

# Index

## **ACCIDENT RECONSTRUCTION EVIDENCE**

Personal Injuries, this index

## **ACCIDENT REPORTS**

Generally §§ 4:65 to 4:73

Business records exception to  
hearsay rule § 4:73

Diagrams made at scene § 4:72

Hearsay §§ 4:68, 4:73

Opinions in reports § 4:69

Opposing authorities

Generally § 4:71

Business records exception to  
hearsay rule § 4:73

Diagrams made at scene § 4:72

Refreshing recollection, report  
used to § 4:71

Opposition to motion to exclude  
§ 4:141

Refreshing recollection, report used  
to § 4:71

Summary § 4:66

Supporting authorities

Generally § 4:67

Hearsay, inadmissible § 4:68

Opinions in reports § 4:69

Other grounds § 4:70

Text of motion, suggested § 4:65

## **ACCIDENTS**

Personal Injuries, this index

## **ACCIDENT SCENE PHOTOGRAPHS**

Gruesome or inflammatory  
photographs §§ 4:41, 4:48

## **ADMISSION, REQUESTS FOR**

Discovery Motions, this index

## **AFFIRMATIVE DEFENSES**

Premature rebuttal. Trial, this index

## **ALCOHOL AND INTOXICATION**

Character evidence §§ 7:9, 7:21

Consumption of alcohol §§ 10:87 to  
10:96

Lay witness testimony, intoxication  
§ 8:42

Percipient witness, sample motion to  
exclude evidence of alcoholism  
§ 7:59

Personal Injuries, this index

## **ANTHROPOMORPHIC DUMMIES**

Excluding biomechanic evidence  
§ 10:129

## **ARBITRATION AND AWARD**

Generally §§ 9:30 to 9:34

Evidence and findings

Generally §§ 9:30 to 9:34

Limitation on arbitration evidence  
§ 9:32

Opposing authorities § 9:34

Summary § 9:31

Supporting authorities §§ 9:32,  
9:33

Text of motion, suggested § 9:30

Limitation on arbitration evidence  
§ 9:32

Testimony of arbitrator § 8:63

## **ARGUMENTS OF COUNSEL**

Golden Rule argument, motion to  
preclude. Trial, this index

Improper, motion to exclude

During opening statement § 9:63

Opening statement, motion to  
exclude improper argument.

Trial, this index

Sample motions and suggested  
motion text, motion to exclude  
improper argument § 9:8

## **ARRESTS**

Character evidence §§ 7:10, 7:65

**ARRESTS—Cont'd**

- Prior arrest, investigation, or criminal charge inadmissible § 7:47
- Prior D.U.I., exclusion of arrests § 10:102

**ARTICLES**

- Published Articles, this index

**ATTORNEYS**

- Arguments of Counsel, this index
- Motion to exclude testimony of. Witnesses, this index

**AUTHENTICATION OR AUTHENTICITY**

- Writings and physical evidence §§ 4:24, 4:25, 4:29, 4:140

**AUTOMOBILE ACCIDENTS**

- Personal Injuries, this index

**BATTERED SPOUSE SYNDROME**

- Tests and scientific evidence §§ 5:38, 5:45

**BEST AND SECONDARY EVIDENCE**

- Writings and physical evidence §§ 4:28, 4:32

**BIAS OF WITNESS**

- Character evidence §§ 7:18, 7:24
- Emotional bias. Prejudicial Evidence, this index

**BIFURCATED TRIAL**

- Motion to exclude evidence of damages. Trial, this index

**BIOMECHANIC EVIDENCE**

- Accident reconstruction and biomechanic evidence. Personal Injuries, this index
- Excluding biomechanic evidence §§ 10:129 to 10:131
- Junk science and related evidence §§ 5:31, 5:32, 5:50
- Sample motions and suggested motion text § 5:55

**BLOOD, URINE, AND SALIVA TESTING**

- Alcohol consumption § 10:93

**BLOOD ALCOHOL TESTS**

- Alcohol consumption § 10:93

**BRIEFS**

- Sample in limine brief § 1:11

**BUSINESS VALUE**

- Computerized valuations of business, sample motion to exclude § 8:113

**CANINE SCENT TRACKING UNIT**

- Tests and scientific evidence § 5:37

**CAPITAL OFFENSES AND PUNISHMENT**

- Penalty phase, motion to exclude prior crime evidence § 7:58

**CAUSATION**

- Lay witness testimony § 8:35

**CHARACTER EVIDENCE**

- Generally § 7:1 et seq.
- Admissibility § 7:2
- Alcohol consumption §§ 7:9, 7:21
- Alcoholism of percipient witness, sample motion to exclude evidence of § 7:59
- Arrests § 7:10
- Bias, excluding evidence of § 7:18
- Collateral matters §§ 7:17, 7:25
- Conduct, motion to exclude character evidence used to prove Generally §§ 7:28 to 7:38
- Context evidence § 7:38
- Crimes evidence § 7:33
- Impeachment of witness § 7:37
- Improper character evidence §§ 7:32, 7:33
- Opposing authorities Generally §§ 7:35 to 7:38
- Context evidence § 7:38
- Impeachment of witness § 7:37
- Prior misconduct, admission of § 7:35
- Relevant to material issue § 7:36
- Prior misconduct, admission of § 7:35
- Relevant to material issue § 7:36

## INDEX

### **CHARACTER EVIDENCE—Cont'd**

- Conduct, motion to exclude character evidence used to prove—Cont'd
  - Sample motions
    - Generally § 7:58 et seq.
    - Juvenile adjudication § 7:63
    - Marital infidelity § 7:61
    - Prescription drug abuse § 7:64
  - Summary § 7:29
  - Supporting authorities
    - Generally §§ 7:30 to 7:34
    - Crimes evidence § 7:33
    - Improper character evidence §§ 7:32, 7:33
    - Irrelevant evidence § 7:31
    - Other grounds § 7:34
    - Prejudicial evidence § 7:30
  - Text of motion, suggested § 7:28
- Context evidence § 7:38
- Details of prior convictions §§ 7:44, 7:54
- Drug use §§ 7:11, 7:20, 7:64
- Exclusion, character evidence subject to § 7:3
- Fraudulent acts § 7:13
- Good character of witness § 7:14
- Impeachment, motion to exclude character evidence used for
  - Generally §§ 7:4 to 7:27, 7:37
  - Alcohol consumption §§ 7:9, 7:21
  - Arrests § 7:10
  - Bias of witness §§ 7:18, 7:24
  - Collateral matters §§ 7:17, 7:25
  - Drug use §§ 7:11, 7:21
  - Fraudulent acts § 7:13
  - Good character of witness § 7:14
  - Opening the door doctrine § 7:27
  - Opposing authorities
    - Generally §§ 7:20 to 7:27
    - Alcohol or drug use by witness § 7:21
    - Bias of witness § 7:24
    - Collateral matters § 7:25
    - Facts at issue § 7:21
    - Impeachment, generally § 7:22
    - Opening the door doctrine § 7:27
    - Religious beliefs § 7:26

### **CHARACTER EVIDENCE—Cont'd**

- Impeachment, motion to exclude character evidence used for—Cont'd
  - Opposing authorities—Cont'd
    - Veracity of witness § 7:23
  - Prior convictions § 7:12
  - Religious belief §§ 7:15, 7:26
  - Sexual preference or behavior § 7:16
- Summary § 7:5
- Supporting authorities
  - Generally §§ 7:6 to 7:19
  - Alcohol consumption § 7:9
  - Arrests § 7:10
  - Bias, excluding evidence of § 7:18
  - Collateral issues § 7:17
  - Drug use § 7:11
  - Fraudulent acts § 7:13
  - Good character of witness § 7:14
  - Improper impeachment evidence § 7:8
  - Irrelevant evidence § 7:7
  - Other grounds § 7:19
  - Prejudicial evidence § 7:6
  - Prior convictions § 7:12
  - Religious belief § 7:15
  - Sexual preference or behavior § 7:16
- Text of motion, suggested § 7:4
- Veracity of witness § 7:23
- Opening the door doctrine § 7:27
- Overview § 7:1
- Prescription drug abuse § 7:64
- Prior convictions § 7:12
- Prior crime evidence
  - Generally §§ 7:33, 7:39 to 7:58
  - Arrest, investigation, or criminal charge inadmissible § 7:47
  - Capital cases, penalty phase § 7:58
  - Civil cases §§ 7:49, 7:53
  - Details of prior convictions §§ 7:44, 7:54
  - Guilty findings admissible in criminal cases § 7:56

**CHARACTER EVIDENCE—Cont'd**

- Prior crime evidence—Cont'd
  - Municipal violations §§ 7:46, 7:57, 7:60
  - No discretion § 7:52
  - Opposing authorities
    - Generally §§ 7:51 to 7:58
    - Capital cases, penalty phase § 7:58
    - Civil and criminal cases, prior convictions admissible § 7:53
    - Details of prior convictions § 7:54
    - Guilty findings admissible in criminal cases § 7:56
    - Municipal violations § 7:57
    - No discretion § 7:52
    - Plea evidence admissible in criminal cases § 7:55
    - Statutory provisions § 7:51
  - Plea evidence admissible in criminal cases § 7:55
  - Statutory provisions § 7:51
  - Summary § 7:40
  - Supporting authorities
    - Generally §§ 7:41 to 7:50
    - Character evidence, improper § 7:45
    - Civil cases, prior criminal pleas inadmissible § 7:49
    - Codefendants, conviction of § 7:48
    - Crime evidence, exclusion, generally § 7:43
    - Irrelevant evidence § 7:42
    - Municipal ordinance violations inadmissible § 7:46
    - Other grounds § 7:50
    - Prejudicial evidence § 7:41
    - Prior arrest, investigation, or criminal charge inadmissible § 7:47
    - Underlying details inadmissible § 7:44
  - Text of motion, suggested § 7:39
  - Prior misconduct, admission of § 7:35
  - Relevant to material issue § 7:36

**CHARACTER EVIDENCE—Cont'd**

- Religious belief §§ 7:15, 7:26
- Sample motions
  - Generally § 7:58 et seq.
- Inflammatory evidence, opposition to motion to exclude § 7:66
- Juvenile adjudication, motion to exclude improper character evidence § 7:63
- Prescription drug abuse, motion to exclude § 7:64
- Prior arrest of witness, motion to exclude § 7:65
- Religious beliefs, motion to exclude § 7:62
- Sexual preference or behavior § 7:16
- Veracity of witness § 7:23

**CHILDREN AND MINORS**

- Child support action, mediator, motion to exclude testimony § 8:64
- Incompetent witness, motion to exclude testimony §§ 8:52, 8:57

**CHILD SUPPORT ACTION**

- Motion to exclude testimony of mediator § 8:64

**CHIROPRACTORS**

- Non-chiropractor giving opinion on necessity of chiropractic treatment, sample motion to preclude § 8:112

**COLLATERAL ACTS OR MATTERS**

- Irrelevant evidence §§ 3:14, 3:17, 3:24
- Payments. Collateral Source Payments, this index
- Tests and scientific evidence § 5:10

**COLLATERAL SOURCE PAYMENTS**

- Generally §§ 10:1 to 10:15
- Disability benefits § 10:8
- Governmental benefits based on financial need § 10:11
- Gratuitous payments §§ 10:6, 10:14
- Medical or liability policy payments § 10:7

## INDEX

### **COLLATERAL SOURCE PAYMENTS—Cont'd**

- Opposing authorities
  - Generally §§ **10:13 to 10:15**
  - Gratuitous payments, split of authority § **10:14**
  - Relevant to issue in case § **10:15**
- Prejudicial evidence § **10:3**
- Summary § **10:2**
- Supporting authorities
  - Generally §§ **10:3 to 10:12**
  - Collateral source evidence § **10:5**
  - Disability benefits § **10:8**
  - Governmental benefits based on financial need § **10:11**
  - Gratuitous payments § **10:6**
  - Irrelevant evidence § **10:4**
  - Medical or liability policy payments § **10:7**
  - Other grounds § **10:12**
  - Prejudicial evidence § **10:3**
  - Wage payments § **10:10**
  - Workers' compensation benefits § **10:9**
- Text of motion, suggested § **10:1**
- Wage payments § **10:10**
- Workers' compensation benefits § **10:9**

### **COMPENSATION**

- Collateral source payments § **10:10**

### **COMPROMISE OR SETTLEMENT**

- Settlement, this index

### **CONDUCT**

- Character Evidence, this index

### **CRIMES AND OFFENSES**

- Prior crime evidence. Character Evidence, this index
- Privilege Against Self-Incrimination, this index
- Sample motions and suggested motion text, motion to exclude prior crime evidence § **7:39**
- Tests and scientific evidence
  - New scientific evidence § **5:23**
  - Not generally accepted § **5:5**

### **CUMULATIVE ACTS OR MATTERS**

- Expert witnesses, cumulative testimony §§ **8:18, 8:25**
- Hearsay cumulative of admissible evidence § **8:109**
- Letters § **4:80**
- Motion to exclude or limit cumulative evidence. Prejudicial Evidence, this index

### **DAMAGES**

- Bifurcated trial, motion to exclude evidence of damages. Trial, this index
- Improper damage evidence, generally §§ **10:175 to 10:188**
- Junk science and related evidence, opposing authorities, hedonic damages § **5:42**
- Lay witness testimony § **8:43**
- Personal Injuries, this index
- Punitive Damages, this index
- Sample motions and suggested motion text
  - Bifurcated trial, motion to exclude evidence of damages §§ **9:35, 9:61**
  - Damages in bifurcated trial §§ **9:35, 9:61**

### **DEATH PENALTY**

- Motion to exclude prior crime evidence § **7:58**

### **DEFAULT JUDGMENT**

- Discovery sanction
- Motion for order § **6:60**

### **DEFENSES**

- Affirmative defenses. Trial, this index

### **DEMONSTRATIVE OR REAL EVIDENCE**

- Demonstrations and experiments § **4:133**
- Maps, Models, Charts, Exhibits and Demonstrative Evidence, this index
- Sample motions and suggested motion text § **4:86**

**DEPOSITIONS**

Discovery Motions, this index

**DESCRIPTION OF MOTION**

Generally § 1:1

**DESTROYED EVIDENCE**

Lost or Destroyed Evidence, this index

**DIAGRAMS, CHARTS, OR EXHIBITS**

Maps, Models, Charts, Exhibits and Demonstrative Evidence, this index

**DISABILITY BENEFITS**

Collateral source payments § 10:8

**DISABLED OR INCAPACITATED PERSONS**

Collateral source payments, disability benefits § 10:8

**DISCOVERY MOTIONS**

Generally §§ 6:1 to 6:60

Admission, requests for

Conclusively establishing admitted matters

Generally §§ 6:34 to 6:39

Exclusion of evidence § 6:38

Opposing authorities § 6:39

Purpose of rule § 6:37

Summary § 6:35

Text of motion, suggested § 6:34

Conclusively establishing admitted matters, supporting authorities

Generally § 6:36

Exclusion of evidence § 6:38

Purpose of rule § 6:37

Sanctions motions

Generally §§ 6:20 to 6:22

Exclusion of evidence § 6:21

Non-responsive matters, deeming admitted §§ 6:22, 6:32

Rule 59.01 § 6:20

Appropriateness of sanction to level of misconduct § 6:27

Available sanctions § 6:3

**DISCOVERY MOTIONS—Cont'd**

Claims denied or changed during discovery

Generally §§ 6:40 to 6:45

Exclusion of evidence §§ 6:42, 6:43

Opposing authorities § 6:45

Prejudicial evidence § 6:42

Sample motion to exclude evidence §§ 6:52, 6:53, 6:55

Summary § 6:41

Supporting authorities

Generally § 6:42

Exclusion of evidence §§ 6:42, 6:43

Other grounds § 6:44

Prejudicial evidence § 6:42

Text of motion, suggested § 6:40

Deadline, motion to exclude evidence produce beyond § 6:55

Deem matters admitted, motion to § 6:56

Depositions

Generally § 6:8

Evidence sanctions § 6:9

Improper expert deposition. Expert witnesses, below

Opposing authorities § 6:29

Rule 61.01 § 6:8

Terminating sanctions § 6:10

Evidence sanctions § 6:4

Expert witnesses

Duty to supplement witness exchange § 6:49

Faulty expert designations or declarations, motion for sanctions § 6:24

Improper expert witness exchange or expert deposition, motions concerning

Generally §§ 6:46 to 6:51, 6:48 to 6:50

Duty to supplement § 6:49

Exclusion of evidence § 6:50

Opposing authorities, expert testimony admitted § 6:51

Summary § 6:47

Text of motion, suggested § 6:46

## INDEX

### DISCOVERY MOTIONS—Cont'd

- Expert witnesses—Cont'd
  - Limiting plaintiff's expert's opinions, sample opposition to defendants' motion § 6:59
  - Matters not disclosed § 6:58
- Interrogatories
  - Generally § 6:11
  - Evidence sanctions § 6:12
  - Issue sanctions § 6:13
  - Opposing authorities § 6:30
  - Rule 61.01 § 6:11
  - Terminating sanctions § 6:14
- Issue sanctions § 6:5
- Medical bills for service obtained after [date], motion to exclude evidence of § 6:53
- Mental and physical examination §§ 6:18, 6:19
- Order rendering default judgment
  - Sanction discovery § 6:60
- Production requests
  - Generally § 6:15
  - Evidence sanctions § 6:16
  - Opposing authorities § 6:31
  - Terminating sanctions § 6:17
- Reasonable alternative remedy § 6:28
- Sanctions, motion for
  - Establishing facts § 6:57
- Sanctions, motion for
  - Generally §§ 6:1 to 6:45
  - Admission, requests for, above
  - Appropriateness of sanction to level of misconduct § 6:27
  - Available sanctions § 6:3
  - Depositions, above
  - Establishing facts, motion for § 6:57
  - Evidence sanctions § 6:4
  - Expert designations or declarations, faulty § 6:24
  - Issue sanctions § 6:5
  - Mental and physical examination §§ 6:18, 6:19
  - Opposing authorities
    - Generally §§ 6:26 to 6:33
    - Admitted, matters deemed § 6:32

### DISCOVERY MOTIONS—Cont'd

- Sanctions, motion for—Cont'd
  - Opposing authorities—Cont'd
    - Depositions § 6:29
    - Interrogatories § 6:30
    - Production, requests for § 6:31
    - Reasonable alternative remedy § 6:28
    - Sanction should be appropriate to level of misconduct § 6:27
    - Witnesses, failure to disclose identity § 6:33
  - Prior order unnecessary § 6:7
  - Reasonable alternative remedy § 6:28
  - Summary § 6:2
  - Supporting authorities
    - Generally §§ 6:3 to 6:25
    - Available sanctions § 6:3
    - Evidence sanctions § 6:4
    - Expert designations or declarations, faulty § 6:24
    - Issue sanctions § 6:5
    - Mental and physical examination §§ 6:18, 6:19
    - Other grounds § 6:25
    - Prior order unnecessary § 6:7
    - Terminating sanctions § 6:6
    - Witnesses, failure to disclose identity §§ 6:23, 6:24
  - Text of motion, suggested § 6:1
  - Witnesses, failure to disclose identity §§ 6:23, 6:24, 6:33
- Undisclosed witnesses
  - Sample motion to exclude testimony § 6:54
  - Sanctions, failure to disclose identity of witnesses §§ 6:23, 6:24

### DIVORCE AND SEPARATION

- Mediator, motion to exclude testimony § 8:64

### DRAFTING SUGGESTIONS

- Generally § 1:8
- Be succinct § 1:10
- Facts, file motions supported by § 1:9



**DRIVERS' LICENSES**

Unlicensed driver. Personal Injuries, this index

**DRIVING WHILE INTOXICATED**

Prior D.U.I. Personal Injuries, this index

**DRUGS AND NARCOTICS**

Character evidence, drug use §§ 7:11, 7:21, 7:64

**ESTOPPEL AND WAIVER**

Exclusion of improper damage evidence § 10:181

Unpleaded issues § 3:18

**EVIDENCE**

Accident reconstruction evidence. Personal Injuries, this index

Arbitration and Award, this index

Best and secondary evidence §§ 4:28, 4:32

Biomechanic Evidence, this index

Character Evidence, this index

Demonstrative or Real Evidence, this index

Expert Witnesses, this index

Hypnosis Evidence, this index

Irrelevant Evidence, this index

Lost or Destroyed Evidence, this index

Maps, Models, Charts, Exhibits and Demonstrative Evidence, this index

Medical bills and services obtained after, motion to exclude § 6:53

Opposition to motion to exclude

Confuse the jury § 2:43

Personal Injuries, this index

Polygraph Examination, this index

Poverty, motion to exclude evidence of defendant's § 2:41

Prejudicial Evidence, this index

Prescription drug abuse, motion to exclude § 7:64

Preservation of objections § 1:4

Rebuttal Evidence, this index

Speculative Evidence, this index

Spoliation of evidence § 9:25

**EVIDENCE—Cont'd**

Tests and Scientific Evidence, this index

Videotape Evidence, this index

Witnesses, this index

Writings and Physical Evidence, this index

**EXAMINATIONS AND EXAMINERS**

Mental and physical examination §§ 6:18, 6:19

Polygraph examination, motion to exclude § 5:52

Sanctions, discovery motions §§ 6:18, 6:19

**EXCLUSION OF COMMENT**

Motion to

Exercise of privilege § 8:121

**EXCLUSION OF EVIDENCE**

Opposition to motion

Confuse the jury § 2:43

**EXCLUSION OF IMPROPER ARGUMENT**

Motion to

During opening statement § 9:63

**EXCLUSION OF TESTIMONY**

Motion to

Incompetent witness § 8:118

**EXERCISE OF PRIVILEGE**

Motion to exclude comment § 8:121

**EXHIBITS**

Maps, Models, Charts, Exhibits and Demonstrative Evidence, this index

**EXPERIMENTS OR TESTS**

Demonstrations and experiments § 4:133

Polygraph examination, motion to exclude § 5:52

Sample motions and suggested motion text § 5:1

Tests and Scientific Evidence, this index



## INDEX

### EXPERIMENTS OR TESTS

#### —Cont'd

Writings and physical evidence,  
experiments, improper founda-  
tion § 4:10

### EXPERT WITNESSES

Common experience, matters of  
§ 8:11

Conjecture § 8:13

Cumulative testimony §§ 8:18, 8:25

Examples, improper qualifications  
§ 8:29

Foundation

Improper § 4:12

Inadequate § 8:4

Hearsay §§ 8:6 to 8:8, 8:21, 8:22

Hypothetical questions §§ 8:5, 8:22,  
8:23

Improper expert opinion

Generally §§ 8:1 to 8:25

Common experience, matters of  
§ 8:11

Conjecture § 8:13

Cumulative testimony §§ 8:18,  
8:25

Hearsay §§ 8:6 to 8:8, 8:21, 8:22

Hypothetical questions §§ 8:5,  
8:23

Jury function, usurping § 8:14

Legal questions vs. ultimate issues  
§§ 8:10, 8:24

Not reasonably relied upon by  
experts § 8:12

Opinions or statements of others  
§§ 8:7, 8:22

Opposing authorities

Generally §§ 8:20 to 8:25

Cumulative testimony § 8:25

Hearsay §§ 8:21, 8:22

Hypothetical questions § 8:23

Legal questions vs. ultimate  
issues § 8:24

Statements of others § 8:22

Profile evidence, improper § 8:16

Specialty or expertise, outside area  
of § 8:17

Speculation §§ 8:13, 8:110

### EXPERT WITNESSES—Cont'd

Improper expert opinion—Cont'd

Supporting authorities

Generally §§ 8:3 to 8:19

Common experience, matters of  
§ 8:11

Conjecture § 8:13

Cumulative testimony § 8:18

Foundation, inadequate § 8:4

Hearsay, inadmissible §§ 8:6 to  
8:8

Hypothetical questions § 8:5

Irrelevant matters § 8:15

Jury function, usurping § 8:14

Legal questions vs. ultimate  
issues §§ 8:9, 8:10

Not reasonably relied upon by  
experts § 8:12

Opinions or statements of others  
§ 8:7

Other grounds § 8:19

Profile evidence, improper  
§ 8:16

Specialty or expertise, outside  
area of § 8:17

Speculation §§ 8:13, 8:110

Treatises, documents and texts  
§ 8:8

Ultimate issues, legal questions  
compared § 8:10

Text of motion, suggested § 8:1

Treatises, documents and texts  
§ 8:8

Ultimate issues, legal questions  
compared §§ 8:10, 8:24

Jury function, usurping § 8:14

Legal questions vs. ultimate issues  
§§ 8:10, 8:24

Non-qualified expert, motion to  
exclude testimony

Generally §§ 8:26 to 8:31

Examples, improper qualifications  
§ 8:29

Opposing authorities §§ 8:31,  
8:120

Summary § 8:27

Supporting authorities

Generally §§ 8:28 to 8:30

**EXPERT WITNESSES—Cont’d**

- Non-qualified expert, motion to exclude testimony—Cont’d
- Supporting authorities—Cont’d
- Examples, improper qualifications § 8:29
- Other grounds § 8:30
- Text of motion, suggested § 8:26
- Not reasonably relied upon by experts § 8:12
- Opinions or statements of others §§ 8:7, 8:22
- Profile evidence, improper § 8:16
- Sample motions and suggested motion text §§ 5:54, 8:120
- Specialty or expertise, outside area of § 8:17
- Speculation §§ 8:13, 8:110
- Statements of others §§ 8:7, 8:22
- Tests and scientific evidence, expert not qualified to testify on subject § 5:3
- Treatises, documents and texts § 8:8
- Ultimate issues, legal questions compared §§ 8:10, 8:24

**FIFTH AMENDMENT**

- Privilege Against Self-Incrimination, this index

**FINANCIAL STATUS OF PARTY**

- Personal Injuries, this index

**FINITE ELEMENT ANALYSIS TESTS**

- Excluding biomechanic evidence § 10:130

**FOUNDATION**

- Expert witnesses §§ 4:12, 8:4
- Personal injuries, accident reconstruction and biomechanic evidence §§ 10:124, 10:140
- Tests and Scientific Evidence, this index
- Writings and Physical Evidence, this index

**FRAUD AND DECEIT**

- Character evidence, fraudulent acts as § 7:13

**GOLDEN RULE ARGUMENT**

- Motion to preclude. Trial, this index
- Prejudicial evidence § 2:22

**GRUESOME OR INFLAMMATORY PHOTOGRAPHS**

- Accident scene photographs §§ 4:41, 4:48

**HEARSAY**

- Generally §§ 8:95 to 8:109
- Accident reconstruction evidence, excluding § 10:123
- Accident reports §§ 4:68, 4:73
- Admissible evidence, hearsay cumulative of § 8:109
- Business records exception
- Accident reports § 4:73
- Letters § 4:84
- Medical records, reports or bills § 4:118
- Expert witnesses §§ 8:6 to 8:8, 8:21, 8:22
- Impeaching witness credibility, use of hearsay § 8:108
- Letters § 4:78
- Medical records, reports or bills §§ 4:106, 4:111
- Multiple hearsay §§ 8:102, 8:107
- Non-assertive conduct § 8:106
- Non-hearsay evidence § 8:105
- Opposing authorities
- Generally §§ 8:103 to 8:108
- Admissible evidence, cumulative of § 8:109
- Impeaching witness credibility, use of hearsay § 8:108
- Multiple hearsay § 8:107
- Non-assertive conduct § 8:106
- Non-hearsay evidence § 8:105
- Purpose of exceptions § 8:104
- Physical evidence §§ 4:26, 4:27, 4:31
- Published articles §§ 4:60, 4:64
- Purpose of rule and exceptions §§ 8:98, 8:104
- Statements of others §§ 8:7, 8:22
- Summary § 8:96

## INDEX

### HEARSAY—Cont'd

- Supporting authorities
  - Generally §§ 8:97 to 8:102
  - Multiple hearsay § 8:102
  - Purpose of rule § 8:98
  - Written hearsay §§ 8:99 to 8:101
- Text of motion to exclude, suggested § 8:95
- Treatises, documents and texts § 8:8
- Writings and physical evidence §§ 4:26, 4:27, 4:31
- Written hearsay §§ 8:99 to 8:101

### HYPNOSIS EVIDENCE

- Motion to exclude §§ 5:29, 5:46
- Sample motion to exclude § 5:53

### IMMIGRATION STATUS

- Sample motion to exclude irrelevant evidence § 3:21

### IMPEACHMENT

- Generally §§ 7:4 to 7:27
- Hearsay used to impeach witness credibility § 8:108
- Motion to exclude character evidence used for. Character Evidence, this index
- Personal Injuries, this index

### IMPROPER ARGUMENT

- During opening statement
- Motion to exclude § 9:63

### INCOMPETENT OR INSANE PERSONS

- Incompetent witness. Witnesses, this index
- Lay witness testimony, sanity and mental condition § 8:40

### INCOMPETENT WITNESS

- Motion to exclude testimony § 8:118

### INDIGENT PEOPLE

- Defendant's, evidence of § 2:41

### INSURANCE

- Liability Insurance, this index
- Medical insurance policy, collateral source payments § 10:7
- Sample motion to exclude irrelevant evidence in case § 3:23

### INTERROGATORIES

- Discovery Motions, this index

### IRRELEVANT EVIDENCE

- Generally §§ 3:1 to 3:25
- Admissibility despite uncontested issue § 3:20
- Admitted or uncontroverted matters § 3:13
- Collateral issues §§ 3:14, 3:17, 3:24
- Estoppel, unpleaded issues § 3:18
- Immigration status, sample motion to exclude irrelevant evidence § 3:21
- Insurance case, sample motion to exclude irrelevant evidence § 3:23
- Letters §§ 4:79, 4:85
- Matters not in controversy
  - Generally §§ 3:10 to 3:20
  - Admissibility despite uncontested issue § 3:20
  - Admitted or uncontroverted matters § 3:13
  - Collateral issues §§ 3:14, 3:17
  - Estoppel, unpleaded issues § 3:18
  - Opposing authorities
    - Generally § 3:16
    - Admissibility despite uncontested issue § 3:20
    - Collateral issues § 3:17
    - Estoppel, unpleaded issues § 3:18
    - Relevance to other issues § 3:19
  - Other issues, relevance to § 3:19
- Summary § 3:11
- Supporting authorities
  - Generally § 3:12
  - Admitted or uncontroverted matters § 3:13
  - Collateral issues § 3:14
  - Unpleaded issues § 3:15
  - Text of motion, suggested § 3:10
  - Unpleaded issues §§ 3:15, 3:18
- No unlimited inquiry § 3:4
- Opposing authorities § 3:9
- Other issues, relevance to § 3:19
- Outside pleadings § 3:5

## **IRRELEVANT EVIDENCE—Cont'd**

- Photographs, gruesome or inflammatory § **4:36**
- Physical conditions not at issue, sample motion to exclude § **3:21**
- Prejudicial § **3:6**
- Remoteness § **3:8**
- Sample motions
  - Generally §§ **3:21 to 3:25**
  - Collateral and irrelevant evidence, motion to exclude § **3:24**
  - Immigration status, motion to exclude irrelevant evidence of § **3:21**
  - Insurance cases, motion to exclude irrelevant evidence of § **3:23**
  - Physical conditions not at issue, motion to exclude evidence of § **3:22**
  - Speculative evidence, motion to exclude § **3:25**
  - Unpleaded issues, motion to exclude § **3:26**
- Speculative evidence § **3:25**
- Speculative evidence § **3:7**
- Summary § **3:2**
- Supporting authorities
  - Generally § **3:3**
  - No unlimited inquiry § **3:4**
  - Outside pleadings § **3:5**
  - Prejudicial § **3:6**
  - Speculative evidence § **3:7**
  - Too remote § **3:8**
- Text of motion, suggested §§ **3:1, 3:10**
- Too remote § **3:8**
- Unpleaded issues §§ **3:15, 3:18, 3:26**

## **JUDGES**

- Opposition to motion
  - Exclude evidence
    - Confuse the jury § **2:43**
- Testimony of § **8:62**

## **JUDGMENT**

- Default, Motion for order
  - Discovery sanction § **6:60**

## **JURORS**

- Appeal to jurors as taxpayers, improper § **10:162**
- Confusion
  - Opposition to motion, exclude evidence § **2:43**
- Improper voir dire § **9:62**
- Missing evidence instruction, opposition to motion for § **9:64**
- Voir dire improper. Trial, this index
- Witness, juror as, motion to exclude testimony §§ **8:66, 8:73**

## **JUVENILE ADJUDICATION**

- Motion to exclude improper character evidence § **7:63**

## **LEGAL OPINIONS**

- Lay witness testimony §§ **8:36, 10:171**

## **LEGAL SEPARATION ACTION**

- Motion to exclude testimony of mediator § **8:64**

## **LETTERS**

- Generally §§ **4:74 to 4:85**
- Business records exception to hearsay rule § **4:87**
- Cumulative § **4:80**
- Foundation, lack of § **4:81**
- Hearsay §§ **4:78, 4:84**
- Motion to exclude written letters, sample § **4:134**
- Opposing authorities
  - Generally § **4:83**
  - Business records exception to hearsay rule § **4:87**
  - Relevant § **4:85**
- Relevance §§ **4:79, 4:85**
- Summary § **4:75**
- Supporting authorities
  - Generally §§ **4:76, 4:77**
  - Cumulative § **4:80**
  - Foundation, lack of § **4:81**
  - Hearsay § **4:78**
  - Irrelevant § **4:79**
  - Other grounds § **4:82**
- Text of motion, suggested § **4:74**

## INDEX

### LIABILITY INSURANCE

- Collateral source payments § 10:7
- Motion to exclude evidence of insurance §§ 10:16 to 10:27
- Personal Injuries, this index

### LOCAL RULES AND REGULATIONS

- Caution regarding motions in limine § 1:7

### LOST OR DESTROYED EVIDENCE

- Generally §§ 9:20 to 9:29
- Intentional destruction § 9:24
- Missing evidence instruction, opposition to motion for § 9:64
- Negative presumption § 9:26
- Opposing authorities
  - Generally § 9:28
  - Other remedies § 9:29
- Prejudicial evidence § 9:22
- Sample motion § 9:58
- Spoilation of evidence § 9:25
- Summary § 9:21
- Supporting authorities
  - Generally §§ 9:22 to 9:27
  - Exclusion of lost or destroyed evidence § 9:23
  - Intentional destruction § 9:24
  - Negative presumption § 9:26
  - Other grounds § 9:27
  - Prejudicial evidence § 9:22
  - Spoilation of evidence § 9:25
  - Suppression of evidence § 9:24
- Suppression of evidence § 9:24
- Text of motion, suggested § 9:20

### LOST PROFITS

- Exclusion of improper damage evidence § 10:181
- Motion to exclude improper damage evidence (speculative evidence) § 10:201

### MALPRACTICE BY MEDICAL PROFESSION

- Lay witness testimony, common knowledge exception § 8:47

### MAPS, MODELS, CHARTS, EXHIBITS AND DEMONSTRATIVE EVIDENCE

- Generally §§ 4:86 to 4:101
- Demonstrations §§ 4:92, 4:100, 4:101
- Diagrams §§ 4:93, 4:99
- Discretion of court §§ 4:89, 4:97
- Exhibits § 4:91
- Illustrations §§ 4:93, 4:99
- Injury, demonstration of § 4:101
- Maps, models or charts §§ 4:90, 4:98
- Opposing authorities
  - Generally § 4:95
  - Demonstrations §§ 4:100, 4:101
  - Diagrams § 4:99
  - Discretion of court § 4:97
  - Illustrations § 4:99
  - Injury, demonstration of § 4:101
  - Maps, models, or charts § 4:98
  - Relevant to issues § 4:96
- Relevant to issues § 4:96
- Summary § 4:87
- Supporting authorities
  - Generally § 4:88
  - Demonstrations § 4:92
  - Diagrams § 4:93
  - Discretion of court § 4:89
  - Exhibits § 4:91
  - Illustrations § 4:93
  - Maps, models or charts § 4:90
  - Other grounds § 4:94
- Text of motion, suggested § 4:86

### MEDIATION

- Motion to exclude, sample § 9:59
- Witness, mediator as, motion to exclude testimony §§ 8:63, 8:64

### MEDICAL CARE OR TREATMENT

- Medical Records, Reports or Bills, this index
- Mental and physical examination, sanctions, discovery motions §§ 6:18, 6:19

### MEDICAL INSURANCE POLICY

- Collateral source payments § 10:7

**MEDICAL MALPRACTICE**

Lay witness testimony, common knowledge exception § 8:47

**MEDICAL RECORDS, REPORTS OR BILLS**

Generally §§ 4:102 to 4:121

Billing records

Foundation, lack of § 4:112

Motion to exclude evidence of after [date] § 6:53

Proof of medical expenses § 4:113

Reasonableness of charges § 4:121

Business records exception § 4:118

Diagnosis and treatment, opinion used in § 4:117

Foundation, improper § 4:105

Hearsay §§ 4:106, 4:111

Medical history §§ 4:110, 4:111, 4:119, 4:120

Observations of physician § 4:119

Opposing authorities

Generally § 4:115

Authentication, proper § 4:116

Billing records, reasonableness of charges § 4:121

Business records exception § 4:118

Opinion used in formation of diagnosis and treatment § 4:117

Patient history

Medical diagnosis, pertinent to § 4:120

Observations of physician § 4:119

Personal knowledge, lack of § 4:107

Sample motions and suggested motion text §§ 4:102, 4:135

Self-serving opinions § 4:109

Speculation § 4:108

Summary § 4:103

Supporting authorities

Generally § 4:104

Billing records

Foundation, lack of § 4:112

Proof of medical expenses § 4:113

Foundation, improper § 4:105

Hearsay

Medical history § 4:111

**MEDICAL RECORDS, REPORTS OR BILLS—Cont'd**

Supporting authorities—Cont'd

Hearsay—Cont'd

Medical opinions § 4:106

Medical opinions, improper hearsay § 4:106

Opinions of others

Lack of personal knowledge § 4:107

Self-serving § 4:109

Speculation § 4:108

Other grounds § 4:114

Patient medical history §§ 4:110, 4:111

Text of motion, suggested § 4:102

**MENTAL AND PHYSICAL EXAMINATION**

Sanctions, discovery motions §§ 6:18, 6:19

**MENTAL CAPACITY OR CONDITION**

Incompetent witness, motion to exclude testimony §§ 8:53, 8:58

Lay witness testimony, sanity and mental condition § 8:40

**MESSAGES**

Text, Motion to exclude § 4:142

**MINORS**

Child support action, mediator, motion to exclude testimony § 8:64

Incompetent witness, motion to exclude testimony §§ 8:52, 8:57

**MODELS AND PROTOTYPES**

Maps, Models, Charts, Exhibits and Demonstrative Evidence, this index

**MOTION PICTURES**

Improper foundation § 4:11

**MOTION TO DISMISS**

Action as discovery sanction § 6:62

**MUNICIPAL CORPORATIONS AND OTHER POLITICAL SUBDIVISIONS**

Excluding prior crime evidence §§ 7:46, 7:57, 7:60

## INDEX

### **MUNICIPAL CORPORATIONS AND OTHER POLITICAL SUBDIVISIONS—Cont'd**

Prior D.U.I., exclusion of municipal  
violations § **10:103**

### **NON-CALLED WITNESSES**

Witnesses, this index

### **OBJECTIONS**

Preservation of § **1:4**

### **OBJECTS OR THINGS**

Improper foundation § **4:15**

### **ORDERS**

Motion for

Discovery sanction

Rendering default judgment  
§ **6:60**

Evidentiary sanctions

Serve answers/objections to  
interrogatories § **6:61**

Sample in limine order § **1:12**

### **PATTERN OF INJURY TESTS**

Excluding biomechanic evidence  
§ **10:131**

### **PERSONAL INJURIES**

Generally § **10:1 et seq.**

Accident reconstruction and  
biomechanic evidence

Generally §§ **10:119 to 10:146**

Accident reconstruction evidence  
Generally §§ **10:121 to 10:127,**  
**10:139**

Competent facts § **10:140**

Foundation § **10:140**

Foundation, improper § **10:124**

Hearsay § **10:123**

Incomplete facts § **10:122**

Observation of others, reliance  
on § **10:123**

Opinion, proper basis for  
§ **10:139**

Photographs depicting “no dam-  
age” to vehicles § **10:145**

Point of impact § **10:144**

Point of impact determinations  
§ **10:125**

### **PERSONAL INJURIES—Cont'd**

Accident reconstruction and  
biomechanic evidence—Cont'd

Accident reconstruction evidence  
—Cont'd

Qualification, improper  
§ **10:124**

Reaction time determinations  
§ **10:126**

Skid mark analysis § **10:142**

Speculation § **10:122**

Speed of vehicle § **10:141**

Stopping distances § **10:143**

Vehicle speed determinations  
§ **10:127**

Anthropomorphic dummies  
§ **10:129**

Biomechanic evidence

Admitting § **10:146**

Excluding §§ **10:128 to 10:131**

Biomechanic evidence, excluding

Generally §§ **10:128 to 10:131**

Anthropomorphic dummies  
§ **10:129**

Finite element analysis tests  
§ **10:130**

Pattern of injury tests § **10:131**

Competent facts § **10:140**

Finite element analysis tests  
§ **10:130**

Foundation §§ **10:124, 10:140**

Hearsay § **10:123**

Human crash test dummy  
testimony § **10:135**

Incomplete facts § **10:122**

Low-speed impact automobile  
cases

Generally §§ **10:132 to 10:137**

Human crash test dummy  
testimony § **10:135**

Other unreliable tests § **10:137**

Photographs depicting “no dam-  
age” to vehicles § **10:136**

Plopping into a chair testimony,  
challenging § **10:134**

Opinion, proper basis for § **10:139**

Opposing authorities

Biomechanic evidence, cases  
where admitted § **10:146**



**PERSONAL INJURIES—Cont’d**

- Accident reconstruction and biomechanic evidence—Cont’d
- Opposing authorities—Cont’d
  - Competent facts § 10:140
  - Opinion, proper basis for § 10:139
  - Photographs depicting “no damage” to vehicles § 10:145
  - Skid mark analysis § 10:142
  - Stopping distances § 10:143
  - Tests and scientific testimony § 10:138
- Pattern of injury tests § 10:131
- Photographs depicting “no damage” to vehicles §§ 10:136, 10:145
- Point of impact determinations §§ 10:125, 10:144
- Reaction time determinations § 10:126
- Skid mark analysis § 10:142
- Speculation § 10:122
- Stopping distances § 10:143
- Summary § 10:120
- Supporting authorities
  - Anthropomorphic dummies § 10:129
  - Finite element analysis tests § 10:130
  - Foundation, improper § 10:124
  - Hearsay § 10:123
  - Incomplete facts § 10:122
  - Pattern of injury tests § 10:131
  - Point of impact determinations § 10:125
  - Reaction time determinations § 10:126
  - Speculation § 10:122
  - Vehicle speed determinations § 10:127
- Text of motion, suggested § 10:119
- Vehicle speed determinations §§ 10:127, 10:141
- Alcohol consumption
  - Generally §§ 10:87 to 10:96
  - Blood alcohol level tests § 10:93
  - Irrelevant evidence § 10:90

**PERSONAL INJURIES—Cont’d**

- Alcohol consumption—Cont’d
- Opposing authorities
  - Generally § 10:95
  - Relevant to issues § 10:95
  - Witness perceptions § 10:96
- Passenger, consumption by § 10:92
- Prejudicial evidence § 10:89
- Relevant to issues § 10:95
- Summary § 10:88
- Supporting authorities
  - Generally §§ 10:89 to 10:94
  - Alcohol evidence § 10:91
  - Blood alcohol level tests § 10:93
  - Irrelevant evidence § 10:90
  - Other grounds § 10:94
  - Passenger, consumption by § 10:92
  - Prejudicial evidence § 10:89
- Text of motion, suggested § 10:87
- Witness perceptions § 10:96
- Collateral source payments
  - Generally §§ 10:1 to 10:15
  - Disability benefits § 10:8
  - Governmental benefits based on financial need § 10:11
  - Gratuitous payments §§ 10:6, 10:14
  - Medical or liability policy payments § 10:7
- Opposing authorities
  - Generally §§ 10:13 to 10:15
  - Gratuitous payments, split of authority § 10:14
  - Relevant to issue in case § 10:15
- Prejudicial evidence § 10:3
- Summary § 10:2
- Supporting authorities
  - Generally §§ 10:3 to 10:12
  - Collateral source evidence § 10:5
  - Disability benefits § 10:8
  - Governmental benefits based on financial need § 10:11
  - Gratuitous payments § 10:6
  - Irrelevant evidence § 10:4

## INDEX

### **PERSONAL INJURIES—Cont'd**

- Collateral source payments—Cont'd
  - Supporting authorities—Cont'd
    - Medical or liability policy payments § 10:7
    - Other grounds § 10:12
    - Prejudicial evidence § 10:3
    - Wage payments § 10:10
    - Workers' compensation benefits § 10:9
  - Text of motion, suggested § 10:1
  - Wage payments § 10:10
  - Workers' compensation benefits § 10:9
- Damage evidence, improper
  - Generally §§ 10:175 to 10:188
  - Court's discretion § 10:183
  - Denied claims §§ 10:183, 10:185
  - Estoppel § 10:184
  - Lost profits § 10:181
- Opposing authorities
  - Generally § 10:183
  - Court's discretion § 10:183
  - Denied claims §§ 10:183, 10:185
  - Estoppel § 10:184
  - Punitive damages § 10:188
  - Reasonably certain damages § 10:187
  - Speculative damages § 10:186
  - Unpleaded claims § 10:183
- Punitive damages §§ 10:182, 10:188
- Reasonably certain damages § 10:187
- Speculative damages §§ 10:180, 10:186, 10:201
- Summary § 10:176
- Supporting authorities
  - Generally §§ 10:177 to 10:182
  - Lost profits § 10:181
  - Punitive damages § 10:182
  - Speculative damages § 10:180
  - Surprise claims § 10:179
  - Undisputed matters § 10:178
  - Unpleaded matters § 10:177
  - Surprise claims § 10:179

### **PERSONAL INJURIES—Cont'd**

- Damage evidence, improper—Cont'd
  - Text of motion, suggested § 10:175
  - Undisputed matters § 10:178
  - Unpleaded matters §§ 10:177, 10:183
- Evidence, see more specific groups in this index topic
- Financial status of party
  - Generally §§ 10:147 to 10:157
  - Defendant's financial status § 10:153
- Opposing authorities
  - Generally § 10:156
  - Punitive damages claim, necessary to support § 10:157
  - Relevant to issues § 10:156
- Plaintiff's, motion to exclude, sample § 10:198
- Plaintiff's financial status § 10:152
- Relevant to issues § 10:156
- Sample motions and suggested motion text §§ 10:147, 10:198, 10:204
- Summary § 10:148
- Supporting authorities
  - Generally §§ 10:149 to 10:155
  - Defendant's financial status § 10:153
  - Financial status evidence § 10:151
  - Irrelevant evidence § 10:150
  - Other grounds § 10:155
  - Plaintiff's financial status § 10:152
  - Prejudicial evidence § 10:149
  - Punitive damages cases §§ 10:154, 10:157
  - Text of motion, suggested § 10:147
- Impeachment
  - Prior D.U.I. §§ 10:101, 10:107, 10:108
  - Subsequent repairs § 10:62
- Liability insurance
  - Generally §§ 10:16 to 10:27
  - Cross-examination § 10:23

**PERSONAL INJURIES—Cont’d**

Liability insurance—Cont’d

Evidence of, sample motion to exclude § 10:197

Incidental reference to insurance § 10:25

Irrelevant evidence § 10:19

Lack of insurance, evidence of § 10:21

Non-prejudicial references to insurance § 10:26

Opposing authorities

Generally §§ 10:23 to 10:27

Cross-examination § 10:23

Incidental reference to insurance § 10:25

Non-prejudicial references to insurance § 10:26

Ownership or employment, proving § 10:27

Relevant to other issues or otherwise admissible § 10:24

Ownership or employment, proving § 10:27

Prejudicial evidence § 10:18

Relevant to other issues or otherwise admissible § 10:24

Summary § 10:17

Supporting authorities

Generally §§ 10:18 to 10:22

Irrelevant evidence § 10:19

Lack of insurance, evidence of § 10:21

Liability insurance evidence § 10:20

Other grounds § 10:22

Prejudicial evidence § 10:18

Liability or fault evidence

Generally §§ 10:165 to 10:174

Admitted matters §§ 10:169, 10:170, 10:174

Legal opinions by lay witnesses, inadmissible § 10:171

Opposing authorities

Generally § 10:173

Admission of fault § 10:174

Relevance § 10:173

Relevance § 10:173

**PERSONAL INJURIES—Cont’d**

Liability or fault evidence—Cont’d

Settlement negotiations, admissions made during § 10:170

Summary § 10:165

Supporting authorities

Generally §§ 10:167 to 10:172

Admitted matters §§ 10:169, 10:170

Irrelevant evidence § 10:168

Legal opinions by lay witnesses, inadmissible § 10:171

Other grounds § 10:172

Prejudicial evidence § 10:167

Settlement negotiations, admissions made during § 10:170

Text of motion, suggested § 10:165

Motion to exclude

Evidence regarding party’s prior injuries § 10:205

Motion to exclude evidence regarding party’s prior injuries § 10:205

Motion to exclude that driver was unlicensed § 10:206

Other accidents, claims, or lawsuits

Generally §§ 10:40 to 10:54

Opposing authorities

Generally §§ 10:49 to 10:54

Subsequent accidents, evidence of § 10:54

Prior accident evidence

Absence of prior accidents §§ 10:44, 10:49

Dangerous condition §§ 10:46, 10:51

Defective products §§ 10:46, 10:51

Exclusion, sample motion §§ 10:49, 10:202

Negligence, prior accident evidence used to prove § 10:45

Notice § 10:52

Relevant to issues in case § 10:53

Similarity §§ 10:46, 10:51

## INDEX

### **PERSONAL INJURIES—Cont'd**

- Other accidents, claims, or lawsuits—Cont'd
  - Subsequent accidents, evidence of § 10:54
  - Summary § 10:41
- Supporting authorities
  - Generally §§ 10:42 to 10:48
  - Irrelevant evidence § 10:43
  - Other claims or lawsuits § 10:47
  - Other grounds § 10:48
  - Prejudicial evidence § 10:42
- Text of motion, suggested § 10:40
- Party's health or injuries, motion to exclude where not at issue
  - Generally §§ 10:110 to 10:118
- Demonstrations §§ 10:117, 10:118
- Irrelevant evidence § 10:113
- Opposing authorities
  - Generally §§ 10:116 to 10:118
- Demonstration of injury § 10:117
- Other demonstrations § 10:118
- Relevant to issues in case § 10:116
- Prejudicial evidence § 10:112
- Relevant to issues in case § 10:116
- Summary § 10:111
- Supporting authorities
  - Generally §§ 10:112 to 10:115
  - Health or injuries where not at issue, exclusion of evidence § 10:114
  - Irrelevant evidence § 10:113
  - Other grounds § 10:115
  - Prejudicial evidence § 10:112
- Text of motion, suggested § 10:110
- Prior D.U.I.
  - Generally §§ 10:97 to 10:109
  - Arrests § 10:102
  - Impeachment §§ 10:101, 10:107, 10:108
  - Improper conduct, exclusion of D.U.I. evidence where used to prove § 10:104
  - Irrelevant evidence § 10:100
  - Municipal ordinance violations § 10:103

### **PERSONAL INJURIES—Cont'd**

- Prior D.U.I.—Cont'd
  - Opposing authorities
    - Generally §§ 10:106 to 10:109
    - Impeachment §§ 10:107, 10:108
    - Relevant to issues § 10:109
  - Prejudicial evidence § 10:99
  - Relevant to issues § 10:109
  - Summary § 10:98
  - Supporting authorities
    - Generally §§ 10:99 to 10:105
  - Arrests § 10:102
  - Impeachment, crimes evidence used for § 10:101
  - Improper conduct, exclusion of D.U.I. evidence where used to prove § 10:104
  - Irrelevant evidence § 10:100
  - Municipal ordinance violations § 10:103
  - Other grounds § 10:105
  - Prejudicial evidence § 10:99
  - Text of motion, suggested § 10:97
- Sample motions
  - Motion to exclude that driver was unlicensed § 10:206
- Seat belts, failure to wear
  - Generally §§ 10:80 to 10:86
  - Irrelevant evidence § 10:83
  - Mitigation, admissible as § 10:86
  - Opposing authorities, admissible as mitigation § 10:86
  - Prejudicial evidence § 10:82
  - Summary § 10:81
  - Supporting authorities
    - Generally §§ 10:82 to 10:85
    - Irrelevant evidence § 10:83
    - Other grounds § 10:85
    - Prejudicial evidence § 10:82
    - Seat belt evidence § 10:84
  - Text of motion, suggested § 10:80
- Settlement evidence
  - Generally §§ 10:28 to 10:39
  - Admission against interest § 10:39
  - Co-defendants, settlement with § 10:35
  - Irrelevant evidence § 10:31

**PERSONAL INJURIES—Cont’d**

Settlement evidence—Cont’d

Liability, settlement evidence used to show § 10:32

Negotiations § 10:34

Offer to compromise § 10:36

Opposing authorities

Generally § 10:38

Admission against interest § 10:39

Prejudicial evidence § 10:30

Prior settlements § 10:33

Summary § 10:29

Supporting authorities

Generally §§ 10:30 to 10:37

Co-defendants, settlement with § 10:35

Irrelevant evidence § 10:31

Offer to compromise § 10:36

Other grounds § 10:37

Prejudicial evidence § 10:30

Prior settlements § 10:33

Settlement evidence used to show liability § 10:32

Settlement negotiations § 10:34

Text of motion, suggested § 10:28

Settlement evidence, motion to exclude, sample § 10:196

Speculative evidence, motion exclude improper damage evidence § 10:201

Statute violation

Generally §§ 10:65 to 10:74

Injury not one statute meant to prevent § 10:70

Irrelevant evidence § 10:68

Negligence per se §§ 10:70, 10:74

Not proximate cause § 10:70

Opposing authorities

Generally § 10:73

Negligence per se § 10:74

Presumption of negligence § 10:74

Traffic citation, admission of § 10:73

Prejudicial evidence § 10:67

Presumption of negligence § 10:74

**PERSONAL INJURIES—Cont’d**

Statute violation—Cont’d

Protected class, party not within § 10:71

Summary § 10:66

Supporting authorities

Generally §§ 10:67 to 10:72

Injury not one statute meant to prevent § 10:70

Irrelevant evidence § 10:68

Negligence per se not applicable § 10:70

Not proximate cause § 10:70

Other grounds § 10:72

Prejudicial evidence § 10:67

Protected class, party not within § 10:71

Traffic citation evidence § 10:69

Text of motion, suggested § 10:65

Traffic citation evidence §§ 10:69, 10:73

Statute violation, sample motion to exclude § 10:194

Subsequent accidents, evidence of § 10:54

Subsequent repairs

Generally §§ 10:55 to 10:63

Impeachment § 10:62

Irrelevant evidence § 10:58

Negligence, exclusion of subsequent repair evidence to show § 10:59

Non-parties § 10:61

Opposing authorities

Generally § 10:61

Impeachment § 10:62

Non-parties § 10:61

Relevant to issues § 10:63

Sample motions § 10:203

Strict products liability § 10:64

Prejudicial evidence § 10:57

Relevant to issues § 10:63

Sample motion to exclude §§ 10:193, 10:203

Strict products liability § 10:64

Summary § 10:56

Supporting authorities

Generally §§ 10:57 to 10:60

## INDEX

### **PERSONAL INJURIES—Cont'd**

- Subsequent repairs—Cont'd
  - Supporting authorities—Cont'd
    - Irrelevant evidence § 10:58
    - Negligence, exclusion of subsequent repair evidence to show § 10:59
    - Other grounds § 10:60
    - Prejudicial evidence § 10:57
  - Text of motion, suggested § 10:55
- Tax evidence
  - Generally §§ 10:158 to 10:164
  - Jurors, improper appeal to as taxpayers § 10:162
  - Opposing authorities, relevant to issues § 10:164
  - Relevant to issues § 10:164
  - Summary § 10:159
  - Supporting authorities
    - Generally §§ 10:160 to 10:163
    - Irrelevant evidence § 10:161
    - Jurors, improper appeal to as taxpayers § 10:162
    - Other grounds § 10:163
    - Prejudicial evidence § 10:160
  - Text of motion, suggested §§ 10:158 to 10:164
- Unlicensed driver
  - Generally §§ 10:76 to 10:80
  - Opposing authorities, relevant to issues § 10:79
  - Summary § 10:76
  - Supporting authorities §§ 10:77, 10:78
  - Text of motion, suggested § 10:75

### **PHOTOGRAPHS**

- Accident reconstruction evidence, photographs depicting “no damage” to vehicles §§ 10:136, 10:145
- Accident scene photographs §§ 4:41, 4:48
- Cumulative evidence, motion to exclude or limit §§ 2:30, 2:37
- Enlarged photographs § 4:45
- Foundation §§ 4:8, 4:44
- Gruesome or inflammatory
  - Generally §§ 4:33 to 4:48

### **PHOTOGRAPHS—Cont'd**

- Gruesome or inflammatory—Cont'd
  - Accident scene photographs §§ 4:41, 4:48
  - Enlarged photographs § 4:45
  - Inflaming jurors' emotions, purpose to § 4:38
- Opposing authorities
  - Generally § 4:43
  - Accident scene photographs § 4:48
  - Enlarged photographs § 4:45
  - Foundation, adequate § 4:44
  - Gruesome photographs § 4:46
  - Photographs, generally § 4:43
  - X-rays § 4:47
- Sample motions §§ 4:132, 4:137
- Summary § 4:34
- Supporting authorities
  - Generally § 4:35
  - Accident scene photographs § 4:41
  - Gruesome or inflammatory photographs § 4:37
  - Inflaming jurors' emotions, purpose to § 4:38
  - Irrelevant evidence § 4:36
  - Other grounds § 4:42
  - Photographs, exclusion of, generally § 4:39
  - Prejudicial evidence § 4:35
  - X-rays § 4:40
  - Text of motion, suggested § 4:33
  - X-rays §§ 4:40, 4:47
- Inflammatory. Gruesome or inflammatory, above
- X-rays §§ 4:40, 4:47

### **PHYSICAL APPEARANCE OR CONDITION**

- Sample motion to exclude physical conditions not at issue § 3:21

### **PHYSICAL CONDITIONS**

- Sample motion to exclude physical conditions not at issue § 3:21

### **PHYSICAL OR MENTAL EXAMINATION**

- Sanctions, discovery motions §§ 6:18, 6:19



**PICTURES AND PHOTOGRAPHS**

Photographs, this index

**POLYGRAPH EXAMINATION**

Motion to exclude § 5:52

Tests and Scientific Evidence, this index

**POVERTY**

Defendant's, evidence of § 2:41

**PREJUDICE OR BIAS**

Bias, this index

**PREJUDICE OR BIAS OF WITNESS**

Character evidence §§ 7:18, 7:24

**PREJUDICIAL EVIDENCE**

Generally §§ 2:1 to 2:44

Confusing or misleading evidence

Generally §§ 2:12 to 2:16

Limiting instruction § 2:16

Opposing authorities

Generally § 2:15

Limiting instruction § 2:16

Sample motion § 2:38

Summary § 2:13

Supporting authorities § 2:14

Cumulative evidence, motion to exclude or limit

Generally §§ 2:24 to 2:37

Letters § 4:80

Number of witnesses §§ 2:29, 2:35

Opposing authorities

Generally §§ 2:34 to 2:37

Number of witnesses § 2:35

Photographs § 2:37

Videotape evidence § 2:36

Photographs §§ 2:30, 2:37

Rebuttal testimony § 2:33

Sample motion § 2:39

Summary § 2:25

Supporting authorities

Generally §§ 2:26, 2:27

Articles and letters § 2:28

Number of witnesses § 2:29

Photographs § 2:30

Rebuttal testimony § 2:33

Videotape evidence § 2:32

**PREJUDICIAL EVIDENCE**

—Cont'd

Cumulative evidence, motion to exclude or limit—Cont'd

Supporting authorities—Cont'd

Witness testimony § 2:31

Text of motion, suggested § 2:24

Videotape evidence § 2:32

Witnesses §§ 2:29, 2:31, 2:35

Discretion § 2:7

Emotional bias, motion to exclude evidence used to create

Generally §§ 2:5, 2:17 to 2:23

Golden Rule argument § 2:22

Opposing authorities § 2:23

Photographs, gruesome or inflammatory § 4:38

Summary § 2:18

Supporting authorities

Generally §§ 2:19, 2:20

Golden Rule argument § 2:22

Taxpayers, jurors' self-interest as § 2:21

Taxpayers, jurors' self-interest as § 2:21

Text of motion, suggested § 2:17

Golden Rule argument § 2:22

Irrelevant evidence § 3:6

Motion for order

Rendering default judgment

Discovery sanction § 6:60

Motion to exclude improper argument during opening statement § 9:63

Motion to exclude prejudicial evidence § 2:40

Motion to exclude testimony of incompetent witness § 8:118

Opposing authorities

Generally § 2:6

Broad discretion § 2:7

Opposition to motion

Confuse the jury

Exclude evidence § 2:43

Opposition to motion to exclude prejudicial evidence § 2:42

Photographs, gruesome or inflammatory §§ 4:35, 4:137



## INDEX

### **PREJUDICIAL EVIDENCE**

#### **—Cont'd**

- Poverty, motion to exclude evidence of defendant's § 2:41
- Prejudice defined § 2:4
- Summary § 2:2
- Supporting authorities
  - Generally § 2:3
  - Emotional bias § 2:5
  - Exclusion of prejudicial evidence § 2:3
  - Prejudice defined § 2:4
- Text messages
  - Motion to exclude § 4:142
- Text of motion, suggested § 2:1
- Time wasting evidence
  - Generally §§ 2:8 to 2:11
  - Opposing authorities § 2:11
  - Summary § 2:9
  - Supporting authorities §§ 2:10, 2:26
  - Text of motion, suggested § 2:8
- Videotape evidence §§ 2:32, 2:36
- Witnesses, motion to exclude or limit cumulative evidence §§ 2:29, 2:31

### **PREMATURE REBUTTAL**

- Rebuttal evidence
  - Affirmative defenses
    - Generally §§ 9:14 to 9:19
  - Affirmative defenses, motion to bar § 9:65

### **PRESERVATION OF OBJECTIONS**

- Generally § 1:4

### **PRIOR CONVICTIONS**

- Defendant's prior DWI, motion to exclude, sample § 10:199
- Impeachment, use for § 7:12

### **PRIOR CRIME EVIDENCE**

- Character Evidence, this index

### **PRIVILEGE AGAINST SELF-INCRIMINATION**

- Allowable comments in criminal matters § 8:85
- Civil consequences of silence § 8:86

### **PRIVILEGE AGAINST SELF-INCRIMINATION**

#### **—Cont'd**

- Comment on exercise of privilege
  - Generally §§ 8:82 to 8:86
  - Allowable comments in criminal matters § 8:85
  - Civil consequences of silence § 8:86
  - No comment rule § 8:84
  - Opposing authorities §§ 8:85, 8:86
  - Summary § 8:83
  - Supporting authorities § 8:84
- No comment rule § 8:84
- Silence, civil consequences § 8:86

### **PROCEDURAL REQUIREMENTS**

- Generally §§ 1:6, 1:7
- Local rules, caution regarding § 1:7

### **PRODUCTION OF DOCUMENTS AND THINGS**

- Discovery Motions, this index

### **PRODUCTS LIABILITY**

- Strict liability, motion to exclude evidence of subsequent repairs § 10:64

### **PROFITS**

- Lost Profits, this index

### **PROPERTY VALUE**

- Lay witness testimony § 8:43

### **PROXIMATE CAUSE**

- Lay witness testimony § 8:35

### **PSYCHIATRY AND PSYCHOLOGY**

- Motion to exclude tests and syndromes §§ 5:28, 5:44

### **PSYCHOLOGICAL TESTS AND SYNDROMES**

- Tests and scientific evidence §§ 5:28, 5:44

### **PUBLISHED ARTICLES**

- Generally §§ 4:57 to 4:64, 4:136
- Hearsay §§ 4:60, 4:64
- Opposition authorities
  - Non hearsay § 4:64
  - Relevant to issues § 4:63

**PUBLISHED ARTICLES—Cont’d**

- Prejudicial § 4:61
- Sample motion to exclude § 4:136
- Summary § 4:58
- Supporting authorities
  - Generally § 4:59
  - Hearsay § 4:60
  - Other grounds § 4:62
  - Prejudicial § 4:61
- Text of motion, suggested § 4:57

**PUNITIVE DAMAGES**

- Exclusion of improper damage evidence §§ 10:182, 10:188
- Party’s financial status, evidence of §§ 10:154, 10:157

**PURPOSE OF MOTION**

- Generally § 1:1

**RAPE TRAUMA SYNDROME**

- Motion to exclude §§ 5:28, 5:44

**REBUTTAL EVIDENCE**

- Affirmative defenses, premature rebuttal
  - Generally §§ 9:14 to 9:19
- Cumulative evidence, motion to exclude or limit § 2:33

**REFRESHING RECOLLECTION**

- Accident report used for purpose of § 4:71

**RELEVANCY**

- Irrelevant Evidence, this index

**RELIGIOUS BELIEFS**

- Character evidence §§ 7:15, 7:26, 7:62
- Motion to exclude improper character evidence § 7:62

**REMOTENESS**

- Irrelevant evidence § 3:8

**SAMPLE MOTIONS**

- Motion to exclude
  - Evidence regarding party’s prior injuries § 10:205
- Motion to exclude that driver was unlicensed § 10:206

**SAMPLE MOTIONS AND SUGGESTED MOTION TEXT**

- Generally §§ 2:38 to 2:44
- Accident report
  - Opposition to motion to exclude § 4:141
- Accident report § 4:65
- Action as discovery sanction, motion to dismiss § 6:62
- Admitted matters, motion to
  - Conclusively establish § 6:34
  - Deem § 6:56
- Affirmative defenses, motion to bar premature rebuttal § 9:14
- Alcohol consumption § 10:87
- Alcoholism of percipient witness § 7:59
- Arbitration evidence and findings § 9:30
- Bifurcated trial, motion to exclude evidence of damages §§ 9:35, 9:61
- Biomechanic evidence, motion to exclude § 5:55
- Brief, sample § 1:11
- Character evidence
  - Conduct, motion to exclude evidence used to prove § 7:28
  - Impeachment, motion to exclude evidence used for § 7:4
  - Juvenile adjudication, motion to exclude § 7:63
  - Marital infidelity, motion to exclude § 7:61
  - Prescription drug abuse, motion to exclude § 7:64
  - Prior crime evidence, motion to exclude § 7:39
- Claim denied during discovery
  - Motion to exclude evidence § 6:40
  - Sample motion to exclude evidence § 6:52
- Collateral evidence, motion to exclude § 3:24
- Collateral source payments §§ 10:1, 10:189
- Computerized valuations of business, motion to exclude evidence § 8:113

## INDEX

### SAMPLE MOTIONS AND SUGGESTED MOTION TEXT

#### —Cont'd

Conduct, motion to exclude character evidence used to prove § **7:28**  
Confusing evidence § **2:38**  
Cumulative evidence  
    Excluding or limiting § **2:24**  
    Sample motion to exclude § **2:39**  
Damage evidence, improper § **10:175**  
Damages in bifurcated trial §§ **9:35, 9:61**  
Deem matters admitted, motion to § **6:56**  
Defendant's prior DWI, motion to exclude § **10:199**  
Demonstration, motion to exclude § **4:133**  
Discovery, motion for evidentiary sanctions § **6:1**  
Discovery deadline, motion to exclude evidence produce beyond § **6:55**  
D.U.I., prior § **10:97**  
Emotion bias, motion to exclude evidence used to create § **2:17**  
Evidentiary sanctions for failure  
    Serve answers/objections to interrogatories § **6:61**  
Exclude comment regarding exercise of privilege § **8:121**  
Exclude improper argument  
    During opening statement § **9:63**  
Exclude testimony of incompetent Witness § **8:118**  
Exclude text messages § **4:142**  
Exclusion of witness from courtroom prior to testifying §§ **8:74, 8:115**  
Experts  
    Expert witness exchange or expert deposition, improper § **6:46**  
    Improper expert opinion, motion to exclude § **8:1**  
    Opposition to motion to exclude § **8:120**  
    Speculative opinion § **8:110**  
Witnesses, limiting plaintiff's § **6:59**

### SAMPLE MOTIONS AND SUGGESTED MOTION TEXT

#### —Cont'd

Financial status of party §§ **10:147, 10:198, 10:204**  
Firearm residue laboratory testing, admission § **10:191**  
Foundation, motion to exclude evidence lacking § **4:1**  
Golden Rule argument, motion to preclude § **9:60**  
Hypnosis evidence, motion to exclude § **5:53**  
Immigration status, sample motion to exclude irrelevant evidence § **3:21**  
Impeachment, motion to exclude character evidence used for § **7:4**  
Improper voir dire § **9:62**  
Incompetent witness § **8:49**  
Inflammatory evidence, opposition to motion to exclude § **7:66**  
Insurance case, sample motion to exclude irrelevant evidence § **3:23**  
Irrelevant evidence § **3:1**  
Irrelevant evidence, exclusion of §§ **3:23, 3:24**  
Judge, arbitrator, mediator, attorney or juror § **8:60**  
Junk science and related evidence § **5:20**  
Lack of personal knowledge of subject matter, motion to exclude testimony § **8:116**  
Lay witness testimony  
    Motion to exclude § **8:33**  
    Opposition to motion to exclude § **8:119**  
Letters § **4:74**  
Liability insurance, motion to exclude evidence of § **10:16**  
Liability insurance evidence, motion to exclude § **10:197**  
Liability or fault evidence §§ **10:165, 10:190**  
Lost or destroyed evidence, motion to exclude reference to §§ **9:20, 9:58**

**SAMPLE MOTIONS AND  
SUGGESTED MOTION TEXT**

**—Cont’d**

Lost profits, motion to exclude improper damage evidence (speculative evidence) § **10:201**

Maps, models, charts, exhibits and demonstrative evidence § **4:86**

Matters not disclosed, motion to exclude § **6:58**

Matters not in controversy § **3:10**

Mediation evidence, motion to exclude § **9:59**

Mediator testimony  
Motion to exclude § **8:117**

Medical bills, motion to exclude § **4:145**

Medical bills for service obtained after [date], motion to exclude evidence of § **6:53**

Medical doctor, motion to exclude testimony and opinions § **8:114**

Medical history of plaintiff, motion to exclude § **4:135**

Medical records, reports or bills § **4:102**

Missing evidence instruction, opposition to motion for § **9:64**

Motion to bar premature rebuttal to affirmative defense § **9:65**

Motion to exclude  
Evidence regarding witness’s mental health § **7:71**

Motion to exclude, evidence regarding witness’s mental health § **7:71**

Municipal ordinance violation § **7:60**

Newspaper article, motion to exclude § **4:136**

Non-called witnesses, motion to exclude evidence of §§ **8:87, 8:111**

Non-chiropractor giving opinion on necessity of chiropractic treatment, sample motion to preclude § **8:112**

Opening statement, motion to exclude improper argument § **9:8**

**SAMPLE MOTIONS AND  
SUGGESTED MOTION TEXT**

**—Cont’d**

Opposition to motion to exclude  
Inflammatory evidence § **7:66**

Jury confusion § **2:42**  
Evidence § **2:43**

Prejudicial evidence § **2:44**

Order, sample § **1:12**

Other accidents, claims, or lawsuits § **10:40**

Photographs, gruesome or inflammatory §§ **4:33, 4:132, 4:137**

Physical conditions not at issue § **3:22**

Poverty, motion to exclude evidence of defendant’s § **2:41**

Prejudicial evidence §§ **2:1, 2:7**

Prior  
Accident evidence, exclusion § **10:202**

Arrest of witness, motion to exclude § **7:65**

Crime evidence § **7:39**

Municipal ordinance violation, sample motion to exclude evidence of § **7:60**

Published article, motion to exclude § **4:136**

Rendering default judgment  
Motion for order  
Discovery sanction § **6:60**

Sanction for establishing facts, motion for § **6:57**

Sanctions, evidentiary § **6:1**

Seat belt, exclusion of evidence of failure to wear § **10:80**

Settlement evidence § **10:28**

Settlement evidence, motion to exclude § **10:196**

Social media  
Motions to exclude § **4:139**

Opposition to motion to exclude § **4:143**

Speculative evidence, motion to exclude § **3:25**

Statistical analysis, sample motion to exclude § **5:51**

Statute violation, evidence of § **10:65**

## INDEX

### **SAMPLE MOTIONS AND SUGGESTED MOTION TEXT**

#### **—Cont'd**

- Subsequent repairs §§ **10:55, 10:203**
- Surveillance video, sample motion to exclude § **10:192**
- Tattoo, excluding demonstration of § **4:138**
- Taxes, motion to exclude evidence of failure to pay § **10:195**
- Terminology, improper § **9:47**
- Tests, experiments and related testimony § **5:1**
- Text messages
  - Opposition to motion to exclude § **4:144**
- Time wasting evidence § **2:8**
- Traffic citations, motion to exclude evidence of § **10:200**
- Undisclosed witnesses, motion to exclude testimony of § **6:54**
- Unlicensed driver § **10:75**
- Unpleaded issues, motion to exclude § **3:26**
- Videotape or film
  - Prejudicial § **4:59**
  - Unauthenticated § **4:140**
- Voir dire, improper, motion to prevent § **9:1**
- Witnesses, non-called §§ **8:87, 8:111**
- Writings § **4:20**
- Written letter, motion to exclude § **4:134**

### **SANCTIONS**

- Discovery Motions, this index

### **SANITY**

- Lay witness testimony § **8:40**

### **SCIENCE AND SCIENTIFIC MATTERS**

- Generally §§ **5:20 to 5:50**
- Tests and Scientific Evidence, this index

### **SEAT BELTS, FAILURE TO WEAR**

- Personal Injuries, this index

### **SECONDARY EVIDENCE**

- Writings and physical evidence §§ **4:28, 4:32**

### **SELF-INCRIMINATION**

- Privilege Against Self-Incrimination, this index

### **SETTLEMENT**

- Admissions made during settlement negotiations § **10:169**
- Motion to exclude settlement evidence §§ **10:28 to 10:39, 10:196**
- Personal Injuries, this index

### **SEXUAL PREFERENCE OR BEHAVIOR**

- Character evidence § **7:16**

### **SOCIAL MEDIA**

- Generally §§ **4:122 to 4:131, 4:139, 4:143**
- Opposition citations §§ **4:129 to 4:131**
- Sample motions
  - Motion to exclude § **4:139**
  - Opposition to motion to exclude § **4:143**
- Supporting authorities §§ **4:124 to 4:128**
- Text of motion, suggested § **4:122**

### **SPECULATION**

- Improper expert opinion §§ **8:13, 8:110**
- Motion to exclude § **3:7**

### **SPECULATIVE EVIDENCE**

- Improper expert opinion §§ **8:13, 8:110**
- Motion to exclude § **3:7**

### **SPEED**

- Lay witness testimony, speed of vehicles § **8:44**

### **SPOILIATION OF EVIDENCE**

- Generally § **9:25**

### **STATISTICAL EVIDENCE**

- Tests and Scientific Evidence, this index

**STATUTES**

Personal Injuries, this index

**SUBSEQUENT ACTS OR MATTERS**

Repairs. Personal Injuries, this index

**TAPE RECORDINGS**

Improper foundation § 4:9

**TATTOO**

Physical evidence, sample motion excluding § 4:138

**TAXATION**

Jurors' self-interest as taxpayers, motion to exclude evidence intended to inflame emotions § 2:21

Motion to exclude evidence of failure to pay § 10:195

Personal Injuries, this index

**TESTIMONY**

Motion to exclude

Incompetent witness § 8:118

**TESTS AND SCIENTIFIC EVIDENCE**

Generally §§ 5:1 to 5:55

Accident reconstruction evidence §§ 5:30, 5:50

Approved tests § 5:41

Battered spouse syndrome §§ 5:38, 5:45

Biomechanic evidence §§ 5:31, 5:32, 5:50

Canine scent tracking unit § 5:37

Careless testing § 5:18

Collateral issues § 5:10

Conjectural § 5:9

Discretion of court § 5:13

Foundation

Improper § 4:10

Lack of § 5:11

Frye requirements §§ 5:19, 5:40

Hedonic damage evidence §§ 5:24, 5:42

Hypnosis evidence §§ 5:29, 5:46

Junk science and related evidence Generally §§ 5:20 to 5:50

**TESTS AND SCIENTIFIC EVIDENCE—Cont'd**

Junk science and related evidence —Cont'd

Accident reconstruction evidence §§ 5:30, 5:50

Approved tests § 5:41

Battered spouse syndrome §§ 5:38, 5:45

Biomechanic evidence §§ 5:31, 5:32, 5:50

Canine scent tracking unit § 5:37

Hedonic damage evidence §§ 5:24, 5:42

Hypnosis evidence §§ 5:29, 5:46

New scientific evidence §§ 5:22, 5:23

Opposing authorities

Generally § 5:39

Accident reconstruction evidence § 5:50

Approved tests § 5:41

Battered spouse syndrome § 5:45

Biomechanic evidence § 5:50

Frye test not required § 5:40

Hedonic damages § 5:42

Hypnosis evidence, exceptions to inadmissibility § 5:46

Polygraph evidence, exceptions in inadmissibility § 5:43

Psychological tests § 5:44

Rape trauma syndrome § 5:44

Polygraph evidence §§ 5:26, 5:27, 5:43

Psychological tests and syndromes §§ 5:28, 5:44

Rape trauma syndrome §§ 5:28, 5:44

Summary § 5:21

Supporting authorities

Generally § 5:22

Accident reconstruction evidence § 5:30

Battered spouse syndrome § 5:38

Biomechanic evidence §§ 5:31, 5:32

## INDEX

### TESTS AND SCIENTIFIC EVIDENCE—Cont'd

- Junk science and related evidence—Cont'd
- Supporting authorities—Cont'd
  - Canine scent tracking unit § 5:37
  - Hedonic damage evidence § 5:24
  - Hypnosis evidence § 5:29
  - Low-speed impact cases § 5:32
  - New scientific evidence §§ 5:22, 5:23
  - Polygraph evidence §§ 5:26, 5:27
  - Psychological tests and syndromes § 5:28
  - Rape trauma syndrome § 5:28
  - Truth serum evidence § 5:25
  - Text of motion, suggested § 5:20
  - Truth serum evidence § 5:25
- Low-speed impact cases § 5:32
- New scientific evidence
  - Civil cases § 5:22
  - Criminal cases § 5:23
- Not generally accepted
  - Acceptance in scientific community §§ 5:15, 5:16
  - Civil cases § 5:4
  - Criminal cases § 5:5
- Polygraph evidence
  - Generally § 5:26
  - Exceptions to inadmissibility § 5:43
  - Refusal to take § 5:26
- Psychological tests and syndromes §§ 5:28, 5:44
- Published precedent § 5:15
- Rape trauma syndrome §§ 5:28, 5:44
- Reliability, lack of § 5:7
- Sample motions and suggested motion text
  - Biomechanic evidence, motion to exclude § 5:55
  - Expert testimony, motion to exclude § 5:54
  - Hypnosis, motion to exclude evidence of § 5:53

### TESTS AND SCIENTIFIC EVIDENCE—Cont'd

- Sample motions and suggested motion text—Cont'd
  - Polygraph examination, motion to exclude evidence of § 5:52
  - Statistical analysis, motion to exclude evidence of § 5:51
- Scientific procedures not proper § 5:8
- Speculative § 5:9
- Statistical evidence
  - Generally § 5:33
  - Confusing evidence § 5:33
  - Disapproved statistics evidence § 5:34
- Employment discrimination cases § 5:36
- General acceptance § 5:47
- Judicial notice § 5:49
- Negligence cases § 5:35
- Products liability cases § 5:35
- Sample motion to exclude evidence of statistical analysis § 5:51
- Weight vs. admissibility § 5:48
- Substantially similar conditions §§ 5:6, 5:14
- Tests, experiments and related testimony
  - Generally §§ 5:1 to 5:19
  - Careless testing § 5:18
  - Collateral issues § 5:10
  - Conjectural § 5:9
  - Discretion of court § 5:13
  - Expert not qualified to testify on subject § 5:3
  - Frye requirements, outside realm of § 5:19
  - Not generally accepted, above § 5:4
- Opposing authorities
  - Generally § 5:13
  - Careless testing § 5:18
  - Discretion of court § 5:13
  - Frye requirements, outside realm of § 5:19
  - General acceptance § 5:15
  - Level of acceptance in scientific community § 5:16



**TESTS AND SCIENTIFIC  
EVIDENCE—Cont’d**

Tests, experiments and related testimony—Cont’d  
 Opposing authorities—Cont’d  
   Published precedent § 5:15  
   Substantially similar conditions requirement § 5:14  
   Weight vs. admissibility § 5:17  
   Published precedent § 5:15  
   Reliability, lack of § 5:7  
   Scientific procedures not proper § 5:8  
   Speculative § 5:9  
   Substantially similar conditions §§ 5:6, 5:14  
   Summary § 5:2  
   Supporting authorities  
     Generally § 5:3  
     Collateral issues § 5:10  
     Conjectural § 5:9  
     Expert not qualified to testify on subject § 5:3  
     Foundation, lack of § 5:11  
     Not generally accepted §§ 5:4, 5:5  
     Not reliable § 5:7  
     Other grounds § 5:12  
     Scientific procedures not proper § 5:8  
     Speculative § 5:9  
     Substantially similar conditions, not made under § 5:6  
     Too time consuming § 5:10  
     Text of motion, suggested § 5:1  
     Too time consuming § 5:10  
     Weight vs. admissibility § 5:17  
   Too time consuming § 5:10  
   Truth serum evidence § 5:25  
   Weight vs. admissibility § 5:17

**TEXT MESSAGES**

Motion to exclude § 4:142  
 Sample motions  
   Opposition to motion to exclude § 4:144  
 Writings and physical evidence  
   Opposition to motion to exclude § 4:144

**TIMING**

Motion, timing of § 1:5

**TRAFFIC CITATIONS**

Admission or exclusion §§ 10:69, 10:73  
 Sample motion to exclude evidence of § 10:200

**TRAFFIC STOPS**

Admission or exclusion §§ 10:69, 10:73

**TRIAL**

Generally §§ 9:1 to 9:63  
 Affirmative defenses, motion to bar premature rebuttal  
   Generally §§ 9:14 to 9:19  
   Opposing authorities § 9:19  
   Order of proof § 9:17  
   Prejudicial evidence § 9:16  
   Summary § 9:15  
   Supporting authorities  
     Generally §§ 9:16 to 9:18  
     Order of proof § 9:17  
     Other grounds § 9:18  
     Prejudicial evidence § 9:16  
   Text of motion, suggested § 9:14  
 Bifurcated trial, motion to exclude evidence of damages  
   Generally §§ 9:35 to 9:40  
   Opposing authorities § 9:40  
   Policy considerations § 9:38  
   Sample motions and suggested motion text § 9:61  
   Statutory authority § 9:37  
   Summary § 9:36  
   Supporting authorities  
     Generally §§ 9:37 to 9:39  
     Other grounds § 9:39  
     Policy considerations § 9:38  
     Statutory authority § 9:37  
   Text of motion, suggested § 9:35  
 Confusing evidence § 9:49  
 Golden Rule argument, motion to preclude  
   Generally §§ 9:41 to 9:46, 9:60  
 Inflaming jurors’ emotions, exclusion of evidence § 2:22  
 Opposing authorities § 9:46

## INDEX

### **TRIAL—Cont'd**

- Golden Rule argument, motion to preclude—Cont'd
  - Rejection of argument § 9:44
  - Summary § 9:42
- Supporting authorities
  - Generally §§ 9:43 to 9:45
  - Other grounds § 9:45
  - Prejudicial evidence § 9:43
  - Rejection of argument § 9:44
  - Text of motion, suggested § 9:41
- Mediation evidence, motion to exclude § 9:59
- Motion to exclude
  - Improper argument
    - During opening statement § 9:63
- Opening statement, motion to exclude improper argument
  - Generally §§ 9:8 to 9:13
  - Opposing authorities § 9:13
  - Prejudicial matter § 9:11
  - Summary § 9:9
- Supporting authorities
  - Generally §§ 9:10 to 9:12
  - Other grounds § 9:12
  - Prejudicial matter § 9:11
  - Text of motion, suggested § 9:8
- Terminology, improper
  - Generally §§ 9:47 to 9:57
- Confusing evidence § 9:49
- Legal conclusions §§ 9:50, 9:57
- Legal questions vs. ultimate issues §§ 9:51, 9:52, 9:56
- Opposing authorities
  - Generally §§ 9:55 to 9:57
  - Legal conclusions compared § 9:57
  - Legal questions vs. ultimate issues § 9:56
- Preconditioning jury § 9:53
- Summary § 9:48
- Supporting authorities
  - Generally §§ 9:49 to 9:54
  - Confusing evidence § 9:49
  - Legal conclusions, terms including § 9:50
  - Preconditioning jury § 9:53

### **TRIAL—Cont'd**

- Terminology, improper—Cont'd
  - Supporting authorities—Cont'd
    - Ultimate issue opinions §§ 9:51, 9:52
  - Usurping jury function § 9:54
- Text of motion, suggested § 9:47
- Usurping jury function § 9:54
- Voir dire, improper, motion to prevent
  - Generally §§ 9:1 to 9:7
- Educating jury on law § 9:5
- Opposing authorities § 9:7
- Preconditioning § 9:4
- Summary § 9:2
- Supporting authorities
  - Generally §§ 9:3 to 9:7
  - Educating jury on law § 9:5
  - Other grounds § 9:6
  - Preconditioning § 9:4
  - Text of motion, suggested § 9:1

### **TYPICAL USE OF MOTION**

- Generally § 1:3
- Preservation of objections § 1:4

### **UNPLEADED ISSUES**

- Irrelevant evidence §§ 3:15, 3:18

### **VIDEOTAPE EVIDENCE**

- Cumulative evidence, motion to exclude or limit §§ 2:32, 2:36
- Foundation
  - Adequate § 4:56
  - Improper § 4:11
- Prejudicial film or videotapes
  - Generally §§ 4:49 to 4:56
- Opposing authorities
  - Generally § 4:54
  - Foundation, adequate § 4:56
  - Relevance § 4:55
- Summary § 4:50
- Supporting authorities §§ 4:51 to 4:53
  - Text of motion, suggested § 4:49
- Relevance § 4:55
- Unauthenticated video recording, motion to exclude § 4:140

**VOIR DIRE**

Motion to prevent improper. Trial,  
this index

**WAGES**

Collateral source payments § 10:10

**WITNESSES**

Generally §§ 8:1 to 8:120

Arbitrator or mediator, motion to  
exclude testimony §§ 8:63, 8:64

Causation, lay witness testimony  
§ 8:35

Children §§ 8:52, 8:57

Cumulative evidence, motion to  
exclude or limit §§ 2:29, 2:31,  
2:35

Damages, lay witness testimony  
§ 8:43

Excluding witness from courtroom  
prior to testifying

Generally §§ 8:74 to 8:81, 8:115

Admission of witness testimony  
§ 8:80

Discretionary decision § 8:78

Opposing authorities

Generally §§ 8:78 to 8:81

Admission of witness testimony  
§ 8:80

Discretionary decision § 8:78

Party cannot be excluded § 8:79

Purpose of rule § 8:81

Party cannot be excluded § 8:79

Purpose of rule § 8:81

Summary § 8:75

Supporting authorities

Generally § 8:76

Exclusion of testimony for  
violation of rule § 8:77

Text of motion, suggested § 8:74

Violation of rule, excluding  
testimony § 8:77

Expert Witnesses, this index

Foundation, improper, lay witness  
testimony § 4:13

Health, lay witness testimony § 8:41

Impeachment

Generally §§ 7:4 to 7:27

Hearsay used to impeach witness  
credibility § 8:108

**WITNESSES—Cont'd**

Impeachment—Cont'd

Motion to exclude character evi-  
dence used for. Character Evi-  
dence, this index

Personal Injuries, this index

Use for, motions in limine § 7:12

Incompetent witness, motion to  
exclude testimony

Generally §§ 8:49 to 8:59

Children §§ 8:52, 8:57

Insanity §§ 8:53, 8:58

Mental competence §§ 8:53, 8:58

Opposing authorities

Generally §§ 8:56 to 8:59

Children § 8:57

Insanity § 8:58

Mental competence § 8:58

Personal knowledge of subject  
matter, lack of § 8:59

Personal knowledge of subject  
matter, lack of §§ 8:54, 8:59

Statutory provisions § 8:51

Summary § 8:50

Supporting authorities

Generally §§ 8:51 to 8:55

Children § 8:52

Insanity § 8:53

Mental competence, lack of  
§ 8:53

Other grounds § 8:55

Personal knowledge of subject  
matter, lack of § 8:54

Statutory provisions § 8:51

Text of motion, suggested § 8:49

Injury, lay witness testimony § 8:41

Insanity, motion to exclude testimony  
§§ 8:53, 8:58

Intoxication, lay witness testimony  
§ 8:42

Judge, arbitrator, mediator, attorney  
or juror, motion to exclude  
testimony

Generally § 8:60

Arbitrator or mediator §§ 8:63,  
8:64

Attorney testimony

Generally §§ 8:65, 8:68

## INDEX

### WITNESSES—Cont'd

- Judge, arbitrator, mediator, attorney or juror, motion to exclude testimony—Cont'd
- Attorney testimony—Cont'd
  - Other attorney in firm or office, testimony of § 8:72
  - Substantial hardship § 8:71
  - Uncontested matter § 8:69
  - Value of legal services § 8:70
- Judge as witness § 8:62
- Juror as witness §§ 8:66, 8:73
- Opposing authorities
  - Generally §§ 8:67 to 8:73
  - Arbitrator as witness § 8:67
  - Juror as witness § 8:73
- Summary § 8:61
- Supporting authorities
  - Generally §§ 8:62 to 8:66
  - Arbitrator or mediator §§ 8:63, 8:64
  - Attorney as witness § 8:65
  - Judge as witness § 8:62
  - Juror as witness § 8:66
  - Legal separation and child support actions, mediator in § 8:64
- Juror as witness, motion to exclude testimony §§ 8:66, 8:73
- Lack of personal knowledge of subject matter, motion to exclude testimony § 8:116
- Lay witness testimony
  - Generally §§ 8:32 to 8:48
  - Causation § 8:35
  - Damages § 8:43
  - Health § 8:41
  - Helpful to jury § 8:46
  - Improper foundation § 4:13
  - Injury § 8:41
  - Intoxication § 8:42
  - Legal opinions §§ 8:36, 10:171
  - Medical malpractice, common knowledge exception § 8:47
  - Mental condition § 8:40
  - Opposing authorities
    - Generally §§ 8:39 to 8:48
    - Damages § 8:43

### WITNESSES—Cont'd

- Lay witness testimony—Cont'd
- Opposing authorities—Cont'd
  - Health § 8:41
  - Helpful to jury § 8:46
  - Injury § 8:41
  - Intoxication § 8:42
  - Medical malpractice, common knowledge exception § 8:47
  - Mental condition § 8:40
  - Perceptions of witness § 8:39
  - Point of impact § 8:44
  - Property value § 8:43
  - Sanity § 8:40
  - Speed of vehicles § 8:44
  - Summary of conditions § 8:48
- Opposition to motion to exclude § 8:119
- Perceptions of witness § 8:39
- Point of impact § 8:44
- Property value § 8:43
- Sanity § 8:40
- Speed of vehicles § 8:44
- Summary § 8:33
- Summary of conditions § 8:48
- Supporting authorities
  - Generally §§ 8:34 to 8:38
  - Causation § 8:35
  - Legal opinions § 8:36
  - Other grounds § 8:38
  - Ultimate issue, opinion on § 8:37
- Text of motion, suggested § 8:32
- Ultimate issue, opinion on § 8:37
- Legal opinions, lay witness testimony § 8:36
- Mediator, motion to exclude testimony of mediator § 8:117
- Medical doctor, sample motion to exclude testimony and opinions § 8:114
- Medical malpractice, common knowledge exception § 8:47
- Mental competence §§ 8:53, 8:58
- Mental condition, lay witness testimony § 8:40

**WITNESSES—Cont'd**

- Motion to exclude
  - Testimony of incompetent § 8:118
- Non-called witnesses
  - Generally §§ 8:87 to 8:94
  - Cumulative nature of testimony § 8:91
  - Material witness, non-calling § 8:94
  - Opposition citations
    - Generally § 8:93
    - Material witness, non-calling § 8:94
  - Otherwise inadmissible testimony § 8:91
  - Prejudicial evidence § 8:89
  - Sample motion § 8:111
  - Summary § 8:88
  - Supporting authorities
    - Generally §§ 8:89 to 8:92
    - Cumulative nature of testimony § 8:91
    - Other grounds § 8:92
    - Otherwise inadmissible testimony § 8:91
    - Prejudicial evidence § 8:89
    - Witness equally available to testify § 8:90
    - Witness equally available to testify § 8:90
  - Perceptions of witness § 8:39
  - Personal knowledge of subject matter, lack of §§ 8:54, 8:59
  - Point of impact, lay witness testimony § 8:44
  - Property value, lay witness testimony § 8:43
  - Sanctions, failure to disclose identity of witnesses §§ 6:23, 6:24, 6:33
  - Sanity, lay witness testimony § 8:40
  - Speed of vehicles § 8:44
  - Ultimate issue, opinion on § 8:37
  - Undisclosed witnesses
    - Sample motion to exclude testimony § 6:54
    - Sanctions, failure to disclose identity of witnesses §§ 6:23, 6:24

**WORKERS' COMPENSATION  
BENEFITS**

- Collateral source payments § 10:9

**WRITINGS AND PHYSICAL  
EVIDENCE**

- Generally § 4:1 et seq.
- Accident reports
  - Generally §§ 4:65 to 4:73
- Authentication §§ 4:24, 4:25, 4:29
- Conditional admissibility § 4:17
- Experiments, improper foundation § 4:10
- Expert witnesses, improper foundation § 4:12
- Foundation, motion to exclude evidence lacking
  - Generally §§ 4:1 to 4:19
  - Conditional admissibility § 4:17
  - Experiments § 4:10
  - Expert witnesses § 4:12
  - Improper foundation
    - Generally § 4:7
    - Experiments § 4:10
    - Expert witnesses § 4:12
    - Lay witness testimony § 4:13
  - Letters § 4:81
  - Motion pictures § 4:11
  - Objects or things § 4:15
  - Opposing authorities
    - Generally § 4:16
    - Conditional admissibility § 4:17
    - Outside juror's presence § 4:18
    - Weight vs. admissibility § 4:19
  - Photographs § 4:8
  - Preliminary facts
    - Generally § 4:4
    - Definitions § 4:4
    - Determination out of jury presence § 4:5
    - Inadmissibility of evidence § 4:6
  - Suggested motion text § 4:1
  - Summary § 4:2
  - Supporting authorities
    - Generally §§ 4:2 to 4:15
  - Tape recordings § 4:9
  - Tests § 4:10

## INDEX

### WRITINGS AND PHYSICAL EVIDENCE—Cont'd

- Foundation, motion to exclude evidence lacking—Cont'd
  - Text of motion, suggested § **4:1**
- Videotapes § **4:11**
- Weight vs. admissibility § **4:19**
- Writings § **4:14**
- Hearsay and exceptions §§ **4:26, 4:27, 4:31**
- Lay witness testimony, improper foundation § **4:13**
- Letters
  - Generally §§ **4:74 to 4:85**
  - Sample motion to exclude § **4:134**
- Maps, models, charts, exhibits and demonstrative evidence §§ **4:86 to 4:101**
- Medical bills, motion to exclude § **4:145**
- Medical records, reports or bills §§ **4:102 to 4:121**
- Motion pictures, improper foundation § **4:11**
- Objects or things, improper foundation § **4:15**
- Photographs, gruesome or inflammatory §§ **4:33 to 4:48**
- Published articles §§ **4:57 to 4:64, 4:136**
- Secondary evidence §§ **4:28, 4:32**
- Social media
  - Motion to exclude § **4:139**
  - Opposition to motion to exclude § **4:143**
- Tape recordings, improper foundation § **4:9**
- Tattoo, excluding demonstration of § **4:138**
- Tests, improper foundation § **4:10**
- Text messages
  - Opposition to motion to exclude § **4:144**

### WRITINGS AND PHYSICAL EVIDENCE—Cont'd

- Videotape or film
  - Improper foundation § **4:11**
  - Prejudicial §§ **4:49 to 4:56**
  - Unauthenticated recording, motion to exclude § **4:140**
- Weight vs. admissibility, improper foundation § **4:19**
- Writings
  - Generally §§ **4:20 to 4:32**
  - Authentication §§ **4:24, 4:25, 4:29**
  - Foundational requirements
    - Adequacy of foundation §§ **4:23, 4:30**
    - Improper foundation § **4:14**
  - Hearsay and exceptions §§ **4:26, 4:27, 4:31**
  - Opposing authorities
    - Generally § **4:29**
    - Authentication § **4:29**
    - Foundations, adequate § **4:30**
    - Hearsay exceptions § **4:31**
    - Secondary evidence § **4:32**
  - Secondary evidence §§ **4:28, 4:32**
  - Summary § **4:21**
  - Supporting authorities
    - Generally § **4:22**
    - Foundation, inadequate § **4:23**
    - Hearsay, inadmissible §§ **4:26, 4:27**
    - Secondary evidence, inadmissible § **4:28**
    - Unauthenticated writings §§ **4:24, 4:25**
    - Writing, defined § **4:22**
  - Text of motion, suggested § **4:20**

### X-RAYS

- Photographs, gruesome or inflammatory §§ **4:40, 4:47**