of prior traffic citations
§ 10:254	Motion to exclude improper damage evidence (speculative evidence of lost profits)
§ 10:255	Motion to exclude evidence regarding prior accident
§ 10:256	Motion to exclude evidence regarding party's prior injuries
§ 10:257	Opposition to motion to exclude evidence of subsequent repairs
§ 10:258	Opposition to motion to exclude evidence of defendant's financial status

## Table of Laws and Rules

## Table of Cases

## Index