

Table of Contents

CHAPTER 1. MOTION IN LIMINE LAW

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 —Preservation of objections
- § 1:5 Timing of motion
- § 1:6 Procedural requirements
- § 1:7 —Caution regarding local rules

B. DRAFTING SUGGESTIONS

- § 1:8 Overview
- § 1:9 —File motions supported by facts
- § 1:10 —Be succinct

II. SAMPLES

- § 1:11 Sample in limine brief
- § 1:12 Sample in limine order

CHAPTER 2. PREJUDICIAL EVIDENCE

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 Opposing authorities

E. MOTION TO EXCLUDE OR LIMIT CUMULATIVE EVIDENCE

- § 2:24 Suggested motion text
- § 2:25 Motion summary
- § 2:26 Supporting authorities—Exclusion of time-wasting evidence
- § 2:27 —Exclusion of cumulative evidence
- § 2:28 — —Articles and letters
- § 2:29 — —Number of witnesses
- § 2:30 — —Photographs
- § 2:31 — —Witness testimony
- § 2:32 — —Videotape evidence
- § 2:33 —Rebuttal testimony
- § 2:34 Opposing authorities—General authority
- § 2:35 —Number of witnesses
- § 2:36 —Videotape evidence
- § 2:37 —Photographs

TABLE OF CONTENTS

II. SAMPLE MOTIONS

- § 2:38 Motion to exclude confusing evidence
- § 2:39 Motion to exclude cumulative evidence
- § 2:40 Motion to exclude prejudicial evidence
- § 2:41 Motion to exclude evidence of defendant's poverty
- § 2:42 Motion to exclude evidence that will confuse the jury
- § 2:43 Opposition to motion to exclude evidence that will confuse the jury
- § 2:44 Opposition to motion to exclude prejudicial evidence

CHAPTER 3. IRRELEVANT EVIDENCE

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 — —No unlimited inquiry
- § 3:5 — —Outside pleadings
- § 3:6 — —Prejudicial
- § 3:7 — —Speculative evidence
- § 3:8 — —Too remote
- § 3:9 Opposing authorities

B. MOTION TO EXCLUDE EVIDENCE OF MATTERS NOT IN CONTROVERSY

- § 3:10 Suggested motion text
- § 3:11 Motion summary
- § 3:12 Supporting authorities—Exclusion of irrelevant evidence, generally
- § 3:13 — —Admitted or uncontroverted matters
- § 3:14 — —Collateral issues
- § 3:15 — —Unpleaded issues
- § 3:16 Opposing authorities
- § 3:17 — —Collateral issues
- § 3:18 — —Estoppel: unpleaded issues
- § 3:19 — —Where relevant to other issues
- § 3:20 — —Admissibility of evidence despite uncontested issue

II. SAMPLE MOTIONS

- § 3:21 Motion to exclude irrelevant evidence (immigration status)

- § 3:22 Motion to exclude evidence of physical conditions not at issue
- § 3:23 Motion to exclude irrelevant evidence (insurance case)
- § 3:24 Motion to exclude collateral and irrelevant evidence
- § 3:25 Motion to exclude speculative evidence
- § 3:26 Motion to exclude evidence relating to unpleaded issues

CHAPTER 4. WRITINGS & PHYSICAL EVIDENCE

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—Definitions
 - § 4:5 — —Determination out of jury presence
 - § 4:6 — —Inadmissibility of evidence
 - § 4:7 —Improper foundation, generally
 - § 4:8 — —Photographs
 - § 4:9 — —Tape recordings
 - § 4:10 — —Tests and experiments
 - § 4:11 — —Videotapes and motion pictures
 - § 4:12 — —Witness testimony—Experts
 - § 4:13 — — —Lay
 - § 4:14 — —Writings
 - § 4:15 — —Objects or things
 - § 4:16 Opposing authorities—General
 - § 4:17 —Conditional admissibility
 - § 4:18 —Outside juror’s presence
 - § 4:19 —Weight vs. admissibility

B. MOTION TO EXCLUDE WRITINGS, GENERALLY

- § 4:20 Suggested motion text
- § 4:21 Motion summary
- § 4:22 Supporting authorities—“Writing” defined
 - § 4:23 — —Inadequate foundation
 - § 4:24 —Unauthenticated writings—General authentication requirement

TABLE OF CONTENTS

- § 4:25 — —Exclusion of unauthenticated writings
- § 4:26 — —Inadmissible hearsay—Generally
- § 4:27 — —Examples of inadmissible written hearsay
- § 4:28 — —Inadmissible secondary evidence
- § 4:29 Opposing authorities—Authentication
- § 4:30 — —Adequate foundations—Examples
- § 4:31 — —Hearsay—Hearsay exceptions, generally
- § 4:32 — —Secondary evidence

C. MOTION TO EXCLUDE GRUESOME OR INFLAMMATORY PHOTOGRAPHS

- § 4:33 Suggested motion text
- § 4:34 Motion summary
- § 4:35 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 4:36 — —Exclusion of irrelevant evidence, generally
 - § 4:37 — —Gruesome or inflammatory photographs
 - § 4:38 — —Purpose to inflame jurors' emotions
 - § 4:39 — —Exclusion of photographs, generally
 - § 4:40 — —X-rays
 - § 4:41 — —Accident scene photographs, generally
 - § 4:42 — —Other grounds
 - § 4:43 Opposing authorities—Photographs, generally
 - § 4:44 — —Adequate foundation
 - § 4:45 — —Enlarged photographs
 - § 4:46 — —Gruesome photographs
 - § 4:47 — —X-rays
 - § 4:48 — —Accident scene photographs

D. MOTION TO EXCLUDE PREJUDICIAL FILM OR VIDEOTAPES

- § 4:49 Suggested motion text
- § 4:50 Motion summary
- § 4:51 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 4:52 — —Exclusion of videotape evidence
 - § 4:53 — —Other grounds
 - § 4:54 Opposing authorities—Generally
 - § 4:55 — —Relevance
 - § 4:56 — —Adequate foundation

E. MOTION TO EXCLUDE PUBLISHED ARTICLES

- § 4:57 Suggested motion text

- § 4:58 Motion summary
- § 4:59 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:60 —Exclusion of published articles—Hearsay
- § 4:61 — —Prejudicial
- § 4:62 — —Other grounds
- § 4:63 Opposition authorities—Where relevant to issues
- § 4:64 —Nonhearsay

F. MOTION TO EXCLUDE ACCIDENT REPORTS

- § 4:65 Suggested motion text
- § 4:66 Motion summary
- § 4:67 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:68 —Inadmissible hearsay
- § 4:69 —Opinions in reports
- § 4:70 —Other grounds
- § 4:71 Opposing authorities—Report used to refresh recollection
- § 4:72 —Diagrams made at scene
- § 4:73 —Business records exception to hearsay rule

G. MOTION TO EXCLUDE LETTERS

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

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

- § 4:86 Suggested motion text
- § 4:87 Motion summary

TABLE OF CONTENTS

- § 4:88 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:89 —Court’s discretion
- § 4:90 —Exclusion of maps, models or charts
- § 4:91 —Exhibits
- § 4:92 —Demonstrations
- § 4:93 —Illustrations and diagrams
- § 4:94 —Other grounds
- § 4:95 Opposing authorities—Illustrative purposes
- § 4:96 —Relevant to issues
- § 4:97 —Discretion of court
- § 4:98 —Maps, models or charts, generally
- § 4:99 —Diagrams and illustrations
- § 4:100 —Demonstrations
- § 4:101 — —Demonstration of injury

I. MOTION TO EXCLUDE IMPROPER MEDICAL RECORDS, REPORTS OR BILLS

- § 4:102 Suggested motion text
- § 4:103 Motion summary
- § 4:104 Supporting authorities—Exclusion of prejudicial matter, generally
- § 4:105 —Improper foundation, generally
- § 4:106 —Medical opinions—Improper hearsay evidence
- § 4:107 — —Opinions of others—Lack of personal knowledge
- § 4:108 — —Speculation
- § 4:109 — —Self-serving
- § 4:110 —Patient medical history
- § 4:111 — —Improper hearsay
- § 4:112 —Billing records—Lack of foundation
- § 4:113 — — —Proof of medical expenses
- § 4:114 —Other grounds
- § 4:115 Opposition citations—Generally
- § 4:116 —Proper authentication
- § 4:117 —Opinions of others—Opinion used in formation of diagnosis and treatment
- § 4:118 — —Business records exception
- § 4:119 —Patient history—Observations of physician
- § 4:120 — —Pertinent to medical diagnosis
- § 4:121 —Medical billing records—Reasonableness of charges

J. MOTION TO EXCLUDE SOCIAL MEDIA EVIDENCE

- § 4:122 Suggested motion text

- § 4:123 Motion summary
- § 4:124 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:125 —Exclusion of social media evidence—Generally
- § 4:126 — —Hearsay
- § 4:127 — —Lack of foundation or authentication
- § 4:128 —Other grounds
- § 4:129 Opposing authorities—Generally
- § 4:130 —Nonhearsay
- § 4:131 —Proper foundation or authentication

II. SAMPLE MOTIONS

- § 4:132 Motion to exclude gruesome photographs
- § 4:133 Motion to exclude demonstration
- § 4:134 Motion to exclude written letter
- § 4:135 Motion to exclude plaintiff’s medical history
- § 4:136 Motion to exclude newspaper article
- § 4:137 Motion to exclude evidence of inflammatory and prejudicial photographs
- § 4:138 Motion to exclude demonstration of defendant’s tattoo
- § 4:139 Motion to exclude social media evidence
- § 4:140 Motion to exclude unauthenticated video recording
- § 4:141 Motion to exclude accident report
- § 4:142 Motion to exclude text messages
- § 4:143 Opposition to motion to exclude social media evidence
- § 4:144 Opposition to motion to exclude text messages
- § 4:145 Motion to exclude medical bills

CHAPTER 5. TESTS & SCIENTIFIC EVIDENCE

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—Civil cases
- § 5:5 — —Criminal cases
- § 5:6 —Not made under “substantially similar” conditions
- § 5:7 —Not reliable

TABLE OF CONTENTS

- § 5:8 —Scientific procedures not proper
- § 5:9 —Speculative or conjectural
- § 5:10 —Too time-consuming / collateral issues
- § 5:11 —Lack of foundation
- § 5:12 —Other grounds
- § 5:13 Opposing authorities—Court’s discretion
- § 5:14 —Substantially similar conditions requirement
- § 5:15 —General acceptance—Published precedent
- § 5:16 — —Level of acceptance in scientific community
- § 5:17 —Weight vs. admissibility
- § 5:18 — —Careless testing
- § 5:19 —Outside realm of Frye requirements

B. MOTION TO EXCLUDE JUNK SCIENCE AND RELATED EVIDENCE

- § 5:20 Suggested motion text
- § 5:21 Motion summary
- § 5:22 Supporting authorities—Exclusion of new scientific evidence—Generally—Civil cases
 - § 5:23 — — —Criminal cases
- § 5:24 —Hedonic damage evidence
- § 5:25 —“Truth-serum” evidence
- § 5:26 —Polygraph evidence
- § 5:27 — —Refusal to take polygraph test
- § 5:28 —Psychological tests and syndromes—Rape trauma syndrome
 - § 5:29 —Hypnosis evidence
 - § 5:30 —Accident reconstruction evidence
 - § 5:31 —Biomechanic evidence
 - § 5:32 — —Low-speed impact cases
 - § 5:33 —Statistical evidence—Exclusion of confusing evidence
 - § 5:34 — —Disapproved statistics evidence, generally
 - § 5:35 — —Statistics in products liability or negligence cases
 - § 5:36 — —Statistics in employment discrimination cases
 - § 5:37 —Canine scent tracking unit
 - § 5:38 —Battered spouse syndrome
- § 5:39 Opposing authorities—In general
 - § 5:40 — —Where Frye test not required
 - § 5:41 — —Approved tests
 - § 5:42 —Hedonic damages
 - § 5:43 —Polygraph evidence—Exceptions to inadmissibility
 - § 5:44 —Psychological tests—Rape trauma syndrome
 - § 5:45 — —Battered spouse syndrome
 - § 5:46 —Hypnosis evidence—Exceptions to inadmissibility

- § 5:47 —Statistics evidence—General acceptance
- § 5:48 — —Weight vs. admissibility
- § 5:49 — —Judicial notice
- § 5:50 —Accident reconstruction and biomechanic evidence

II. SAMPLE MOTIONS

- § 5:51 Motion to exclude evidence of statistical analysis
- § 5:52 Motion to exclude evidence of polygraph examination
- § 5:53 Motion to exclude evidence of hypnosis
- § 5:54 Motion to exclude expert testimony
- § 5:55 Motion to exclude biomechanic evidence

CHAPTER 6. DISCOVERY MOTIONS

I. MOTION AUTHORITIES

A. MOTION FOR EVIDENTIARY SANCTIONS

- § 6:1 Suggested motion text
- § 6:2 Motion summary
- § 6:3 Supporting authorities—General authority [Rule 61.01]—Available sanctions, generally
- § 6:4 — —Evidence sanctions
- § 6:5 — —Issue sanctions
- § 6:6 — —Terminating sanctions
- § 6:7 — —Prior order unnecessary
- § 6:8 —Depositions—Rule 61.01
- § 6:9 — —Evidence sanctions
- § 6:10 — —Terminating sanctions
- § 6:11 —Interrogatories—Rule 61.01
- § 6:12 — —Evidence sanctions
- § 6:13 — —Issue sanctions
- § 6:14 — —Terminating sanctions
- § 6:15 —Production requests—Rule 61.01
- § 6:16 — —Evidence sanctions
- § 6:17 — —Terminating sanctions
- § 6:18 —Mental and physical examinations—Rule 60.01
- § 6:19 — —Sanctions
- § 6:20 —Requests for admission—Rule 59.01
- § 6:21 — —Exclusion of evidence
- § 6:22 — —Deeming non-responsive matters admitted
- § 6:23 —Failure to disclose identity of witnesses, generally
- § 6:24 — —Compare: faulty expert designations or declarations
- § 6:25 —Other grounds

TABLE OF CONTENTS

- § 6:26 Opposing authorities—Generally
- § 6:27 — —Sanction should be appropriate to level of misconduct
- § 6:28 — —Reasonable alternative remedy
- § 6:29 —Depositions
- § 6:30 —Interrogatories
- § 6:31 —Requests for production
- § 6:32 —Matters deemed admitted
- § 6:33 —Failure to disclose identity of witnesses, generally

B. MOTION TO CONCLUSIVELY ESTABLISH ADMITTED MATTERS

- § 6:34 Suggested motion text
- § 6:35 Motion summary
- § 6:36 Supporting authorities—Conclusive establishment of admitted matters
- § 6:37 —Purpose of rule
- § 6:38 —Exclusion of evidence
- § 6:39 Opposing authorities

C. MOTION TO EXCLUDE EVIDENCE OF CLAIMS DENIED OR CHANGED DURING DISCOVERY

- § 6:40 Suggested motion text
- § 6:41 Motion summary
- § 6:42 Supporting authorities—Exclusion of evidence—
Exclusion of prejudicial evidence, generally
- § 6:43 — —Exclusion of evidence, generally
- § 6:44 —Other grounds
- § 6:45 Opposing authorities

D. MOTIONS CONCERNING IMPROPER EXPERT WITNESS EXCHANGE OR EXPERT DEPOSITION

- § 6:46 Suggested motion text
- § 6:47 Motion summary
- § 6:48 Supporting authorities—Expert witness exchange
- § 6:49 —Duty to supplement
- § 6:50 —Exclusion of evidence
- § 6:51 Opposing authorities—Expert testimony admitted

II. SAMPLE MOTIONS

- § 6:52 Motion to exclude evidence of claim denied during discovery

- § 6:53 Motion to exclude evidence of medical bills for services obtained after [date]
- § 6:54 Motion to exclude testimony of undisclosed witness
- § 6:55 Motion to exclude evidence produced beyond discovery deadline
- § 6:56 Motion to deem matters admitted
- § 6:57 Motion for sanction establishing facts
- § 6:58 Motion to exclude expert testimony relating to matters not disclosed during discovery
- § 6:59 Opposition to defendants' motion to limit plaintiff's expert's opinions
- § 6:60 Motion for order rendering default judgment as discovery sanction
- § 6:61 Motion for evidentiary sanctions for failure to serve answers/objections to interrogatories
- § 6:62 Motion to dismiss action as discovery sanction

CHAPTER 7. CHARACTER EVIDENCE

I. MOTION AUTHORITIES

- § 7:1 Overview of character evidence
- § 7:2 Admissible character evidence
- § 7:3 Character evidence subject to exclusion

A. MOTION TO EXCLUDE CHARACTER EVIDENCE USED FOR IMPEACHMENT

- § 7:4 Suggested motion text
- § 7:5 Motion summary
- § 7:6 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:7 —Exclusion of irrelevant evidence, generally
- § 7:8 —Exclusion of improper impeachment evidence, generally
- § 7:9 — —Alcohol consumption
- § 7:10 — —Arrests
- § 7:11 — —Drug use
- § 7:12 — —Prior convictions
- § 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 bias
- § 7:18 — —Other grounds
- § 7:19 Opposing authorities—Facts at issue

TABLE OF CONTENTS

- § 7:20 —Witness alcohol or drug use
- § 7:21 —Impeachment, generally
- § 7:22 — —Witness veracity
- § 7:23 — —Witness bias
- § 7:24 — —Collateral matters
- § 7:25 — —Religious beliefs
- § 7:26 —Opening the door doctrine

B. MOTION TO EXCLUDE CHARACTER EVIDENCE USED TO PROVE CONDUCT

- § 7:27 Suggested motion text
- § 7:28 Motion summary
- § 7:29 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:30 —Exclusion of irrelevant evidence, generally
- § 7:31 —Exclusion of improper character evidence
- § 7:32 — —Crimes evidence, generally
- § 7:33 —Other grounds
- § 7:34 Opposing authorities—Admission of prior misconduct, generally
- § 7:35 —Relevant to material issue
- § 7:36 —Witness impeachment
- § 7:37 —Context evidence

C. MOTION TO EXCLUDE PRIOR CRIME EVIDENCE

- § 7:38 Suggested motion text
- § 7:39 Motion summary
- § 7:40 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:41 —Exclusion of irrelevant evidence, generally
- § 7:42 —Exclusion of crime evidence, generally
- § 7:43 —Underlying details of prior convictions inadmissible
- § 7:44 —Improper character evidence
- § 7:45 —Violations of municipal ordinances inadmissible
- § 7:46 —Prior arrest, investigation, or criminal charge inadmissible
- § 7:47 —Conviction of co-defendants
- § 7:48 —Prior criminal pleas inadmissible in civil cases
- § 7:49 —Other grounds
- § 7:50 Opposing authorities—Mo. Stat. Ann. § 491.050
- § 7:51 — —No discretion
- § 7:52 —Prior convictions admissible in civil and criminal cases

- § 7:53 — —Details of prior convictions
- § 7:54 —Plea evidence admissible in criminal cases
- § 7:55 —Guilty findings admissible in criminal cases
- § 7:56 —Municipal violations
- § 7:57 —Capital cases—Penalty phase

II. SAMPLE MOTIONS

- § 7:58 Motion to exclude evidence of alcoholism of percipient witness
- § 7:59 Motion to exclude evidence of witness' habit of intemperance
- § 7:60 Motion to exclude evidence of prior municipal ordinance violation
- § 7:61 Motion to exclude improper character evidence (marital infidelity)
- § 7:62 Motion to exclude evidence of religious beliefs
- § 7:63 Motion to exclude improper character evidence (juvenile adjudication)
- § 7:64 Motion to exclude improper character evidence (prescription drug abuse)
- § 7:65 Motion to exclude evidence of prior arrest of witness
- § 7:66 Opposition to motion to exclude inflammatory evidence
- § 7:67 Motion to exclude evidence regarding witness's mental health

CHAPTER 8. WITNESS EVIDENCE

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 or statements of others
 - § 8:8 — —Treatises, documents & texts
 - § 8:9 —Legal questions
 - § 8:10 — —Compare: ultimate issues
 - § 8:11 —Matters of common experience
 - § 8:12 —Not reasonably relied upon by experts

TABLE OF CONTENTS

- § 8:13 —Speculation or conjecture
- § 8:14 —Usurping jury function
- § 8:15 —Irrelevant matters
- § 8:16 —Improper profile evidence
- § 8:17 —Outside area of specialty or expertise
- § 8:18 —Cumulative testimony
- § 8:19 —Other grounds
- § 8:20 Opposing authorities—Generally
- § 8:21 —Hearsay
- § 8:22 — —Statements of others
- § 8:23 —Hypothetical questions
- § 8:24 —Legal questions vs. ultimate issues
- § 8:25 —Cumulative testimony

B. MOTION TO EXCLUDE TESTIMONY OF NON-QUALIFIED EXPERT

- § 8:26 Suggested motion text
- § 8:27 Motion summary
- § 8:28 Supporting authorities—Exclusion of non-qualified experts
- § 8:29 —Improper qualifications: examples
- § 8:30 —Other grounds
- § 8:31 Opposing authorities—Generally

C. MOTION TO EXCLUDE LAY WITNESS TESTIMONY

- § 8:32 Suggested motion text
- § 8:33 Motion summary
- § 8:34 Supporting authorities—Exclusion of non-expert opinion
- § 8:35 — —Causation
- § 8:36 — —Legal opinions
- § 8:37 — —Opinion on ultimate issue
- § 8:38 —Other grounds
- § 8:39 Opposing authorities—Perceptions of witness
- § 8:40 — —Sanity and mental condition
- § 8:41 — —Health or injury
- § 8:42 — —Intoxication
- § 8:43 — —Property value or damages
- § 8:44 — —Speed of vehicles
- § 8:45 — —Point of impact
- § 8:46 —Helpful to jury
- § 8:47 —Medical malpractice cases—“Common knowledge” exception

§ 8:48 —Summary of conditions

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

- § 8:49 Suggested motion text
- § 8:50 Motion summary
- § 8:51 Supporting authorities—Exclusion of incompetent witnesses pursuant to Mo. Ann. Stat. § 491.060
 - § 8:52 — —Children
 - § 8:53 — —Lack of mental competence / insanity
 - § 8:54 —Lack of personal knowledge of subject matter
 - § 8:55 —Other grounds
 - § 8:56 Opposing authorities—General authority
 - § 8:57 —Children
 - § 8:58 —Mental competence / insanity
 - § 8:59 —Lack of personal knowledge of subject matter

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

- § 8:60 Suggested motion text
- § 8:61 Motion summary
- § 8:62 Supporting authorities—Judge as witness
 - § 8:63 —Arbitrator or mediator as witness
 - § 8:64 — —Mediator in dissolution, legal separation and child support actions
 - § 8:65 —Attorney as witness
 - § 8:66 —Juror as witness
 - § 8:67 Opposing authorities—Arbitrator as witness
 - § 8:68 —Attorney testimony, generally
 - § 8:69 — —Uncontested matter
 - § 8:70 — —Value of legal services
 - § 8:71 — —Substantial hardship
 - § 8:72 — —Testimony of other attorney in firm or office
 - § 8:73 —Juror as witness

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

- § 8:74 Suggested motion text
- § 8:75 Motion summary
- § 8:76 Supporting authorities—Exclusion of non-party witnesses from courtroom
 - § 8:77 —Exclusion of witness testimony for violation of rule

TABLE OF CONTENTS

- § 8:78 Opposing authorities—Discretionary decision
- § 8:79 —Cannot exclude party
- § 8:80 —Admission of witness testimony
- § 8:81 —Purpose of rule

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

- § 8:82 Suggested motion text
- § 8:83 Motion summary
- § 8:84 Supporting authorities—No-comment rule
- § 8:85 Opposing authorities—Allowable comments in criminal matters
- § 8:86 —Civil consequences of silence

H. MOTION TO EXCLUDE EVIDENCE OF NON-CALLED WITNESSES

- § 8:87 Suggested motion text
- § 8:88 Motion summary
- § 8:89 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 8:90 —Where witness was equally available to testify
- § 8:91 —Where witness testimony would be cumulative or otherwise inadmissible
- § 8:92 —Other grounds
- § 8:93 Opposition citations—Generally
- § 8:94 —Non-calling of material witness

I. MOTION TO EXCLUDE HEARSAY EVIDENCE

- § 8:95 Suggested motion text
- § 8:96 Motion summary
- § 8:97 Supporting authorities—General authority for exclusion
- § 8:98 —Purpose of rule
- § 8:99 —Written hearsay
- § 8:100 — —General authority for exclusion
- § 8:101 — —Examples of written hearsay
- § 8:102 —Multiple hearsay
- § 8:103 Opposing authorities—Hearsay exceptions, general examples
- § 8:104 — —Purpose of exceptions to hearsay rule
- § 8:105 —Non-hearsay evidence
- § 8:106 —Non-assertive conduct
- § 8:107 —Multiple hearsay

- § 8:108 —Hearsay used to impeach witness credibility
- § 8:109 —Hearsay cumulative of admissible evidence

II. SAMPLE MOTIONS

- § 8:110 Motion to exclude speculative expert opinion
- § 8:111 Motion to exclude reference to non-called witnesses
- § 8:112 Motion to preclude non-chiropractor from giving opinion on necessity of chiropractic treatment
- § 8:113 Motion to exclude evidence of computerized valuations of plaintiff's business
- § 8:114 Motion to exclude testimony and opinions of medical doctor
- § 8:115 Motion to exclude witness from courtroom prior to testifying
- § 8:116 Motion to exclude testimony of witness for lack of personal knowledge of subject matter
- § 8:117 Motion to exclude testimony of mediator
- § 8:118 Motion to exclude testimony of incompetent witness
- § 8:119 Opposition to motion to exclude lay witness evidence
- § 8:120 Opposition to motion to exclude expert witness testimony (non-qualified)
- § 8:121 Motion to exclude comment regarding exercise of privilege

CHAPTER 9. TRIAL PRESENTATION

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 —Educating jury on the law
- § 9:6 —Other grounds
- § 9:7 Opposing authorities—Generally

B. MOTION TO EXCLUDE IMPROPER ARGUMENT IN OPENING STATEMENT

- § 9:8 Suggested motion text
- § 9:9 Motion summary
- § 9:10 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 9:11 —Exclusion of prejudicial matter in opening statement

TABLE OF CONTENTS

- § 9:12 —Other grounds
- § 9:13 Opposing authorities

C. MOTION TO BAR PREMATURE REBUTTAL TO
AFFIRMATIVE DEFENSES

- § 9:14 Suggested motion text
- § 9:15 Motion summary
- § 9:16 Supporting authorities—Exclusion of prejudicial
evidence, generally
- § 9:17 —Order of proof
- § 9:18 —Other grounds
- § 9:19 Opposing authorities

D. MOTION TO EXCLUDE REFERENCE TO LOST
OR DESTROYED EVIDENCE

- § 9:20 Suggested motion text
- § 9:21 Motion summary
- § 9:22 Supporting authorities—Exclusion of prejudicial
evidence, generally
- § 9:23 —Exclusion of lost or destroyed evidence
- § 9:24 — —Intentional destruction or suppression of evidence
- § 9:25 — —A note on tort of spoliation of evidence
- § 9:26 —Negative presumption
- § 9:27 —Other grounds
- § 9:28 Opposing authorities—Generally
- § 9:29 —Other remedies

E. MOTION TO EXCLUDE ARBITRATION
EVIDENCE AND FINDINGS

- § 9:30 Suggested motion text
- § 9:31 Motion summary
- § 9:32 Supporting authorities—Limitation on arbitration
evidence
- § 9:33 —Other grounds
- § 9:34 Opposing authorities

F. MOTION TO EXCLUDE EVIDENCE OF
DAMAGES IN BIFURCATED TRIAL

- § 9:35 Suggested motion text
- § 9:36 Motion summary
- § 9:37 Supporting authorities—Statutory authority
- § 9:38 —Policy considerations

- § 9:39 —Other grounds
- § 9:40 Opposing authorities

G. MOTION TO PRECLUDE “GOLDEN RULE ARGUMENT”

- § 9:41 Suggested motion text
- § 9:42 Motion summary
- § 9:43 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 9:44 Supporting authorities—Rejection of “golden rule argument”
- § 9:45 —Other grounds
- § 9:46 Opposing authorities

H. MOTION TO EXCLUDE IMPROPER TERMINOLOGY

- § 9:47 Suggested motion text
- § 9:48 Motion summary
- § 9:49 Supporting authorities—Confusing evidence, generally
- § 9:50 —Terms containing legal conclusions
- § 9:51 —Testimony on ultimate issues—General admissibility of ultimate issue opinions
- § 9:52 — —Compare: ultimate issues and non-experts
- § 9:53 —Preconditioning jury
- § 9:54 —Usurping jury function
- § 9:55 Opposing authorities—Opposing authorities, generally
- § 9:56 —Legal questions vs. ultimate issues
- § 9:57 — —Compare: legal conclusions (non-jury case)

II. SAMPLE MOTIONS

- § 9:58 Motion to exclude reference to lost or destroyed evidence
- § 9:59 Motion to exclude mediation evidence
- § 9:60 Motion to preclude golden rule argument
- § 9:61 Motion to exclude evidence of damages in bifurcated trial
- § 9:62 Motion to prevent improper voir dire
- § 9:63 Motion to exclude improper argument during opening statement
- § 9:64 Opposition to motion for missing evidence instruction
- § 9:65 Motion to bar premature rebuttal to affirmative defense

CHAPTER 10. PERSONAL INJURY MOTIONS

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 — —Governmental benefits based upon financial need
 - § 10:12 —Other grounds
- § 10:13 Opposing authorities—Generally
- § 10:14 —Gratuitous payments-split of authority
- § 10:15 —Relevant to issues in case

B. MOTION TO EXCLUDE EVIDENCE OF LIABILITY INSURANCE

- § 10:16 Suggested motion text
- § 10:17 Motion summary
- § 10:18 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 10:19 —Exclusion of irrelevant evidence, generally
 - § 10:20 —Exclusion of liability insurance evidence
 - § 10:21 — —Evidence of party's lack of insurance
 - § 10:22 —Other grounds
- § 10:23 Opposing authorities—Cross-examination
- § 10:24 —Where relevant to issues or otherwise admissible
- § 10:25 —Incidental reference to insurance
- § 10:26 —Non-prejudicial references to insurance
- § 10:27 —To prove ownership or employment

C. MOTION TO EXCLUDE SETTLEMENT EVIDENCE

- § 10:28 Suggested motion text

- § 10:29 Motion summary
- § 10:30 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:31 —Exclusion of irrelevant evidence, generally
- § 10:32 —Exclusion of settlement evidence used to show liability
- § 10:33 — —Prior settlements
- § 10:34 — —Settlement negotiations
- § 10:35 — —Settlement with co-defendants
- § 10:36 — —Offer to compromise
- § 10:37 —Other grounds
- § 10:38 Opposing Authorities—Generally
- § 10:39 —Admission against interest

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

- § 10:40 Suggested motion text
- § 10:41 Motion summary
- § 10:42 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:43 —Exclusion of irrelevant evidence, generally
- § 10:44 —Exclusion of prior-accident evidence—Absence of prior accidents
- § 10:45 — —Prior accident evidence used to prove negligence
- § 10:46 — —Lack of similarity: dangerous condition / defective products
- § 10:47 —Other claims or lawsuits
- § 10:48 —Other grounds
- § 10:49 Opposing authorities—Evidence of prior accidents—Absence of prior accidents
- § 10:50 — —Court’s discretion
- § 10:51 — —Similarity: dangerous condition / defective products
- § 10:52 — —Notice
- § 10:53 — —Relevant to issues in case (e.g., similar injuries)
- § 10:54 —Evidence of subsequent accidents

E. MOTION TO EXCLUDE EVIDENCE OF SUBSEQUENT REPAIRS

- § 10:55 Suggested motion text
- § 10:56 Motion summary
- § 10:57 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:58 —Exclusion of irrelevant evidence, generally

TABLE OF CONTENTS

- § 10:59 —Exclusion of subsequent repair evidence to show negligence
- § 10:60 —Other grounds
- § 10:61 Opposing authorities—Non-party
- § 10:62 —Impeachment
- § 10:63 —Relevant to issues
- § 10:64 —Strict products liability

F. MOTION TO EXCLUDE EVIDENCE OF STATUTE VIOLATION

- § 10:65 Suggested motion text
- § 10:66 Motion summary
- § 10:67 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:68 —Exclusion of irrelevant evidence, generally
- § 10:69 —Exclusion of traffic citation evidence, generally
- § 10:70 —Negligence per se not applicable—Not proximate cause / injury not one statute meant to prevent
- § 10:71 — —Party not within protected class
- § 10:72 —Other grounds
- § 10:73 Opposing authorities—Admission of traffic citation, generally
- § 10:74 —Negligence per se—Presumption of negligence

G. MOTION TO EXCLUDE EVIDENCE THAT DRIVER WAS UNLICENSED

- § 10:75 Suggested motion text
- § 10:76 Motion summary
- § 10:77 Supporting authorities—Exclusion of evidence of lack of license
- § 10:78 —Other grounds
- § 10:79 Opposing authorities—Relevant to issues

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

- § 10:80 Suggested motion text
- § 10:81 Motion summary
- § 10:82 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:83 —Exclusion of irrelevant evidence, generally
- § 10:84 —Exclusion of seat-belt evidence
- § 10:85 —Other grounds
- § 10:86 Opposing authorities—Admissible as mitigation

I. MOTION TO EXCLUDE EVIDENCE OF ALCOHOL CONSUMPTION

- § 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 alcohol evidence, generally
- § 10:92 —Consumption by passenger
- § 10:93 —Blood alcohol level tests generally
- § 10:94 —Other grounds
- § 10:95 Opposing authorities—Where relevant to issues
- § 10:96 Supporting authorities—Witness perceptions

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

- § 10:97 Suggested motion text
- § 10:98 Motion summary
- § 10:99 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:100 —Exclusion of irrelevant evidence, generally
- § 10:101 —Exclusion of crimes evidence used for impeachment—Generally
- § 10:102 — —Exclusion of arrests
- § 10:103 — —Exclusion of violations of municipal ordinances
- § 10:104 —Exclusion of D.U.I. evidence where used to prove improper conduct
- § 10:105 —Other grounds
- § 10:106 Opposing authorities—Generally
- § 10:107 —Impeachment
- § 10:108 — —Use of convictions for impeachment expressly allowed
- § 10:109 —Relevant to issues

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

- § 10:110 Suggested motion text
- § 10:111 Motion Summary
- § 10:112 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:113 —Exclusion of irrelevant evidence, generally
- § 10:114 —Exclusion of evidence of party's health or injuries where not at issue

TABLE OF CONTENTS

- § 10:115 —Other grounds
- § 10:116 Opposing authorities—Relevant to issues in case
- § 10:117 — —Demonstration of injury
- § 10:118 — —Other demonstrations

L. MOTION TO EXCLUDE ACCIDENT RECONSTRUCTION AND BIOMECHANIC EVIDENCE

- § 10:119 Suggested motion text
- § 10:120 Motion summary
- § 10:121 Supporting authorities—Excluding accident reconstruction evidence—Generally
 - § 10:122 — —Incomplete facts / speculation
 - § 10:123 — —Reliance on observations of others (hearsay)
 - § 10:124 — —Improper foundation or qualification
 - § 10:125 — —Point of impact determinations
 - § 10:126 — —Reaction time determinations
 - § 10:127 — —Vehicle speed determinations
 - § 10:128 — —Excluding biomechanic evidence
 - § 10:129 — —Anthropomorphic dummies
 - § 10:130 — —“Finite Element Analysis” tests
 - § 10:131 — —“Pattern of Injury” tests
 - § 10:132 — —Low-speed impact automobile cases
 - § 10:133 — —Excluding “Delta V” testimony
 - § 10:134 — —Challenging “popping into a chair” testimony
 - § 10:135 — —“Human crash test dummy” testimony
 - § 10:136 — —Photographs depicting “no damage” to vehicles
 - § 10:137 — —Other unreliable tests
 - § 10:138 Opposition—Tests and scientific testimony, generally
 - § 10:139 — —Accident reconstruction evidence—Proper basis for opinion
 - § 10:140 — —Competent facts / foundation
 - § 10:141 — —Vehicle speed
 - § 10:142 — —Skid mark analysis
 - § 10:143 — —Stopping distances
 - § 10:144 — —Point of impact
 - § 10:145 — —Photographs depicting “no damage” to vehicles
 - § 10:146 — —Biomechanic evidence—Cases where admitted

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

- § 10:147 Suggested motion text
- § 10:148 Motion summary

- § 10:149 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:150 —Exclusion of irrelevant evidence, generally
- § 10:151 —Exclusion of financial status evidence, generally
- § 10:152 — —Plaintiff's financial status
- § 10:153 — —Defendant's financial status
- § 10:154 —Punitive damages cases
- § 10:155 —Other grounds
- § 10:156 Opposing authorities—Relevant to issues—Generally
- § 10:157 — —Necessary to support punitive damages claim

N. MOTION TO EXCLUDE TAX EVIDENCE

- § 10:158 Suggested motion text
- § 10:159 Motion summary
- § 10:160 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:161 —Exclusion of irrelevant evidence, generally
- § 10:162 —Exclusion of tax evidence—Improper appeal to jurors as taxpayers
- § 10:163 —Other grounds
- § 10:164 Opposing authorities—Relevant to issues

O. MOTION TO EXCLUDE LIABILITY OR FAULT EVIDENCE

- § 10:165 Suggested motion text
- § 10:166 Motion summary
- § 10:167 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:168 —Exclusion of irrelevant evidence, generally
- § 10:169 —Admitted matters, generally
- § 10:170 —Admission of fault—Admissions made during settlement negotiations
- § 10:171 — —Inadmissible legal opinions by lay witnesses
- § 10:172 —Other grounds
- § 10:173 Opposing authorities—Relevance
- § 10:174 —Admission of fault

P. MOTION TO EXCLUDE IMPROPER DAMAGE EVIDENCE

- § 10:175 Suggested motion text
- § 10:176 Motion summary
- § 10:177 Supporting authorities—Unpleaded, undisputed or surprise claims—Unpleaded matters

TABLE OF CONTENTS

- § 10:178 — —Undisputed matters
- § 10:179 — —Surprise claims
- § 10:180 —Speculative damages, generally
- § 10:181 —Lost profits
- § 10:182 —Punitive damages
- § 10:183 Opposing authorities—Unpleaded or denied claims—
Court’s discretion
- § 10:184 — —Estoppel
- § 10:185 — —Denied claims
- § 10:186 —Speculative damages—Generally
- § 10:187 — —“Reasonably certain” damages
- § 10:188 —Punitive damages

II. SAMPLE MOTIONS

- § 10:189 Motion to exclude evidence of collateral source
payments
- § 10:190 Motion to exclude evidence of defendant’s liability
- § 10:191 Motion to admit evidence of laboratory testing
regarding firearm residue
- § 10:192 Motion to exclude surveillance video
- § 10:193 Motion to exclude evidence of subsequent remedial
measures
- § 10:194 Motion to exclude evidence of statute violation
- § 10:195 Motion to exclude evidence of failure to pay taxes
- § 10:196 Motion to exclude settlement evidence
- § 10:197 Motion to exclude liability insurance evidence
- § 10:198 Motion to exclude evidence of plaintiff’s financial
status
- § 10:199 Motion to exclude evidence of defendant’s prior DWI
- § 10:200 Motion to exclude evidence of prior traffic citations
- § 10:201 Motion to exclude improper damage evidence
(speculative evidence of lost profits)
- § 10:202 Motion to exclude evidence regarding prior accident
- § 10:203 Opposition to motion to exclude evidence of
subsequent repairs
- § 10:204 Opposition to motion to exclude evidence of
defendant’s financial status
- § 10:205 Motion to exclude evidence regarding party’s prior
injuries
- § 10:206 Motion to exclude that driver was unlicensed

Table of Laws and Rules

Table of Cases

Index