

Table of Contents

CHAPTER 1. MOTIONS 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 —Limitations on use—Examples
- § 1:5 —Appealability
- § 1:6 Timing of motion
- § 1:7 Scope of motion
- § 1:8 Procedural requirements
- § 1:9 —Caution regarding local rules

B. DRAFTING SUGGESTIONS

- § 1:10 Overview
- § 1:11 —File motions supported by facts
- § 1:12 —Be succinct

II. SAMPLES

- § 1:13 Sample in limine brief
- § 1:14 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 Opposing authorities

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

- § 2:5 Suggested motion text

- § 2:6 Motion summary
- § 2:7 Supporting authorities—Exclusion of time-wasting evidence
- § 2:8 Opposing authorities

C. MOTION TO EXCLUDE CONFUSING OR MISLEADING EVIDENCE

- § 2:9 Suggested motion text
- § 2:10 Motion summary
- § 2:11 Supporting authorities—Exclusion of confusing or misleading evidence, generally
 - § 2:12 —Testimony
 - § 2:13 —Reports
 - § 2:14 —Medical records
- § 2:15 Opposing authorities

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

- § 2:16 Suggested motion text
- § 2:17 Motion summary
- § 2:18 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 2:19 —Exclusion of evidence intended to inflame jurors' emotions
 - § 2:20 — —Jurors' self interest as citizens or taxpayers
 - § 2:21 — —"Golden rule" argument
- § 2:22 Opposing authorities

E. MOTION TO EXCLUDE OR LIMIT CUMULATIVE EVIDENCE

- § 2:23 Suggested notice of motion text
- § 2:24 Motion summary
- § 2:25 Supporting authorities—Exclusion of time-wasting evidence
 - § 2:26 —Exclusion of cumulative evidence, generally
 - § 2:27 — —Letters
 - § 2:28 — —Credentials
 - § 2:29 — —Number of witnesses
 - § 2:30 — —Photographs
 - § 2:31 — —Reports
 - § 2:32 — —Witness testimony
 - § 2:33 — —Video/audio tape evidence
 - § 2:34 — —Medical information
- § 2:35 Opposing authorities—General authority
- § 2:36 —Number of witnesses

TABLE OF CONTENTS

- § 2:37 —Videotape evidence
- § 2:38 —Photographs
- § 2:39 —Reports

II. SAMPLE MOTIONS

- § 2:40 Motion to exclude cumulative evidence
- § 2:41 Motion to exclude prejudicial evidence
- § 2:42 Opposition to motion to exclude prejudicial evidence
- § 2:43 Opposition to motion to exclude cumulative witness testimony
- § 2:44 Motion to exclude evidence that will confuse the jury
- § 2:45 Opposition to motion to exclude evidence that will confuse the jury

CHAPTER 3. IRRELEVANT EVIDENCE

I. MOTION AUTHORITIES

A. MOTION TO EXCLUDE IRRELEVANT EVIDENCE, GENERALLY

- § 3:1 Suggested motion text
- § 3:2 Motion summary
- § 3:3 Supporting authorities—Definition of “relevant evidence”
- § 3:4 —Exclusion of irrelevant evidence, generally
- § 3:5 — —No unlimited inquiry
- § 3:6 — —Legislative deliberations
- § 3:7 — —Prejudicial evidence
- § 3:8 — —Speculative evidence
- § 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 — —Matters not in dispute
- § 3:14 — —Collateral issues
- § 3:15 — —Unpleaded issues
- § 3:16 Opposing authorities
- § 3:17 —Collateral issues
- § 3:18 —Discretion to amend pleadings
- § 3:19 —Issues plead
- § 3:20 —Where relevant to other issues

C. MOTION TO EXCLUDE SPECULATIVE EVIDENCE

- § 3:21 Suggested motion text
- § 3:22 Motion summary
- § 3:23 Supporting authorities—Exclusion of irrelevant evidence, generally
- § 3:24 —Exclusion of speculative evidence—Generally
- § 3:25 — —Expert testimony
- § 3:26 — —Cross examination
- § 3:27 — —Speculative damages
- § 3:28 Opposing authorities—Generally
- § 3:29 —Speculative damages

II. SAMPLE MOTIONS

- § 3:30 Motion to exclude irrelevant evidence (immigration status)
- § 3:31 Motion to exclude irrelevant evidence (physical conditions not at issue)
- § 3:32 Motion to exclude evidence relating to unpleaded issues
- § 3:33 Motion to exclude speculative evidence

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 —Lack of foundation, examples
- § 4:5 — —Photographs
- § 4:6 — —Tape recordings
- § 4:7 — —Tests and experiments
- § 4:8 — —Videotapes and motion pictures
- § 4:9 — —Witness testimony—Experts
- § 4:10 — — —Lay
- § 4:11 — —Writings
- § 4:12 — —Medical reports
- § 4:13 Opposing authorities—Generally
- § 4:14 — —Medical records
- § 4:15 — —Photographs

TABLE OF CONTENTS

§ 4:16 — —Video recordings and sound recordings

**B. MOTION TO EXCLUDE WRITINGS,
GENERALLY**

- § 4:17 Suggested motion text
- § 4:18 Motion summary
- § 4:19 Supporting authorities—Best evidence rule
- § 4:20 — —Definition
- § 4:21 — —Exclusion of secondary evidence
- § 4:22 — —Inadmissible hearsay
- § 4:23 — —Generally
- § 4:24 — —Examples of inadmissible written hearsay
- § 4:25 — —Exclusion of unauthenticated writings
- § 4:26 — —Confusing
- § 4:27 Opposing authorities—Where the best evidence rule
does not apply
- § 4:28 — —N.Y. C.P.L.R. 4539; reproductions of original
- § 4:29 — —N.Y. State Tech. Law § 306; admissibility of
electronic records or electronic signatures
- § 4:30 — —Hearsay exceptions for writings, generally
- § 4:31 — —Business records exception
- § 4:32 — —Public records exception

**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 — —Lack of relevance
- § 4:37 — —Gruesome or inflammatory photographs
- § 4:38 — —Purpose to inflame jurors' emotions
- § 4:39 — —Lack of foundation
- § 4:40 — —Other grounds
- § 4:41 Opposing authorities

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

- § 4:42 Suggested motion text
- § 4:43 Motion summary
- § 4:44 Supporting authorities—Exclusion of prejudicial
videotape evidence
- § 4:45 — —Lack of foundation
- § 4:46 — —Hearsay
- § 4:47 — —Cumulative

- § 4:48 —Irrelevant
- § 4:49 —Other grounds
- § 4:50 Opposing authorities—Generally
- § 4:51 —Foundation
- § 4:52 —Relevance
- § 4:53 —Cautionary admonition
- § 4:54 —Cumulative
- § 4:55 —Hearsay exceptions

E. MOTION TO EXCLUDE PUBLISHED ARTICLES

- § 4:56 Suggested motion text
- § 4:57 Motion summary
- § 4:58 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:59 —Exclusion of published articles
- § 4:60 — —Hearsay
- § 4:61 — —Other grounds
- § 4:62 Opposing authorities—Self-authentication
- § 4:63 —Market reports
- § 4:64 —Where relevant to issues—Libel
- § 4:65 —Nonhearsay
- § 4:66 —Summary judgment—Opposition

F. MOTION TO EXCLUDE ACCIDENT REPORTS

- § 4:67 Suggested motion text
- § 4:68 Motion summary
- § 4:69 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:70 —Inadmissible hearsay
- § 4:71 —Statements and opinions in reports
- § 4:72 —Other grounds
- § 4:73 Opposing authorities—Report used to refresh recollection
- § 4:74 —Diagrams
- § 4:75 —Business records exception to hearsay rule
- § 4:76 —Public records exception to hearsay rule
- § 4:77 —Other exceptions to hearsay rule

G. MOTION TO EXCLUDE LETTERS

- § 4:78 Suggested motion text
- § 4:79 Motion summary
- § 4:80 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:81 —Exclusion of letters, generally
- § 4:82 —Hearsay, in general

TABLE OF CONTENTS

- § 4:83 — —Hearsay, exceptions to N.Y. C.P.L.R. 4518
- § 4:84 —Irrelevant
- § 4:85 —Cumulative
- § 4:86 —Other grounds
- § 4:87 Opposing authorities—Generally
- § 4:88 —Exceptions to hearsay rule
- § 4:89 — —Business records exception
- § 4:90 — —Public records exception
- § 4:91 —Relevant
- § 4:92 —Inconsistent statement
- § 4:93 —Redacted letters

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

- § 4:94 Suggested motion text
- § 4:95 Motion summary
- § 4:96 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:97 —Exclusion of maps, models, diagrams or charts
- § 4:98 —Demonstrative evidence
- § 4:99 —Other grounds
- § 4:100 Opposing authorities—Generally
- § 4:101 —Officer’s drawings or diagrams
- § 4:102 —Illustrative purposes
- § 4:103 —Where no risk of confusion
- § 4:104 —Relevant to issues
- § 4:105 —Made for public purpose
- § 4:106 —Ten-year-old maps, surveys or records

I. MOTION TO EXCLUDE IMPROPER MEDICAL RECORDS OR REPORTS

- § 4:107 Suggested motion text
- § 4:108 Motion summary
- § 4:109 Supporting authorities—Prejudicial evidence—Generally
- § 4:110 — —Prejudicial medical entries
- § 4:111 —Irrelevant evidence—Generally
- § 4:112 — —Not germane to diagnosis and treatment
- § 4:113 —Inadmissible hearsay—Medical reports prepared for litigation
- § 4:114 — —No business record hearsay exception (N.Y. C.P.L.R. 4518)
- § 4:115 — —Lack of duty to report
- § 4:116 —Improper foundation

- § 4:117 — —Lack of certification
- § 4:118 — —Unknown authorship or origin
- § 4:119 —Records containing medical opinions
- § 4:120 —Records confusing to jury
- § 4:121 —Other grounds
- § 4:122 Opposing citations—Hearsay—Business records; N.Y. C.P.L.R. 4518(a)
- § 4:123 — —Hospital bills; N.Y. C.P.L.R. 4518(b)
- § 4:124 — —Other records; N.Y. C.P.L.R. 4518(c)
- § 4:125 —Foundation—Generally
- § 4:126 — —Authentication
- § 4:127 —Admissible even if physician available to testify
- § 4:128 —Opinions
- § 4:129 —Patient history
- § 4:130 — —Observations of physician
- § 4:131 — —Pertinent to medical diagnosis

J. MOTION TO EXCLUDE SOCIAL MEDIA EVIDENCE

- § 4:132 Suggested motion text
- § 4:133 Motion summary
- § 4:134 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:135 —Exclusion of social media evidence—Generally
- § 4:136 — —Hearsay
- § 4:137 — —Lack of foundation or authentication
- § 4:138 —Other grounds
- § 4:139 Opposing authorities—Generally
- § 4:140 —Proper foundation laid
- § 4:141 —Evidence relevant to issues in case
- § 4:142 —Examples of social media evidence admitted

II. SAMPLE MOTIONS

- § 4:143 Motion to exclude gruesome photographs
- § 4:144 Motion to exclude written letter
- § 4:145 Motion to exclude plaintiff's medical history
- § 4:146 Motion to exclude newspaper article
- § 4:147 Motion to exclude demonstration of defendant's tattoo
- § 4:148 Motion to exclude social media evidence
- § 4:149 Opposition to motion to exclude social media evidence
- § 4:150 Opposition to motion to exclude prejudicial photographs
- § 4:151 Motion to exclude map
- § 4:152 Motion to exclude accident report
- § 4:153 Motion to exclude text messages
- § 4:154 Motion to exclude medical bills

TABLE OF CONTENTS

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 — —Discretion of court
- § 5:5 —*Frye* standard, generally
- § 5:6 —Not made under “sufficiently similar” conditions
- § 5:7 —Reliability requirement
- § 5:8 —Speculative or conjectural
- § 5:9 —Too many variables
- § 5:10 —Other grounds
- § 5:11 Opposing authorities—Court’s discretion
- § 5:12 —Purpose of *Frye*
- § 5:13 —Identical conditions unnecessary
- § 5:14 —General acceptance—Published precedent
- § 5:15 — —Level of acceptance in scientific community
- § 5:16 —Expert qualified
- § 5:17 —Weight vs. admissibility
- § 5:18 —*Frye* hearing not required

B. MOTION TO EXCLUDE JUNK SCIENCE AND RELATED EVIDENCE

- § 5:19 Suggested motion text
- § 5:20 Motion summary
- § 5:21 Supporting authorities—Exclusion of new scientific evidence, generally
- § 5:22 —Quantification of loss of enjoyment of life
- § 5:23 —“Truth-serum” evidence
- § 5:24 —Polygraph evidence
- § 5:25 — —Refusal to take polygraph test
- § 5:26 —Psychological tests and syndromes—In general
- § 5:27 — —Rape trauma syndrome
- § 5:28 — —Electronic penile plethysmograph test
- § 5:29 — —Psychological profiling
- § 5:30 — —False confessions
- § 5:31 —Hypnosis evidence
- § 5:32 —Identification by voice spectrograph
- § 5:33 —Accident reconstruction evidence

- § 5:34 —Biomechanic evidence
- § 5:35 — —Low-speed impact cases
- § 5:36 —Statistical evidence—Exclusion of confusing evidence
- § 5:37 — —Disapproved statistics evidence, generally
- § 5:38 — —Statistics in products liability or negligence cases
- § 5:39 — —Statistics in employment discrimination cases
- § 5:40 Opposing authorities
- § 5:41 —In general
- § 5:42 — —When Frye test not required
- § 5:43 — —Approved tests and accepted conditions
- § 5:44 —Hedonic damages
- § 5:45 —Truth serum
- § 5:46 —Polygraph evidence
- § 5:47 — —Stipulation of parties
- § 5:48 — —When used for investigative purposes
- § 5:49 —Psychological tests—Rape trauma syndrome—When not used to show rape occurred
- § 5:50 — —Abused Child Syndrome—When not used to show abuse occurred
- § 5:51 —Hypnosis evidence
- § 5:52 —Statistics evidence—General acceptance
- § 5:53 — —Weight vs. admissibility
- § 5:54 — —Judicial notice
- § 5:55 —Accident reconstruction and biomechanic evidence

II. SAMPLE MOTIONS

- § 5:56 Motion to exclude evidence of statistical analysis
- § 5:57 Motion to exclude experiment
- § 5:58 Motion to exclude evidence of polygraph examination
- § 5:59 Motion to exclude evidence of hypnosis
- § 5:60 Motion to exclude expert testimony
- § 5:61 Motion to exclude expert testimony (credibility of witness)
- § 5:62 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 in a criminal case
- § 6:3 Motion summary
- § 6:4 Supporting authorities—Overview of statutory authority—N.Y. C.P.L.R. 3124; motion to compel disclosure

TABLE OF CONTENTS

§ 6:5	— —N.Y. C.P.L.R. 3126; penalties for refusal to comply with order or to disclose
§ 6:6	— —22 NYCRR § 130-1; order awarding costs or imposing sanctions
§ 6:7	— —N.Y. Crim. Pro. Art. 245; automatic discovery obligations
§ 6:8	— —245.80; remedies and sanctions for failure to comply with discovery in criminal case
§ 6:9	—Supporting authority, generally—Spoliation
§ 6:10	— —N.Y. C.P.L.R. 3126, court’s discretion to impose sanctions
§ 6:11	— —N.Y. C.P.L.R. 3126—Willful, contumacious or bad faith conduct
§ 6:12	— —N.Y. C.P.L.R. 3126(1)—Issue sanction
§ 6:13	— —N.Y. C.P.L.R. 3126(2)—Evidence sanction
§ 6:14	— —N.Y. C.P.L.R. 3126(3)—Terminating sanction
§ 6:15	— —N.Y. C.P.L.R. 3124—Motion to compel not a prerequisite to sanctions
§ 6:16	— —22 NYCRR § 130-1—Frivolous conduct
§ 6:17	—Sanctions arising from depositions—Issue sanction
§ 6:18	— —Terminating sanction
§ 6:19	— —Evidence sanction
§ 6:20	—Sanctions arising from interrogatories—Issue sanction
§ 6:21	— —Evidence sanction
§ 6:22	— —Terminating sanction
§ 6:23	—Sanctions arising from production requests—Issue sanction
§ 6:24	— —Evidence sanction
§ 6:25	— —Terminating sanction
§ 6:26	—N.Y. C.P.L.R. 3121; mental and physical examinations
§ 6:27	— —Failure to comply with examination notice
§ 6:28	—N.Y. C.P.L.R. 3123; admissions as to matters of fact, papers, documents and photographs
§ 6:29	— —Failure to respond to admissions request
§ 6:30	—Other grounds
§ 6:31	—N.Y. Crim. Pro. 245.80; court’s discretion to impose sanctions
§ 6:32	—Sanctions in criminal cases
§ 6:33	Opposing authorities—Generally
§ 6:34	—Sanction appropriate only where there is willful, contumacious or bad faith conduct
§ 6:35	—Frivolous conduct
§ 6:36	—Spoliation
§ 6:37	—Depositions
§ 6:38	—Interrogatories

- § 6:39 —Requests for production
- § 6:40 —Matters deemed admitted
- § 6:41 —N.Y. C.P.L.R. 3121; mental and physical examinations
- § 6:42 —Criminal cases
- § 6:43 —Sanctions in criminal cases

B. MOTIONS REGARDING EXPERT DECLARATIONS AND EXPERT DEPOSITIONS

- § 6:44 Suggested motion text
- § 6:45 Motion summary
- § 6:46 Supporting authorities—Improper expert witness exchange
- § 6:47 — —Deficient declaration
- § 6:48 — —Undisclosed witness
- § 6:49 —Opinions not revealed before trial
- § 6:50 Opposing authorities—Expert witness exchanges
- § 6:51 — —Continuance to depose witness
- § 6:52 — —Compare: Treating physicians
- § 6:53 —Situations where expert may deviate from disclosure
- § 6:54 — —No obligation to voluntarily identify expert
- § 6:55 — —Precise compensation or prior testimony information

C. MOTION TO EXCLUDE EVIDENCE OF CLAIMS DENIED OR NOT RAISED DURING DISCOVERY

- § 6:56 Suggested motion text
- § 6:57 Motion summary
- § 6:58 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 6:59 — —Unfair surprise
- § 6:60 — —Untimely disclosure
- § 6:61 — —If privilege raised during discovery
- § 6:62 —Other grounds
- § 6:63 Opposing authorities

II. SAMPLE MOTIONS

- § 6:64 Motion to exclude evidence of claim denied during discovery
- § 6:65 Motion to exclude evidence for failure to timely respond to discovery
- § 6:66 Memorandum in support of motion to exclude evidence for failure to timely respond to discovery
- § 6:67 Motion to exclude testimony of undisclosed witness

TABLE OF CONTENTS

- § 6:68 Motion to deem matters admitted
- § 6:69 Opposition to defendants' motion to limit plaintiff's expert's opinions
- § 6:70 Motion to exclude expert testimony relating to matters not disclosed during discovery
- § 6:71 Motion for order rendering default judgment as discovery sanction
- § 6:72 Motion for evidentiary sanctions for failure to serve answers/objections to interrogatories

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 OR IN CASE-IN-CHIEF

- § 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 —Exclusion of improper impeachment evidence—Alcohol consumption
- § 7:10 — —Drug use
- § 7:11 — —Arrests, acquittals and misdemeanor convictions
- § 7:12 — —Felony convictions, generally
- § 7:13 — —Uncharged crimes
- § 7:14 — —Fraudulent acts
- § 7:15 — —Good character of witness
- § 7:16 — —Religious belief
- § 7:17 — —Sexual preference or behavior
- § 7:18 — —Youthful offender adjudication
- § 7:19 —Other grounds
- § 7:20 Opposing authorities—Facts at issue
- § 7:21 —Witness perceptions
- § 7:22 —Impeachment, generally
- § 7:23 — —Witness veracity

B. MOTION TO EXCLUDE CHARACTER EVIDENCE USED TO PROVE CONDUCT

- § 7:24 Suggested motion text

- § 7:25 Motion summary
- § 7:26 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:27 —Exclusion of irrelevant evidence, generally
- § 7:28 —Exclusion of improper character evidence
- § 7:29 — —Care or skill in negligence cases
- § 7:30 — —Crimes evidence, generally
- § 7:31 —Other grounds
- § 7:32 Opposing authorities—Court’s discretion
- § 7:33 —Relevant to material issue
- § 7:34 —Witness impeachment
- § 7:35 —Trait at issue

C. MOTION TO EXCLUDE EVIDENCE OF PRIOR FELONY CONVICTION

- § 7:36 Suggested motion text
- § 7:37 Motion summary
- § 7:38 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:39 — —Balancing prejudicial impact of felony evidence
- § 7:40 — —Disposition to commit crime
- § 7:41 —Exclusion of improper impeachment evidence
- § 7:42 — —Must reflect on credibility
- § 7:43 — —Impeachment in civil cases
- § 7:44 —Exclusion of improper character evidence
- § 7:45 —Other grounds
- § 7:46 Opposing authorities—Impeachment expressly allowed in criminal cases
- § 7:47 —Moral turpitude

II. SAMPLE MOTIONS

- § 7:48 Motion to exclude evidence of alcoholism of percipient witness
- § 7:49 Motion to exclude evidence of witness’ habit of intemperance
- § 7:50 Motion to exclude improper character evidence (marital infidelity)
- § 7:51 Motion to exclude evidence of religious beliefs
- § 7:52 Motion to exclude improper character evidence (youthful offender adjudication)
- § 7:53 Motion to exclude evidence of prior arrest of witness
- § 7:54 Opposition to motion to exclude inflammatory evidence
- § 7:55 Motion to exclude evidence regarding witness’s mental health

CHAPTER 8. WITNESS MOTIONS

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 —Hypothetical questions
 - § 8:5 —Inadmissible hearsay
 - § 8:6 — —Opinions of others
 - § 8:7 — —Statements of others
 - § 8:8 — —Treatises, documents & texts
 - § 8:9 —Legal questions
 - § 8:10 — —Ultimate issues
 - § 8:11 —Matters of common experience
 - § 8:12 —Not reasonably relied on by experts
 - § 8:13 —Not perceived or personally known
 - § 8:14 —Precluded by law
 - § 8:15 —Speculation or conjecture
 - § 8:16 —Too many variables
 - § 8:17 —Uncooperative witness
 - § 8:18 —Usurping jury function
 - § 8:19 —Irrelevant matters
 - § 8:20 —Cumulative
 - § 8:21 —Other grounds
- § 8:22 Opposing authorities—Generally
- § 8:23 —Hearsay
 - § 8:24 — —Statements of others
 - § 8:25 — —Treatises, documents and text
 - § 8:26 —Hypothetical questions
 - § 8:27 —Uncooperative witness
 - § 8:28 —Not perceived or personally known

B. MOTION TO EXCLUDE TESTIMONY OF NON-QUALIFIED EXPERT

- § 8:29 Suggested motion text
- § 8:30 Motion summary
- § 8:31 Supporting authorities—Exclusion of non-qualified experts
 - § 8:32 —Improper qualifications: Examples
 - § 8:33 —Other grounds
- § 8:34 Opposing authorities—Generally

§ 8:35 —Goes to weight of testimony, not admissibility

C. MOTION TO EXCLUDE OPINION OF LAY WITNESS

- § 8:36 Suggested motion text
- § 8:37 Motion summary
- § 8:38 Supporting authorities—Exclusion of non-expert opinion
 - § 8:39 — —Causation
 - § 8:40 — —Legal opinions
 - § 8:41 — —Lay experiments
 - § 8:42 — —Other grounds
 - § 8:43 Opposing authorities—Perceptions of witness
 - § 8:44 — —Sanity
 - § 8:45 — —Valuation of property

D. MOTION TO EXCLUDE TESTIMONY OF INCOMPETENT WITNESS

- § 8:46 Suggested motion text
- § 8:47 Motion summary
- § 8:48 Supporting authorities—Children
 - § 8:49 —Lack of mental competence/insanity
 - § 8:50 —Dead man’s statute
 - § 8:51 —Other grounds
- § 8:52 Opposing authorities—General authority
 - § 8:53 —Children
 - § 8:54 —Mental competence/insanity
 - § 8:55 —Dead Man’s statute

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

- § 8:56 Suggested motion text
- § 8:57 Motion summary
- § 8:58 Supporting authorities—Judge, arbitrator or mediator as witness
 - § 8:59 —Juror as witness
- § 8:60 Opposing authorities

F. MOTION TO EXCLUDE WITNESS FROM COURTROOM PRIOR TO TESTIFYING

- § 8:61 Suggested motion text
- § 8:62 Motion summary
- § 8:63 Supporting authorities—Exclusion of non-party witnesses from courtroom

TABLE OF CONTENTS

- § 8:64 —Criminal cases
- § 8:65 Opposing authorities—Discretionary decision
- § 8:66 —Cannot exclude party
- § 8:67 —Experts
- § 8:68 —Exclusion of testimony improper remedy

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

- § 8:69 Suggested motion text
- § 8:70 Motion summary
- § 8:71 Supporting authorities—No-comment
- § 8:72 —Jury instructions
- § 8:73 Opposing authorities—Allowable inferences
- § 8:74 —Civil consequences of silence

H. MOTION TO EXCLUDE EVIDENCE OF NON- CALLED WITNESSES

- § 8:75 Suggested motion text
- § 8:76 Motion summary
- § 8:77 Supporting authorities—Exclusion of prejudicial
evidence, generally
- § 8:78 —When witness was equally available to testify
- § 8:79 —When comments would invite speculation
- § 8:80 —Where other adequate testimony
- § 8:81 —Other grounds
- § 8:82 Opposition citations—Generally
- § 8:83 —Non-calling of material witness
- § 8:84 —Missing witness charge

I. MOTION TO EXCLUDE HEARSAY EVIDENCE

- § 8:85 Suggested motion text
- § 8:86 Motion summary
- § 8:87 Supporting authorities—Definition of hearsay
- § 8:88 —Purpose of rule
- § 8:89 —Written hearsay—Applicability to writings
- § 8:90 — —Examples of written hearsay
- § 8:91 Opposing authorities
- § 8:92 —Hearsay exceptions, generally
- § 8:93 — —Purpose of exceptions to hearsay rule
- § 8:94 —Non-hearsay evidence
- § 8:95 —Non-assertive conduct
- § 8:96 —Multiple hearsay
- § 8:97 —Hearsay used to impeach witness credibility

II. SAMPLE MOTIONS

- § 8:98 Motion to exclude speculative expert opinion

- § 8:99 Motion to exclude reference to non-called witnesses
- § 8:100 Motion to exclude speculative expert evidence
- § 8:101 Memorandum in support of motion to exclude
speculative expert evidence
- § 8:102 Motion to exclude testimony of expert
- § 8:103 Memorandum in support of motion to exclude
testimony of expert
- § 8:104 Motion to exclude lay witness testimony (causation)
- § 8:105 Motion to exclude witness from courtroom prior to
testifying
- § 8:106 Motion to exclude testimony of witness for lack of
personal knowledge of subject matter
- § 8:107 Motion to exclude testimony of incompetent witness
- § 8:108 Opposition to motion to exclude lay witness evidence
- § 8:109 Opposition to motion to exclude expert witness
testimony (non-qualified)

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 —Jurors understanding of the law
- § 9:6 —Medical malpractice findings
- § 9:7 —Other grounds
- § 9:8 Opposition citations—Potential for bias
- § 9:9 —Fair questioning
- § 9:10 —Lack of prejudice or bad faith (reference to
insurance)

B. MOTION TO EXCLUDE IMPROPER ARGUMENT IN OPENING STATEMENT

- § 9:11 Suggested motion text
- § 9:12 Motion summary
- § 9:13 Supporting authorities—Exclusion of prejudicial
evidence, generally
- § 9:14 —Exclusion of prejudicial matter in opening statement
- § 9:15 —Other grounds
- § 9:16 Opposing authorities—Generally
- § 9:17 —Curative instruction

C. MOTION TO BAR PREMATURE REBUTTAL TO AFFIRMATIVE DEFENSES

- § 9:18 Suggested motion text

TABLE OF CONTENTS

- § 9:19 Motion summary
- § 9:20 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 9:21 —Order of proof
- § 9:22 Opposing authorities

D. MOTION TO EXCLUDE REFERENCE TO LOST OR DESTROYED EVIDENCE

- § 9:23 Suggested motion text
- § 9:24 Motion summary
- § 9:25 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 9:26 —Exclusion of lost or destroyed evidence—Accidental destruction of evidence
- § 9:27 — —Intentional destruction or suppression of evidence
- § 9:28 — —Striking pleadings for spoliation
- § 9:29 — —Spoliation prior to litigation
- § 9:30 —Other grounds
- § 9:31 Opposition citations—Generally
- § 9:32 —Overcoming spoliation claim
- § 9:33 —Other remedies
- § 9:34 — —Negative presumption

E. MOTION TO EXCLUDE EVIDENCE OF DAMAGES IN BIFURCATED TRIAL

- § 9:35 Suggested motion text
- § 9:36 Motion summary
- § 9:37 Supporting authorities—Authority for bifurcation
- § 9:38 —Irrelevant evidence—Irrelevant evidence, generally
- § 9:39 — —Damages or injuries as irrelevant in bifurcated trial
- § 9:40 —Policy considerations
- § 9:41 —Some overlap acceptable
- § 9:42 —Other grounds
- § 9:43 Opposing authorities—Liability issues relevant to damages

F. MOTION TO PRECLUDE “GOLDEN RULE ARGUMENT”

- § 9:44 Suggested motion text
- § 9:45 Motion summary
- § 9:46 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 9:47 —Rejection of “golden rule argument”
- § 9:48 —Other grounds

G. MOTION TO EXCLUDE IMPROPER TERMINOLOGY

- § 9:49 Suggested motion text
- § 9:50 Motion summary
- § 9:51 Supporting authorities—Confusing evidence
- § 9:52 —Terms containing legal conclusions
- § 9:53 —Testimony on ultimate issues—Ultimate issues and expert testimony
- § 9:54 — —Compare: Ultimate issues and non-experts
- § 9:55 —Misused terms
- § 9:56 —Preconditioning jury
- § 9:57 —Usurping jury function
- § 9:58 —Meaning of statute
- § 9:59 Opposing authorities—Admissibility of ultimate issue testimony by experts

II. SAMPLE MOTIONS

- § 9:60 Motion to exclude reference to lost or destroyed evidence
- § 9:61 Motion to exclude evidence of damages in bifurcated trial
- § 9:62 Motion to exclude improper argument during opening statement
- § 9:63 Opposition to motion for missing evidence instruction

CHAPTER 10. PERSONAL INJURY MOTIONS

I. MOTION AUTHORITIES

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

- § 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 evidence of party's health or injuries where not at issue
- § 10:6 —Other grounds
- § 10:7 Opposing authorities—Relevant to issues in case

B. MOTION TO EXCLUDE EVIDENCE OF LIABILITY INSURANCE

- § 10:8 Suggested motion text

TABLE OF CONTENTS

- § 10:9 Motion summary
- § 10:10 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:11 —Exclusion of irrelevant evidence, generally
- § 10:12 —Exclusion of liability insurance evidence
- § 10:13 — —Evidence of defendant’s lack of insurance
- § 10:14 —Irrelevant
- § 10:15 —Other grounds
- § 10:16 Opposing authorities—Cross-examination
- § 10:17 —Where relevant to issues or otherwise admissible
- § 10:18 —Incidental reference to insurance
- § 10:19 —Non-prejudicial references to insurance
- § 10:20 —To prove ownership or employment

C. MOTION TO EXCLUDE SETTLEMENT EVIDENCE

- § 10:21 Suggested motion text
- § 10:22 Motion summary
- § 10:23 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:24 —Exclusion of irrelevant evidence, generally
- § 10:25 —Exclusion of settlement evidence used to show liability
- § 10:26 — —Prior settlements
- § 10:27 — —Settlement negotiations
- § 10:28 — —Settlement with co-defendants
- § 10:29 — —Where offer made prior to litigation
- § 10:30 —Other grounds
- § 10:31 Opposing authorities—Purpose other than to show liability—Admission against interest
- § 10:32 — —Bias, prejudice or witness impeachment
- § 10:33 — —Settlement with co-defendant: Pro tanto reduction of verdict
- § 10:34 —Opening the door on direct examination
- § 10:35 —Admissible in criminal proceeding
- § 10:36 —Relevant

D. MOTION TO EXCLUDE EVIDENCE OF OTHER ACCIDENTS

- § 10:37 Suggested motion text
- § 10:38 Motion summary
- § 10:39 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:40 —Exclusion of irrelevant evidence, generally
- § 10:41 —Exclusion of prior-accident evidence—Absence of prior accidents

- § 10:42 — —Prior accident evidence used to prove negligence
- § 10:43 — —Court’s discretion
- § 10:44 — —Lack of similarity: Dangerous condition/defective products
- § 10:45 — —Irrelevant
- § 10:46 — —Exclusion of subsequent accident evidence—
Generally
- § 10:47 — —Dangerous condition cases—Notice
- § 10:48 — —Other grounds
- § 10:49 Opposing authorities—Evidence of prior accidents—
Absence of prior accidents, generally
- § 10:50 — —Similarity: Dangerous condition/defective products
- § 10:51 — —Notice
- § 10:52 — —Relevant to issues in case (e.g., similar injuries)
- § 10:53 — —Prior accidents as basis for expert opinion
- § 10:54 — —Other possible exceptions—Impeachment
- § 10:55 — —Evidence of subsequent accidents—Court’s discretion
- § 10:56 — —Dangerous condition

E. MOTION TO EXCLUDE EVIDENCE OF SUBSEQUENT REPAIRS

- § 10:57 Suggested motion text
- § 10:58 Motion summary
- § 10:59 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:60 — —Exclusion of irrelevant evidence, generally
- § 10:61 — —Exclusion of subsequent repair evidence—
Inadmissible to show negligence
- § 10:62 — —Other grounds
- § 10:63 Opposing authorities—Impeachment
- § 10:64 — —Relevant to issues
- § 10:65 — —Strict products liability

F. MOTION TO EXCLUDE EVIDENCE OF STATUTE VIOLATION

- § 10:66 Suggested motion text
- § 10:67 Motion summary
- § 10:68 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:69 — —Exclusion of irrelevant evidence, generally
- § 10:70 — —Exclusion of traffic citation evidence, generally
- § 10:71 — —Not proximate cause
- § 10:72 — —Prior traffic violations
- § 10:73 — —Other grounds

TABLE OF CONTENTS

- § 10:74 Opposing authorities—Impeachment
- § 10:75 —Proximate cause
- § 10:76 — —Negligence per se—Presumption of negligence
- § 10:77 — —Movant’s reply argument—Gatekeeping provisions

G. MOTION TO EXCLUDE EVIDENCE OF DRIVER’S LICENSE SUSPENSION

- § 10:78 Suggested motion text
- § 10:79 Motion summary
- § 10:80 Supporting authorities—Exclusion of evidence of license suspension or revocation
- § 10:81 —Not evidence of negligence
- § 10:82 —Other grounds
- § 10:83 Opposing authorities—Lack of prejudice
- § 10:84 —Relevant to issues

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

- § 10:85 Suggested motion text
- § 10:86 Motion summary
- § 10:87 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:88 —Exclusion of irrelevant evidence, generally
- § 10:89 —Exclusion of seat-belt evidence
- § 10:90 — —Defendant’s burden unchanged by seatbelt laws
- § 10:91 —Other grounds
- § 10:92 Opposing authorities—Mitigation of damages
- § 10:93 —Mandatory seatbelt laws

I. MOTION TO EXCLUDE EVIDENCE OF ALCOHOL CONSUMPTION

- § 10:94 Suggested motion text
- § 10:95 Motion summary
- § 10:96 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:97 —Exclusion of irrelevant evidence, generally
- § 10:98 —Exclusion of alcohol evidence, generally
- § 10:99 —Exclusion in automobile cases—Consumption by driver where no impairment
- § 10:100 — —Consumption by passenger
- § 10:101 —General intemperance
- § 10:102 —Other grounds
- § 10:103 Opposing authorities—Where relevant to issues—Relevance, generally

- § 10:104 — —Driving under the influence of alcohol as proof of negligence
- § 10:105 —Witness perceptions/impeachment

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

- § 10:106 Suggested motion text
- § 10:107 Motion summary
- § 10:108 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:109 —Exclusion of irrelevant evidence, generally
- § 10:110 —Exclusion of crimes evidence used for impeachment—Generally
- § 10:111 — —Exclusion of arrests and misdemeanor convictions
- § 10:112 — —Where probative value outweighed by risk of undue prejudice
- § 10:113 —Exclusion of evidence where used to prove improper conduct—Generally
- § 10:114 —Other grounds
- § 10:115 Opposing authorities—Generally
- § 10:116 —Impeachment—Statutory authority
- § 10:117 — —Case law
- § 10:118 —Relevant to issues

K. MOTION TO EXCLUDE EVIDENCE OF COLLATERAL SOURCE PAYMENTS

- § 10:119 Suggested motion text
- § 10:120 Motion summary
- § 10:121 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:122 —Exclusion of irrelevant evidence, generally
- § 10:123 —Exclusion of collateral source evidence, generally
- § 10:124 — —Exceptions to N.Y. C.P.L.R. 4545
- § 10:125 — —Pain and suffering
- § 10:126 — —Exception: Contract cases
- § 10:127 —Other grounds
- § 10:128 Opposing authorities—N.Y. C.P.L.R. 4545
- § 10:129 —Cases that settle before trial

L. MOTION TO EXCLUDE ACCIDENT RECONSTRUCTION AND BIOMECHANIC EVIDENCE

- § 10:130 Suggested motion text
- § 10:131 Motion summary

TABLE OF CONTENTS

§ 10:132	Supporting authorities—Excluding accident reconstruction evidence—Expert opinions, generally
§ 10:133	— —Incomplete facts/speculation
§ 10:134	— —Reliance on observations of others (hearsay)
§ 10:135	— —Improper foundation or qualification
§ 10:136	— —Point of impact determinations
§ 10:137	— —Reaction time determinations
§ 10:138	— —Vehicle speed determinations
§ 10:139	— —Skid mark analysis
§ 10:140	— —Stopping distances
§ 10:141	— —Conclusory opinions
§ 10:142	—Excluding biomechanic evidence
§ 10:143	— —Anthropomorphic dummies
§ 10:144	— —“Finite element analysis” tests
§ 10:145	— —“Pattern of injury” tests
§ 10:146	—Low-speed impact automobile cases
§ 10:147	— —Excluding “Delta V” testimony
§ 10:148	— —Challenging “popping into a chair” testimony
§ 10:149	— —“Human crash test dummy” testimony
§ 10:150	— —Photographs depicting “no damage” to vehicles
§ 10:151	— —Other unreliable tests
§ 10:152	Opposition—Tests and scientific testimony, generally
§ 10:153	—Accident reconstruction evidence—Proper basis for opinion
§ 10:154	— —Competent facts/foundation
§ 10:155	— —Speed estimates
§ 10:156	— —Skid mark analysis
§ 10:157	— —Stopping distances
§ 10:158	— —Point of impact
§ 10:159	—Biomechanic evidence
§ 10:160	—A note on opposing motions to exclude low-impact tests

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

§ 10:161	Suggested motion text
§ 10:162	Motion summary
§ 10:163	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:164	—Exclusion of irrelevant evidence, generally
§ 10:165	—Exclusion of financial status evidence, generally
§ 10:166	— —Plaintiff’s financial status
§ 10:167	— —Defendant’s financial status
§ 10:168	— —Wrongful death cases
§ 10:169	—Punitive damages cases

- § 10:170 —Other grounds
- § 10:171 Opposing authorities—Relevant to issues—
Generally
- § 10:172 — —Misrepresentation
- § 10:173 — —Motive
- § 10:174 — —Necessary to support punitive damages claim

N. MOTION TO EXCLUDE TAX EVIDENCE

- § 10:175 Suggested motion text
- § 10:176 Motion summary
- § 10:177 Supporting authorities—Exclusion of prejudicial
evidence, generally
- § 10:178 —Exclusion of irrelevant evidence, generally
- § 10:179 —Exclusion of tax evidence—Tax implications on
damages
- § 10:180 — —Tax returns
- § 10:181 —Tax implications in wrongful death cases
- § 10:182 —Improper appeal to jurors as taxpayers
- § 10:183 —Other grounds
- § 10:184 Opposing authorities—Generally
- § 10:185 —Relevant to issues

O. MOTION TO EXCLUDE LIABILITY EVIDENCE (LIABILITY NOT AT ISSUE)

- § 10:186 Suggested motion text
- § 10:187 Motion summary
- § 10:188 Supporting authorities—Exclusion of prejudicial
evidence, generally
- § 10:189 —Exclusion of irrelevant evidence, generally
- § 10:190 —Exclusion of admitted matters
- § 10:191 —Other grounds
- § 10:192 Opposing authorities

P. MOTION TO EXCLUDE IMPROPER DAMAGE EVIDENCE

- § 10:193 Suggested motion text
- § 10:194 Motion summary
- § 10:195 Supporting authorities—Unpleaded, undisputed or
surprise claims—Unpleaded matters
- § 10:196 — —Undisputed matters
- § 10:197 — —Surprise claims
- § 10:198 — —Amounts in excess of stated damages
- § 10:199 —Speculative damages, generally
- § 10:200 — —Exclusion of evidence relating to speculative
damages

TABLE OF CONTENTS

§ 10:201	—Limitations on damages—Injury to drunk driver
§ 10:202	Opposing authorities—Unpleaded or denied claims— Court’s discretion
§ 10:203	— —Estoppel/denied claims
§ 10:204	—Speculative damages—Generally
§ 10:205	— —Weight vs. admissibility
§ 10:206	— —“Reasonably certain” damages

II. SAMPLE MOTIONS

§ 10:207	Motion to exclude evidence of settlement negotiations
§ 10:208	Motion to exclude evidence of defendant’s liability
§ 10:209	Motion to admit evidence of experiment
§ 10:210	Memorandum in support of motion to admit evidence of experiment
§ 10:211	Motion to exclude video evidence
§ 10:212	Memorandum in support of motion to exclude video evidence
§ 10:213	Motion to exclude evidence of subsequent remedial measures
§ 10:214	Motion to exclude evidence of statute violation
§ 10:215	Motion to exclude evidence of failure to pay taxes
§ 10:216	Motion to exclude mediation evidence
§ 10:217	Motion to exclude liability insurance evidence
§ 10:218	Motion to exclude evidence of plaintiff’s financial status
§ 10:219	Motion to exclude evidence of defendant’s prior DWI
§ 10:220	Opposition to motion to exclude evidence of subsequent repairs
§ 10:221	Opposition to motion to exclude evidence of defendant’s financial status
§ 10:222	Motion to exclude improper damage evidence (speculative evidence of lost profits)
§ 10:223	Motion to exclude evidence regarding prior accident
§ 10:224	Motion to exclude evidence regarding party’s prior injuries
§ 10:225	Motion to exclude that driver was unlicensed

Table of Laws and Rules

Table of Cases

Index