

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 —Limitations on use
- § 1:5 —Preservation of objections
- § 1:6 Timing of motion
- § 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

TENNESSEE MOTIONS IN LIMINE

- § 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

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 ——“Golden rule” argument
- § 2:21 ——Evidence of poverty as motive
- § 2:22 ——Juror's self-interest as taxpayers
- § 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, generally
- § 2:28 ——Articles, letters, and journals
- § 2:29 ——Photographs and videotape evidence
- § 2:30 ——Witness testimony
- § 2:31 —Repetitive testimony
- § 2:32 Opposing authorities—Generally
- § 2:33 —Photographs
- § 2:34 —Number of witnesses
- § 2:35 —Videotape evidence

II. SAMPLE MOTIONS

- § 2:36 Motion to exclude cumulative evidence

TABLE OF CONTENTS

- § 2:37 Opposition to motion to exclude cumulative witness testimony
- § 2:38 Motion to exclude prejudicial evidence
- § 2:39 Opposition to motion to exclude prejudicial evidence
- § 2:40 Motion to exclude evidence of defendant's poverty
- § 2:41 Motion to exclude evidence that will confuse jury
- § 2:42 Opposition to motion to exclude evidence that will confuse the jury

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 —Prejudicial
 - § 3:6 —Court's discretion
 - § 3:7 —Matters not in dispute
 - § 3:8 —Outside pleadings
 - § 3:9 —Speculative evidence
 - § 3:10 —Too remote
 - § 3:11 Opposing authorities

B. MOTION TO EXCLUDE EVIDENCE OF MATTERS NOT IN CONTROVERSY

- § 3:12 Suggested motion text
- § 3:13 Motion summary
- § 3:14 Supporting authorities—Exclusion of irrelevant evidence, generally
 - § 3:15 —Admitted or uncontested matters
 - § 3:16 —Collateral issues
 - § 3:17 —Unpledged issues
 - § 3:18 Opposing authorities
 - § 3:19 —Collateral issues
 - § 3:20 —Estoppel: unpledged issues
 - § 3:21 —Where relevant to other issues

II. SAMPLE MOTIONS

- § 3:22 Motion to exclude evidence of physical conditions not at issue

TENNESSEE MOTIONS IN LIMINE

- § 3:23 Motion to exclude irrelevant evidence (insurance case)
- § 3:24 Motion to exclude collateral and irrelevant evidence
- § 3:25 Motion to exclude evidence relating to unpledaded issues
- § 3:26 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 —Preliminary facts—Definitions
 - § 4:5 ——Determination out of jury presence
 - § 4:6 —Inadmissibility of evidence lacking foundation
 - § 4:7 —Examples of improper foundation, generally
 - § 4:8 ——Photographs, videotapes, and motion pictures
 - § 4:9 ——Tests and experiments
 - § 4:10 ——Videotapes and motion pictures
 - § 4:11 ——Witness testimony—Experts
 - § 4:12 ——Lay
 - § 4:13 ——Writings
 - § 4:14 ——Medical reports
 - § 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
 - § 4:25 ——Exclusion of unauthenticated writings

TABLE OF CONTENTS

- § 4:26 —Inadmissible hearsay—Generally
- § 4:27 —Examples of inadmissible written hearsay
- § 4:28 —Inadmissible secondary evidence
- § 4:29 Opposing authorities—Authentication and foundation—Examples
- § 4:30 —Hearsay exceptions—Hearsay exceptions, generally
- § 4:31 —Secondary evidence

C. MOTION TO EXCLUDE GRUESOME OR INFLAMMATORY PHOTOGRAPHS

- § 4:32 Suggested motion text
- § 4:33 Motion summary
- § 4:34 Supporting authorities—Exclusion of prejudicial evidence, generally
 - Exclusion of irrelevant evidence, generally
 - § 4:36 —Gruesome or inflammatory photographs
 - § 4:37 —Purpose to inflame jurors' emotions
 - § 4:38 —Exclusion of photographs, generally
 - § 4:39 —Accident scene photographs, generally
 - § 4:40 —Other grounds
 - § 4:41 Opposing authorities—Photographs, generally
 - § 4:42 —Adequate foundation
 - § 4:43 —Enlarged photographs
 - § 4:44 —Gruesome photographs
 - § 4:45 —X-rays
 - § 4:46 —Accident scene photographs

D. MOTION TO EXCLUDE PREJUDICIAL FILM OR VIDEOTAPES

- § 4:47 Suggested motion text
- § 4:48 Motion summary
- § 4:49 Supporting authorities—Exclusion of prejudicial evidence, generally
 - Exclusion of videotape evidence
 - § 4:51 —Other grounds
 - § 4:52 Opposing authorities—Generally
 - § 4:53 —Relevance
 - § 4:54 —Adequate foundation

E. MOTION TO EXCLUDE PUBLISHED ARTICLES

- § 4:55 Suggested motion text
- § 4:56 Motion summary
- § 4:57 Supporting authorities—Exclusion of prejudicial evidence, generally

TENNESSEE MOTIONS IN LIMINE

- § 4:58 —Exclusion of published articles—Hearsay
- § 4:59 ——Prejudicial
- § 4:60 —Other grounds
- § 4:61 Opposition authorities—Where relevant to issues
- § 4:62 —Nonhearsay

F. MOTION TO EXCLUDE ACCIDENT REPORTS

- § 4:63 Suggested motion text
- § 4:64 Motion summary
- § 4:65 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:66 —Exclusion based upon Tenn. Code Ann. § 55-10-114(b)
- § 4:67 —Inadmissible hearsay
- § 4:68 —Statements and opinions in reports
- § 4:69 —Other grounds

G. MOTION TO EXCLUDE LETTERS, EMAIL AND TEXT MESSAGES

- § 4:70 Suggested motion text
- § 4:71 Motion summary
- § 4:72 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:73 —Exclusion of letters, email, or text messages—Hearsay
- § 4:74 ——Irrelevant
- § 4:75 ——Lack of foundation
- § 4:76 —Other grounds
- § 4:77 Opposing authorities—Generally
- § 4:78 —Exceptions to hearsay rule
- § 4:79 —Relevant
- § 4:80 —Inconsistent statement

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

- § 4:81 Suggested motion text
- § 4:82 Motion summary
- § 4:83 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:84 —Exclusion of demonstrative evidence, generally
- § 4:85 —Other grounds
- § 4:86 Opposing authorities—Maps, models or charts, generally

TABLE OF CONTENTS

- § 4:87 —Diagrams and illustrations
- § 4:88 —Exhibits and demonstrative evidence
- § 4:89 —Demonstrations

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

- § 4:90 Suggested motion text
- § 4:91 Motion summary
- § 4:92 Supporting authorities—Exclusion of prejudicial matter, generally
 - Exclusion of medical records or bills, generally
 - § 4:94 —Improper foundation
 - § 4:95 —Medical opinions—Improper hearsay evidence
 - § 4:96 —Opinions of others—Lack of personal knowledge
 - § 4:97 —Patient medical history
 - § 4:98 —Other grounds
 - § 4:99 Opposition citations—Proper authentication
 - § 4:100 —Patient history, generally
 - § 4:101 —Pertinent to medical diagnosis
 - § 4:102 —Business records exception
 - § 4:103 —Medical billing records—Reasonableness of charges

J. MOTION TO EXCLUDE SOCIAL MEDIA EVIDENCE

- § 4:104 Suggested motion text
- § 4:105 Motion summary
- § 4:106 Supporting authorities—Exclusion of prejudicial evidence, generally
 - Exclusion of social media evidence—Generally
 - § 4:108 —Hearsay
 - § 4:109 —Lack of foundation or authentication
 - § 4:110 —Other grounds
 - § 4:111 Opposing authorities—Generally
 - § 4:112 —Nonhearsay
 - § 4:113 —Proper foundation or authentication

II. SAMPLE MOTIONS

- § 4:114 Motion to exclude gruesome photographs
- § 4:115 Motion to exclude evidence of inflammatory and prejudicial photographs
- § 4:116 Opposition to motion to exclude prejudicial photographs
- § 4:117 Motion to exclude demonstration

TENNESSEE MOTIONS IN LIMINE

- § 4:118 Motion to exclude written letter
- § 4:119 Motion to exclude plaintiff's medical history
- § 4:120 Motion to exclude newspaper article
- § 4:121 Motion to exclude demonstration of defendant's tattoo
- § 4:122 Motion to exclude social media evidence
- § 4:123 Opposition to motion to exclude social media evidence
- § 4:124 Motion to exclude map
- § 4:125 Motion to exclude unauthenticated video recording
- § 4:126 Motion to exclude accident report
- § 4:127 Motion to exclude text messages
- § 4:128 Opposition to motion to exclude text messages
- § 4:129 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 made under “substantially identical” conditions
 - § 5:5 —Not reliable
 - § 5:6 —Scientific procedures not proper
 - § 5:7 —Speculative or conjectural
 - § 5:8 —Lack of foundation
 - § 5:9 —Other grounds
- § 5:10 Opposing authorities—Generally
 - § 5:11 —Identical conditions requirement
 - § 5:12 —Weight vs. admissibility
 - § 5:13 —Opinion based on legitimate matters

B. MOTION TO EXCLUDE JUNK SCIENCE AND RELATED EVIDENCE

- § 5:14 Suggested motion text
- § 5:15 Motion summary
- § 5:16 Supporting authorities—Exclusion of new scientific evidence—Generally
 - § 5:17 —Hedonic damage evidence
 - § 5:18 —“Truth-serum” evidence

TABLE OF CONTENTS

- § 5:19 —Voice stress analysis
- § 5:20 —Polygraph evidence
- § 5:21 ——Refusal or willingness to take polygraph test
- § 5:22 —Psychological tests, syndromes, and profiles—In general
 - § 5:23 ——Rape trauma syndrome
 - § 5:24 ——Child sexual abuse syndrome
 - § 5:25 ——Gulf war syndrome
 - § 5:26 ——Profiles, generally
 - § 5:27 ——Hypnosis evidence
 - § 5:28 ——Accident reconstruction evidence
 - § 5:29 ——Biomechanic evidence
 - § 5:30 —Statistical evidence—Exclusion of confusing evidence, generally
 - § 5:31 ——Disapproved statistics evidence, generally
 - § 5:32 Opposing authorities—In general
 - § 5:33 ——Approved tests
 - § 5:34 —Truth serum
 - § 5:35 —Polygraph evidence, generally
 - § 5:36 —Battered wife syndrome
 - § 5:37 —Battered child syndrome
 - § 5:38 —Hypnosis evidence
 - § 5:39 —Statistics evidence
 - § 5:40 —Accident reconstruction and biomechanic evidence

II. SAMPLE MOTIONS

- § 5:41 Motion to exclude evidence of statistical analysis
- § 5:42 Motion to exclude evidence of polygraph examination
- § 5:43 Motion to exclude evidence of hypnosis
- § 5:44 Motion to exclude expert testimony
- § 5:45 Motion to exclude expert testimony (credibility of witness)
- § 5:46 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 [Tenn. R. Civ. P. 37]—Available sanctions, generally
 - § 6:4 ——Evidence sanction

TENNESSEE MOTIONS IN LIMINE

- § 6:5 ——Issue sanction
- § 6:6 ——Terminating sanction
- § 6:7 ——When prior order unnecessary
- § 6:8 —Depositions—Tenn. R. Civ. P. 37
- § 6:9 ——Evidence exclusion
- § 6:10 ——Terminating sanctions
- § 6:11 —Interrogatories—Tenn. R. Civ. P. 37
- § 6:12 ——Evidentiary sanctions
- § 6:13 ——Terminating sanctions
- § 6:14 —Production requests—Tenn. R. Civ. P. 37
- § 6:15 ——Terminating sanctions
- § 6:16 —Mental and physical examinations—Tenn. R. Civ. P. 35
- § 6:17 ——Sanctions
- § 6:18 —Requests for admission—Tenn. R. Civ. P. 36
- § 6:19 ——Deeming non-responsive matters admitted
- § 6:20 —Failure to disclose identity of witnesses, generally
- § 6:21 —Other grounds
- § 6:22 Opposing authorities—Generally
- § 6:23 ——Reasonable alternative remedy
- § 6:24 —Depositions
- § 6:25 —Interrogatories
- § 6:26 —Requests for production
- § 6:27 —Matters deemed admitted
- § 6:28 —Disclosure of witnesses, generally
- § 6:29 —Mental and physical examinations

**B. MOTION TO CONCLUSIVELY ESTABLISH
ADMITTED MATTERS**

- § 6:30 Suggested motion text
- § 6:31 Motion summary
- § 6:32 Supporting authorities—Conclusive establishment of admitted matters
- § 6:33 —Purpose of admissions
- § 6:34 Opposing authorities

**C. MOTIONS RE IMPROPER EXPERT WITNESS
EXCHANGE OR EXPERT DEPOSITION**

- § 6:35 Suggested motion text
- § 6:36 Motion summary
- § 6:37 Supporting authorities—Expert witness exchange
- § 6:38 —Duty to supplement
- § 6:39 —Exclusion of evidence for improper disclosure

TABLE OF CONTENTS

- § 6:40 —Improper supplementation
- § 6:41 Opposing authorities—Expert witness exchanges
- § 6:42 ——Continuance
- § 6:43 ——Compare: treating physicians

II. SAMPLE MOTIONS

- § 6:44 Motion to exclude evidence of claim denied during discovery
- § 6:45 Motion to exclude evidence of medical bills for services obtained after *[date]*
- § 6:46 Motion to exclude testimony of undisclosed witness
- § 6:47 Motion to exclude evidence produced beyond discovery deadline
- § 6:48 Motion to deem matters admitted
- § 6:49 Motion for discovery sanction establishing facts
- § 6:50 Motion to exclude expert testimony relating to matters not disclosed during discovery
- § 6:51 Motion for order rendering default judgment as discovery sanction
- § 6:52 Motion for evidentiary sanctions for failure to serve answers/objections to interrogatories
- § 6:53 Motion to dismiss action as discovery sanction

CHAPTER 7. CHARACTER EVIDENCE

I. MOTION AUTHORITIES

A. OVERVIEW OF CHARACTER EVIDENCE

- § 7:1 Admissible character evidence
- § 7:2 Character evidence subject to exclusion
- § 7:3 Evidence rule limitations in criminal cases

B. 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 ——Witness's mental health
- § 7:11 ——Arrests, uncharged conduct, or misdemeanor convictions

TENNESSEE MOTIONS IN LIMINE

- § 7:12 ——Drug use
- § 7:13 ——Felony convictions
- § 7:14 ——Good character of witness
- § 7:15 ——Religious belief
- § 7:16 ——Sexual preference or behavior
- § 7:17 ——Collateral issues
- § 7:18 ——Excluding evidence of bias
- § 7:19 ——Not probative of truthfulness
- § 7:20 —Other grounds
- § 7:21 Opposing authorities—Facts at issue
- § 7:22 —Witness perceptions
- § 7:23 —Impeachment, generally
- § 7:24 ——Witness veracity
- § 7:25 ——Witness bias
- § 7:26 ——Collateral matters
- § 7:27 ——Sexual preference or behavior

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

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

**D. 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 prior felony or crime involving dishonesty
- § 7:43 —Exclusion of prejudicial evidence, generally— Balancing prejudicial impact of felony conviction evidence
- § 7:44 ——Crimes involving dishonesty or false statement

TABLE OF CONTENTS

- § 7:45 ——Exclusion of improper character evidence
- § 7:46 ——Exclusion of remote convictions
- § 7:47 —Exclusion of prior arrest, misdemeanor conviction, or pending charges
- § 7:48 —Exclusion of uncharged conduct or dismissed charges
- § 7:49 —Exclusion of juvenile adjudications
- § 7:50 —Other grounds
- § 7:51 Opposing authorities—Impeachment expressly allowed regarding felonies
- § 7:52 —Crimes involving dishonesty or false statement
- § 7:53 —Remoteness of conviction
- § 7:54 —Uncharged offenses

II. SAMPLE MOTIONS

- § 7:55 Motion to Exclude Evidence of Alcoholism of Percipient Witness
- § 7:56 Motion to exclude evidence of prior felony conviction
- § 7:57 Motion to exclude evidence of witness's habit of intemperance
- § 7:58 Motion to exclude improper character evidence (marital infidelity)
- § 7:59 Motion to exclude evidence of religious beliefs
- § 7:60 Motion to exclude improper character evidence (juvenile adjudication)
- § 7:61 Motion to exclude improper character evidence (prescription drug abuse)
- § 7:62 Motion to exclude evidence of prior arrest of witness
- § 7:63 Motion to exclude evidence regarding witness's mental health
- § 7:64 Opposition to motion to exclude inflammatory opinion and reputation evidence

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
 - Inadequate foundation
 - Hypothetical questions

TENNESSEE MOTIONS IN LIMINE

- § 8:6 —Inadmissible hearsay, generally
- § 8:7 —Legal questions
- § 8:8 ——Compare: ultimate issues
- § 8:9 —Matters of common experience
- § 8:10 —Not reasonably relied upon by experts
- § 8:11 —Not perceived or personally known
- § 8:12 —Speculation or conjecture
- § 8:13 —Not helpful to trier of fact
- § 8:14 —Usurping jury function/invasive province of jury
- § 8:15 —Irrelevant matters
- § 8:16 —Improper profile evidence
- § 8:17 —Cumulative testimony
- § 8:18 —Other grounds
- § 8:19 Opposing authorities—Generally
- § 8:20 —Hearsay
- § 8:21 —Hypothetical questions
- § 8:22 —Legal questions vs. ultimate issues
- § 8:23 —Trustworthy or reliable opinion
- § 8:24 —Cumulative testimony

B. MOTION TO EXCLUDE TESTIMONY OF NON-QUALIFIED EXPERT

- § 8:25 Suggested motion text
- § 8:26 Motion summary
- § 8:27 Supporting authorities—Exclusion of non-qualified experts
- § 8:28 —Improper qualifications: examples
- § 8:29 —Other grounds
- § 8:30 Opposing authorities—Generally

C. MOTION TO EXCLUDE LAY WITNESS TESTIMONY

- § 8:31 Suggested motion text
- § 8:32 Motion summary
- § 8:33 Supporting authorities—Exclusion of non-expert opinion
- § 8:34 —Lack of personal knowledge
- § 8:35 —Legal opinions
- § 8:36 —Other grounds
- § 8:37 Opposing authorities—Perceptions of witness
- § 8:38 —Helpful to clear understanding
- § 8:39 —Damages or value

TABLE OF CONTENTS

§ 8:40 —Medical malpractice cases—“Common knowledge” exception

D. MOTION TO EXCLUDE TESTIMONY OF INCOMPETENT WITNESS

§ 8:41 Suggested motion text
§ 8:42 Motion summary
§ 8:43 Supporting authorities—Exclusion of incompetent witnesses, generally
§ 8:44 —Lack of personal knowledge of subject matter
§ 8:45 —Other grounds
§ 8:46 Opposing authorities—General—Children
§ 8:47 ——Mental competence/insanity
§ 8:48 —Lack of personal knowledge of subject matter

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

§ 8:49 Suggested motion text
§ 8:50 Motion summary
§ 8:51 Supporting authorities—Judge as witness
§ 8:52 —Arbitrator, mediator, or neutral as witness
§ 8:53 —Attorney as witness
§ 8:54 —Juror as witness
§ 8:55 Opposing authorities—Judge
§ 8:56 —Arbitrator or mediator
§ 8:57 —Attorney testimony—Generally
§ 8:58 ——Uncontested matter
§ 8:59 ——Value of legal services
§ 8:60 ——Substantial hardship
§ 8:61 ——Testimony of other attorney in firm or office
§ 8:62 —Juror as witness

F. MOTION TO EXCLUDE WITNESS FROM COURTROOM PRIOR TO TESTIFYING

§ 8:63 Suggested motion text
§ 8:64 Motion summary
§ 8:65 Supporting authorities—Exclusion of non-party witnesses from courtroom
§ 8:66 Opposing authorities—Generally
§ 8:67 —Discretion
§ 8:68 —Cannot exclude party
§ 8:69 —Person essential to presentation of cause

TENNESSEE MOTIONS IN LIMINE

- § 8:70 —When exclusion of testimony improper
- § 8:71 —Purpose of rule

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

- § 8:72 Suggested motion text
- § 8:73 Motion summary
- § 8:74 Supporting authorities—Improper comments
- § 8:75 Opposing authorities—Allowable inferences
- § 8:76 —Civil consequences of silence
- § 8:77 —Waiver

H. MOTION TO EXCLUDE EVIDENCE OF NON-CALLED WITNESSES

- § 8:78 Suggested motion text
- § 8:79 Motion summary
- § 8:80 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 8:81 —Comment or instruction improper, generally
 - § 8:82 —Where witness was equally available to testify
 - § 8:83 —Where other adequate testimony
 - § 8:84 —Other grounds
 - § 8:85 Opposition citations—Generally
 - § 8:86 —Non-calling of material witness

I. MOTION TO EXCLUDE HEARSAY EVIDENCE

- § 8:87 Suggested motion text
- § 8:88 Motion summary
- § 8:89 Supporting authorities—General authority for exclusion
 - § 8:90 —Purpose of rule
 - § 8:91 —Written hearsay, generally
 - § 8:92 —Multiple hearsay
 - § 8:93 Opposing authorities—Hearsay exceptions, generally
 - § 8:94 —Non-hearsay evidence
 - § 8:95 —Non-assertive conduct
 - § 8:96 —Multiple hearsay

II. SAMPLE MOTIONS

- § 8:97 Motion to exclude speculative expert opinion
- § 8:98 Motion to exclude reference to non-called witnesses
- § 8:99 Motion to exclude evidence of computerized

TABLE OF CONTENTS

	valuations of plaintiff's business, or, in the alternative, motion for a <i>Daubert/McDaniel</i> hearing regarding the validity of the methodology
§ 8:100	Motion to exclude testimony and opinions of medical doctor
§ 8:101	Motion to exclude lay witness testimony (causation)
§ 8:102	Opposition to motion to exclude lay witness evidence
§ 8:103	Motion to exclude witness from courtroom prior to testifying
§ 8:104	Motion to exclude testimony of witness for lack of personal knowledge of subject matter
§ 8:105	Motion to exclude testimony of mediator
§ 8:106	Motion to exclude testimony of incompetent witness
§ 8:107	Opposition to motion to exclude expert witness testimony (non-qualified)
§ 8:108	Motion to exclude comment regarding exercise of marital communications 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	—Other grounds
§ 9:6	Opposing authorities—Generally
§ 9:7	—Reference to insurance

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

C. MOTION TO BAR PREMATURE REBUTTAL TO AFFIRMATIVE DEFENSES

§ 9:14	Suggested motion text
--------	-----------------------

TENNESSEE MOTIONS IN LIMINE

- § 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 —Other grounds
- § 9:25 Opposition citations—Generally

E. MOTION TO EXCLUDE ARBITRATION OR MEDIATION EVIDENCE AND FINDINGS

- § 9:26 Suggested motion text
- § 9:27 Motion summary
- § 9:28 Supporting authorities—Limitation on arbitration evidence
- § 9:29 —Other grounds
- § 9:30 Opposing authorities

F. MOTION TO EXCLUDE EVIDENCE OF DAMAGES IN BIFURCATED TRIAL

- § 9:31 Suggested motion text
- § 9:32 Motion summary
- § 9:33 Supporting authorities—Statutory authority
- § 9:34 —Other grounds
- § 9:35 Opposing authorities—Liability issues relevant to damages
- § 9:36 —Small overlap approved

G. MOTION TO PRECLUDE “GOLDEN RULE ARGUMENT”

- § 9:37 Suggested motion text
- § 9:38 Motion summary
- § 9:39 Supporting authorities—Exclusion of prejudicial evidence, generally

TABLE OF CONTENTS

- § 9:40 —Rejection of “golden rule argument”
- § 9:41 —Other grounds
- § 9:42 Opposing authorities

H. MOTION TO EXCLUDE IMPROPER TERMINOLOGY

- § 9:43 Suggested motion text
- § 9:44 Motion summary
- § 9:45 Supporting authorities—Confusing evidence
- § 9:46 —Terms containing legal conclusions
- § 9:47 —Testimony on ultimate issues—Exclusion of ultimate issue evidence
- § 9:48 —General admissibility of ultimate issue opinions
- § 9:49 —Preconditioning jury
- § 9:50 —Usurping jury function
- § 9:51 Opposing authorities—Legal Questions vs. Ultimate Issues

II. SAMPLE MOTIONS

- § 9:52 Motion to exclude reference to lost or destroyed evidence
- § 9:53 Opposition to motion for missing evidence instruction
- § 9:54 Motion to exclude mediation evidence
- § 9:55 Motion to preclude golden rule argument
- § 9:56 Motion to exclude evidence of damages in bifurcated trial
- § 9:57 Motion to prevent improper voir dire (preconditioning)
- § 9:58 Motion to exclude improper argument during opening statement
- § 9:59 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

TENNESSEE MOTIONS IN LIMINE

- § 10:4 —Exclusion of irrelevant evidence, generally
- § 10:5 —Exclusion of collateral source evidence, generally
- § 10:6 ——Discounted medical rates
- § 10:7 ——Gratuitous payments
- § 10:8 ——Workers compensation benefits
- § 10:9 ——Wage payments
- § 10:10 ——Exceptions to medical malpractice statute
- § 10:11 —Other grounds
- § 10:12 Opposing authorities—Opposing authorities, generally—Exception: medical malpractice cases
- § 10:13 ——Exception: workers' compensation cases

B. MOTION TO EXCLUDE EVIDENCE OF LIABILITY INSURANCE

- § 10:14 Suggested motion text
- § 10:15 Motion summary
- § 10:16 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:17 —Exclusion of irrelevant evidence, generally
- § 10:18 —Exclusion of liability insurance evidence
- § 10:19 ——Evidence of defendant's lack of insurance
- § 10:20 —Other grounds
- § 10:21 Opposing authorities—Generally

C. MOTION TO EXCLUDE SETTLEMENT EVIDENCE

- § 10:22 Suggested motion text
- § 10:23 Motion summary
- § 10:24 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:25 —Exclusion of irrelevant evidence, generally
- § 10:26 —Exclusion of settlement evidence used to show liability
- § 10:27 —Other grounds
- § 10:28 Opposing authorities—Generally
- § 10:29 —Purpose other than to show liability

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

- § 10:30 Suggested motion text
- § 10:31 Motion summary
- § 10:32 Supporting authorities—Exclusion of prejudicial evidence, generally

TABLE OF CONTENTS

- § 10:33 —Exclusion of irrelevant evidence, generally
- § 10:34 —Exclusion of prior-accident evidence
- § 10:35 —Exclusion of subsequent accident evidence
- § 10:36 —Other claims or lawsuits
- § 10:37 —Other grounds
- § 10:38 Opposing authorities—Evidence of other accidents or incidents—Generally
- § 10:39 —Similarity: dangerous condition/defective products
- § 10:40 —Relevant to issues in case (e.g., similar injuries)
- § 10:41 —Admissibility of other claims—Generally
- § 10:42 —Proof of punitive damages

E. MOTION TO EXCLUDE EVIDENCE OF SUBSEQUENT REPAIRS

- § 10:43 Suggested motion text
- § 10:44 Motion summary
- § 10:45 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:46 —Exclusion of irrelevant evidence, generally
- § 10:47 —Exclusion of subsequent repair evidence
- § 10:48 —Other grounds
- § 10:49 Opposing authorities—Generally
- § 10:50 —Offered for another purpose/relevant to issues

F. MOTION TO EXCLUDE EVIDENCE OF STATUTE VIOLATION

- § 10:51 Suggested motion text
- § 10:52 Motion summary
- § 10:53 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:54 —Exclusion of irrelevant evidence, generally
- § 10:55 —Exclusion of traffic citation evidence, generally
- § 10:56 —Not proximate cause
- § 10:57 —Party not within protected class
- § 10:58 —Not type of injury statute meant to prevent
- § 10:59 —Other grounds
- § 10:60 Opposing authorities—Proximate cause of injury
- § 10:61 —Injured party within protected class

G. MOTION TO EXCLUDE EVIDENCE THAT DRIVER WAS UNLICENSED

- § 10:62 Suggested motion text

TENNESSEE MOTIONS IN LIMINE

- § 10:63 Motion summary
- § 10:64 Supporting authorities—Exclusion of evidence of absence of license
- § 10:65 —Other grounds
- § 10:66 Opposing authorities—Relevant to issues

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

- § 10:67 Suggested motion text
- § 10:68 Motion summary
- § 10:69 Supporting authorities—Exclusion of prejudicial evidence, generally
 - Exclusion of irrelevant evidence, generally
 - § 10:71 —Exclusion of seat belt evidence
 - § 10:72 ——Child restraint systems
 - § 10:73 —Other grounds
 - § 10:74 Opposing authorities—Non-use of seat belts admissible in certain cases
 - § 10:75 ——Non-use of child restraint systems

I. MOTION TO EXCLUDE EVIDENCE OF ALCOHOL CONSUMPTION

- § 10:76 Suggested motion text
- § 10:77 Motion summary
- § 10:78 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 10:79 —Exclusion of irrelevant evidence, generally
 - § 10:80 —Exclusion of alcohol evidence, generally
 - § 10:81 —Blood alcohol level and blood tests, generally
 - § 10:82 —Other grounds
 - § 10:83 Opposing authorities—Where relevant to issues
 - § 10:84 —Admissible evidence of drinking habit
 - § 10:85 —Admissible evidence of blood alcohol tests and blood tests

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

- § 10:86 Suggested motion text
- § 10:87 Motion summary
- § 10:88 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 10:89 —Exclusion of irrelevant evidence, generally
 - § 10:90 —Exclusion of crimes evidence used for impeachment—Generally

TABLE OF CONTENTS

- § 10:91 ——Exclusion of arrests, uncharged conduct, and misdemeanor convictions
- § 10:92 ——Exclusion of felony convictions where probative value outweighed by risk of unfair prejudice
- § 10:93 —Exclusion of D.U.I. evidence where used to prove improper conduct
- § 10:94 —Other grounds
- § 10:95 Opposing authorities—Generally
- § 10:96 —Impeachment
- § 10:97 Use of felony convictions or convictions involving dishonesty or false statement for impeachment expressly allowed
- § 10:98 Opposing authorities—Relevant to issues

K. MOTION TO EXCLUDE ACCIDENT RECONSTRUCTION AND BIOMECHANIC EVIDENCE

- § 10:99 Suggested motion text
- § 10:100 Motion summary
- § 10:101 Supporting authorities—Excluding accident reconstruction evidence—Generally
 - Reliance on observations of others (hearsay)
 - Improper foundation or qualification
 - Point of impact determinations
 - Reaction time determinations
 - Vehicle speed determinations
 - Excluding biomechanic evidence
 - Anthropomorphic dummies
 - “Finite element analysis” tests
 - Low-speed impact automobile cases
 - Excluding “Delta V” testimony
 - Challenging “plopping into a chair” testimony
 - “Human crash test dummy” testimony
 - Photographs depicting “no damage” to vehicles
 - Other unreliable tests
- § 10:116 Opposition—Tests and scientific testimony, generally
 - Accident reconstruction evidence—Proper basis for opinion
 - Vehicle speed
 - Reaction time
 - Point of impact
 - Photographs depicting “no damage” to vehicles
 - Biomechanic evidence—Cases where admitted

TENNESSEE MOTIONS IN LIMINE

§ 10:123 —A note on opposing motions to exclude low-impact tests

L. MOTION TO EXCLUDE EVIDENCE OF PARTY'S FINANCIAL STATUS

§ 10:124 Suggested motion text
§ 10:125 Motion summary
§ 10:126 Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:127 —Exclusion of irrelevant evidence, generally
§ 10:128 —Exclusion of financial status evidence, generally— Plaintiff's financial status
§ 10:129 ——Defendant's financial status
§ 10:130 —Punitive damages cases
§ 10:131 —Other grounds
§ 10:132 Opposing authorities—Relevant to issues— Generally
§ 10:133 ——Punitive damages cases

M. MOTION TO EXCLUDE TAX EVIDENCE

§ 10:134 Suggested motion text
§ 10:135 Motion summary
§ 10:136 Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:137 —Exclusion of irrelevant evidence, generally
§ 10:138 —Exclusion of tax evidence—Generally
§ 10:139 ——Tax implications on damages
§ 10:140 —Improper appeal to jurors as taxpayers
§ 10:141 —Other grounds
§ 10:142 Opposing authorities—Generally

N. MOTION TO EXCLUDE LIABILITY OR FAULT EVIDENCE

§ 10:143 Suggested motion text
§ 10:144 Motion summary
§ 10:145 Supporting authorities—Exclusion of prejudicial evidence, generally
§ 10:146 —Exclusion of irrelevant evidence, generally
§ 10:147 —Admitted matters, generally
§ 10:148 —Admission of fault—Admissions made during settlement negotiations
§ 10:149 ——Inadmissible legal opinions by lay witnesses
§ 10:150 ——Sympathy or benevolence

TABLE OF CONTENTS

- § 10:151 —Other grounds
- § 10:152 Opposing authorities—Relevance
- § 10:153 —Admission of fault

O. MOTION TO EXCLUDE IMPROPER DAMAGE EVIDENCE

- § 10:154 Suggested motion text
- § 10:155 Motion summary
- § 10:156 Supporting authorities—Unpledged, undisputed or surprise claims—Unpledged matters
 - Undisputed matters
 - Surprise claims
 - § 10:159 —Speculative damages, generally
 - § 10:160 —Lost profits
 - § 10:161 —Punitive damages
 - § 10:162 Opposing authorities—Unpledged or denied claims
 - § 10:163 —Speculative damages
 - § 10:164 —Lost profits
 - § 10:165 —Punitive damages

II. SAMPLE MOTIONS

- § 10:166 Motion to exclude evidence of collateral source payments
- § 10:167 Motion to exclude evidence of defendant's liability
- § 10:168 Motion to admit evidence of laboratory testing regarding firearm residue
- § 10:169 Motion to exclude surveillance video
- § 10:170 Motion to exclude evidence of subsequent remedial measures
- § 10:171 Opposition to motion to exclude evidence of subsequent repairs
- § 10:172 Motion to exclude evidence of statute violation
- § 10:173 Motion to exclude evidence of failure to file income tax returns
- § 10:174 Motion to exclude settlement evidence
- § 10:175 Motion to exclude liability insurance evidence
- § 10:176 Motion to exclude evidence of plaintiff's financial status
- § 10:177 Opposition to motion to exclude evidence of defendant's financial status
- § 10:178 Motion to exclude evidence of defendant's prior DUI
- § 10:179 Motion to exclude evidence of prior traffic citations
- § 10:180 Motion to exclude improper damage evidence (speculative evidence of lost profits)

TENNESSEE MOTIONS IN LIMINE

- § 10:181 Motion to exclude evidence regarding prior accident
- § 10:182 Motion to exclude evidence regarding party's prior injuries
- § 10:183 Motion to exclude that driver was unlicensed

Table of Laws and Rules

Table of Cases

Index