

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 Scope of motion
- § 1:8 Procedural requirements

B. DRAFTING SUGGESTIONS

- § 1:9 Overview
- § 1:10 File motions supported by facts
- § 1:11 Be succinct

II. SAMPLES

- § 1:12 Sample in limine brief
- § 1:13 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—General authority
- § 2:11 —Exclusion of time-wasting evidence
- § 2:12 Opposing authorities

C. MOTION TO EXCLUDE CONFUSING OR MISLEADING EVIDENCE

- § 2:13 Suggested motion text
- § 2:14 Motion summary
- § 2:15 Supporting authorities—Exclusion of confusing or misleading evidence
- § 2:16 Opposing authorities
- § 2:17 —Limiting instruction

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

- § 2:18 Suggested motion text
- § 2:19 Motion summary
- § 2:20 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 2:21 —Exclusion of evidence intended to inflame jurors' emotions
- § 2:22 — —Jurors' self interest as taxpayers
- § 2:23 — —"Golden rule" argument
- § 2:24 — —Evidence of poverty
- § 2:25 Opposing authorities

E. MOTION TO EXCLUDE OR LIMIT CUMULATIVE EVIDENCE

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

TABLE OF CONTENTS

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

II. SAMPLE MOTIONS

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

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 — —Other laws
- § 3:6 — —Court's discretion
- § 3:7 —Exclusion of matters not in dispute
- § 3:8 —Exclusion of matters outside pleadings
- § 3:9 —Exclusion of speculative evidence
- § 3:10 —Exclusion when evidence 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 uncontroverted matters
- § 3:16 — —Collateral issues
- § 3:17 — —Unpleaded issues
- § 3:18 Opposing authorities
- § 3:19 — —Collateral issues
- § 3:20 — —Estoppel: Unpleaded issues
- § 3:21 — —Where relevant to other issues
- § 3:22 — —Admissibility of evidence despite uncontested issue

II. SAMPLE MOTIONS

- § 3:23 Motion to exclude irrelevant evidence (immigration status)
- § 3:24 Motion to exclude evidence of physical conditions not at issue
- § 3:25 Motion to exclude irrelevant evidence (insurance case)
- § 3:26 Motion to exclude collateral and irrelevant evidence
- § 3:27 Motion to exclude evidence relating to unpleaded issues
- § 3:28 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
- § 4:8 — —Photographs
- § 4:9 — —Tape recordings
- § 4:10 — —Tests and experiments
- § 4:11 — —Videotapes and motion pictures
- § 4:12 — —Witness testimony—Expert witnesses
- § 4:13 — — —Lay witnesses
- § 4:14 — —Writings

TABLE OF CONTENTS

- § 4:15 — —Medical reports
- § 4:16 — —Objects or things
- § 4:17 Opposing authorities—General
- § 4:18 —Conditional admissibility
- § 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
- § 4:26 —Inadmissible hearsay—Generally
- § 4:27 — —Examples of inadmissible written hearsay
- § 4:28 —Inadmissible secondary evidence
- § 4:29 —Completeness doctrine
- § 4:30 —Examples of writings held inadmissible
- § 4:31 Opposing authorities—Authentication and foundation—Examples
- § 4:32 —Hearsay exceptions
- § 4:33 —Secondary evidence

C. MOTION TO EXCLUDE GRUESOME OR INFLAMMATORY PHOTOGRAPHS

- § 4:34 Suggested motion text
- § 4:35 Motion summary
- § 4:36 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:37 —Exclusion of irrelevant evidence, generally
- § 4:38 —Gruesome or inflammatory photographs
- § 4:39 —Purpose to inflame jurors’ emotions
- § 4:40 —Exclusion of photographs, generally
- § 4:41 —X-rays
- § 4:42 —Accident scene photographs, generally
- § 4:43 —Other grounds
- § 4:44 Opposing authorities—Photographs, generally
- § 4:45 — —Adequate foundation
- § 4:46 —Gruesome 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
- § 4:50 —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
- § 4:58 —Exclusion of published articles, generally
- § 4:59 —Other grounds
- § 4:60 Opposing authorities—Where relevant to issues
- § 4:61 —Nonhearsay

F. MOTION TO EXCLUDE ACCIDENT REPORTS

- § 4:62 Suggested motion text
- § 4:63 Motion summary
- § 4:64 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:65 —Exclusion based upon Minn. Stat. § 169.09
- § 4:66 —Statements and opinions in reports
- § 4:67 —Other grounds
- § 4:68 Opposing authorities
- § 4:69 —Report used to refresh recollection
- § 4:70 —Diagrams made at scene

G. MOTION TO EXCLUDE LETTERS, EMAILS, AND TEXT MESSAGES

- § 4:71 Suggested motion text
- § 4:72 Motion summary
- § 4:73 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:74 —Exclusion of letters, emails, or text messages—Generally
- § 4:75 — —Hearsay
- § 4:76 — —Irrelevant
- § 4:77 — —Lack of foundation
- § 4:78 —Other grounds

TABLE OF CONTENTS

- § 4:79 Opposing authorities—Generally
- § 4:80 —Nonhearsay
- § 4:81 —Exceptions to hearsay rule—Business records exception
- § 4:82 — —Public records exception
- § 4:83 —Relevant

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

- § 4:84 Suggested motion text
- § 4:85 Motion summary
- § 4:86 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:87 —Exclusion of demonstrative evidence
- § 4:88 —Other grounds
- § 4:89 Opposing authorities—Illustrative purposes
- § 4:90 —Maps, models or charts
- § 4:91 —Diagrams and illustrations
- § 4:92 —Demonstrative evidence, generally
- § 4:93 — —Demonstration of injury

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

- § 4:94 Suggested motion text
- § 4:95 Motion summary
- § 4:96 Supporting authorities—Exclusion of prejudicial matter, generally
- § 4:97 —Improper foundation
- § 4:98 —Medical opinions—Improper hearsay evidence
- § 4:99 — —Opinions of others—Lack of personal knowledge
- § 4:100 —Patient medical history
- § 4:101 —Medical billing records
- § 4:102 —Other grounds
- § 4:103 Opposing authorities
- § 4:104 —Proper authentication
- § 4:105 —Opinions of others—Business records exception to hearsay rule
- § 4:106 —Patient history—Pertinent to medical diagnosis

J. MOTION TO EXCLUDE SOCIAL MEDIA EVIDENCE

- § 4:107 Suggested motion text

- § 4:108 Motion summary
- § 4:109 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:110 —Exclusion of social media evidence—Generally
- § 4:111 — —Hearsay
- § 4:112 — —Lack of foundation or authentication
- § 4:113 —Other grounds
- § 4:114 Opposing authorities—Generally
- § 4:115 —Nonhearsay
- § 4:116 —Proper foundation or authentication

II. SAMPLE MOTIONS

- § 4:117 Motion to exclude gruesome photographs
- § 4:118 Motion to exclude evidence of inflammatory and prejudicial photographs
- § 4:119 Opposition to motion to exclude prejudicial photographs
- § 4:120 Motion to exclude unauthenticated video recording
- § 4:121 Motion to admit videotape evidence
- § 4:122 Motion to exclude demonstration
- § 4:123 Motion to exclude demonstration of defendant's tattoo
- § 4:124 Motion to exclude written letter
- § 4:125 Motion to exclude plaintiff's medical history
- § 4:126 Motion to exclude newspaper article
- § 4:127 Motion to exclude social media evidence
- § 4:128 Opposition to motion to exclude social media evidence
- § 4:129 Motion to exclude map
- § 4:130 Motion to exclude accident report
- § 4:131 Motion to exclude text messages
- § 4:132 Opposition to motion to exclude text messages
- § 4:133 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

TABLE OF CONTENTS

- § 5:5 —Not made under “substantially identical” conditions
- § 5:6 —Not reliable
- § 5:7 —Scientific procedures not proper
- § 5:8 —Speculative or conjectural
- § 5:9 —Lack of foundation
- § 5:10 —Other grounds
- § 5:11 Opposing authorities—Identical conditions requirement
- § 5:12 —General acceptance
- § 5:13 —Weight vs. admissibility
- § 5:14 —Outside realm of *Frye-Mack* requirements

B. MOTION TO EXCLUDE JUNK SCIENCE AND RELATED EVIDENCE

- § 5:15 Suggested motion text
- § 5:16 Motion summary
- § 5:17 Supporting authorities—Exclusion of new scientific evidence—Generally
 - § 5:18 —Hedonic damage evidence
 - § 5:19 —“Truth-serum” evidence
 - § 5:20 —Polygraph evidence
 - § 5:21 — —Willingness or refusal to take polygraph test
 - § 5:22 —Psychological tests and syndromes—In general
 - § 5:23 — —Rape trauma syndrome
 - § 5:24 — —Battering parent evidence
 - § 5:25 — —Male sexual victimization syndrome
 - § 5:26 — —Familial sexual abuse testimony
 - § 5:27 — —Limitations
 - § 5:28 — — —Battered woman syndrome
 - § 5:29 — — —Battered child syndrome
 - § 5:30 —Graphological personality assessment
 - § 5:31 —Hypnosis evidence
 - § 5:32 —Accident reconstruction evidence
 - § 5:33 —Biomechanic evidence
 - § 5:34 — —Low-speed impact cases
 - § 5:35 —Statistical evidence—Exclusion of confusing evidence, generally
 - § 5:36 — —Disapproved statistics evidence, generally
 - § 5:37 — —Statistics in products liability or negligence cases
 - § 5:38 Opposing authorities—Where *Frye-Mack* test not required
 - § 5:39 —Approved tests
 - § 5:40 —Polygraph evidence—Exception to general rule of inadmissibility

- § 5:41 — —Where used for investigative purposes
- § 5:42 —Psychological tests and syndromes—Generally
- § 5:43 — —Battered woman syndrome
- § 5:44 — —Battered child syndrome
- § 5:45 — —Evidence of child sexual abuse
- § 5:46 — —Evidence of adolescent sexual abuse
- § 5:47 —Hypnosis evidence
- § 5:48 —Voiceprint identification
- § 5:49 —Statistics evidence—Statistics evidence, generally
- § 5:50 — —Judicial notice of statistical data
- § 5:51 —Accident reconstruction and biomechanic evidence

II. SAMPLE MOTIONS

- § 5:52 Motion to exclude evidence of statistical analysis
- § 5:53 Motion to exclude evidence of polygraph examination
- § 5:54 Motion to exclude evidence of hypnosis
- § 5:55 Motion to exclude expert testimony
- § 5:56 Motion to exclude expert testimony (credibility of witness)
- § 5:57 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 [Minn. R. Civ. P. 37]—Available sanctions, generally
- § 6:4 — —Evidence sanctions
- § 6:5 — —Issue sanctions
- § 6:6 — —Terminating sanctions
- § 6:7 — —Prior order unnecessary
- § 6:8 — —Willfulness requirement
- § 6:9 —Depositions—Minn. R. Civ. P. 37
- § 6:10 — —Evidence sanctions
- § 6:11 — —Terminating sanctions
- § 6:12 —Interrogatories—Minn. R. Civ. P. 37
- § 6:13 — —Evidence sanctions
- § 6:14 — —Issue sanctions
- § 6:15 — —Terminating sanctions
- § 6:16 —Production requests—Minn. R. Civ. P. 37
- § 6:17 — —Evidence sanctions

TABLE OF CONTENTS

- § 6:18 — —Issue sanctions
- § 6:19 — —Terminating sanctions
- § 6:20 — —Mental and physical examinations—Minn. R. Civ. P.
35
- § 6:21 — —Sanctions
- § 6:22 — —Requests for admission—Minn. R. Civ. P. 36
- § 6:23 — —Exclusion of evidence
- § 6:24 — —Deeming non-responsive matters admitted
- § 6:25 — —Failure to disclose identity of witnesses, generally
- § 6:26 — —Compare: faulty expert designations or
declarations
- § 6:27 — —Other grounds
- § 6:28 Opposing authorities—Generally
- § 6:29 — —Sanction should be appropriate to level of
misconduct
- § 6:30 — —Reasonable alternative remedy
- § 6:31 — —Willfulness requirement
- § 6:32 — —Depositions
- § 6:33 — —Interrogatories
- § 6:34 — —Requests for production
- § 6:35 — —Matters deemed admitted
- § 6:36 — —Failure to disclose identity of witnesses, generally

B. MOTION TO CONCLUSIVELY ESTABLISH ADMITTED MATTERS

- § 6:37 Suggested motion text
- § 6:38 Motion summary
- § 6:39 Supporting authorities—Conclusive establishment of
admitted matters
- § 6:40 — —Purpose of rule
- § 6:41 — —Exclusion of evidence
- § 6:42 Opposing authorities

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

- § 6:43 Suggested motion text
- § 6:44 Motion summary
- § 6:45 Supporting authorities—Exclusion of evidence—
Exclusion of prejudicial evidence, generally
- § 6:46 — —Exclusion of evidence, generally
- § 6:47 — —Other grounds
- § 6:48 Opposing authorities

**D. MOTIONS CONCERNING IMPROPER EXPERT
WITNESS EXCHANGE OR EXPERT
DEPOSITION**

- § 6:49 Suggested motion text
- § 6:50 Motion summary
- § 6:51 Supporting authorities—Expert witness exchange
- § 6:52 —Duty to supplement expert list
- § 6:53 —Exclusion of evidence
- § 6:54 Opposing authorities—Expert testimony admitted
- § 6:55 —Continuance to depose expert or opportunity to
redepote expert

II. SAMPLE MOTIONS

- § 6:56 Motion to exclude evidence of claim denied during
discovery
- § 6:57 Motion to exclude evidence of medical bills for services
obtained after [date]
- § 6:58 Motion to exclude testimony of undisclosed witness
- § 6:59 Motion to exclude evidence produced beyond discovery
deadline
- § 6:60 Motion to deem matters admitted
- § 6:61 Motion for discovery sanction establishing facts
- § 6:62 Motion to exclude expert testimony relating to matters
not disclosed during discovery
- § 6:63 Motion for order rendering default judgment as
discovery sanction
- § 6:64 Motion for evidentiary sanctions for failure to serve
answers or objections to interrogatories
- § 6:65 Motion to dismiss action as discovery sanction
- § 6:66 Opposition to defendants' motion to limit plaintiff's
expert's opinions

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

TABLE OF CONTENTS

§ 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, uncharged conduct, or misdemeanor convictions
§ 7:11	— —Drug use
§ 7:12	— —Felony convictions
§ 7:13	— —Fraudulent acts
§ 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	— —Religious beliefs
§ 7:28	— —Sexual preference or behavior
§ 7:29	—Good character—Opening the door doctrine

C. MOTION TO EXCLUDE CHARACTER EVIDENCE USED TO PROVE CONDUCT

§ 7:30	Suggested motion text
§ 7:31	Motion summary
§ 7:32	Supporting authorities—Exclusion of prejudicial evidence, generally
§ 7:33	—Exclusion of irrelevant evidence, generally
§ 7:34	—Exclusion of improper character evidence
§ 7:35	— —Care or skill in negligence cases
§ 7:36	— —Crimes evidence, generally
§ 7:37	— —Reverse <i>Spreigl</i> evidence
§ 7:38	— —Relationship evidence under Minn. Stat. § 634.20
§ 7:39	—Other grounds
§ 7:40	Opposing authorities—Relevant to material issue
§ 7:41	—Reverse <i>Spreigl</i> evidence

- § 7:42 —Relationship evidence under Minn. Stat. § 634.20
- § 7:43 —Witness impeachment
- § 7:44 —Trait at issue

D. MOTION TO EXCLUDE PRIOR CRIME EVIDENCE

- § 7:45 Suggested motion text
- § 7:46 Motion summary
- § 7:47 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:48 —Exclusion of irrelevant evidence, generally
- § 7:49 —Exclusion of prior felony or crime involving dishonesty
- § 7:50 — —Balancing prejudicial impact of felony conviction evidence
- § 7:51 — —Crime must reflect on credibility for impeachment
- § 7:52 — —Exclusion of improper character evidence
- § 7:53 — —Exclusion of remote convictions
- § 7:54 — —Exclusion of underlying facts surrounding conviction
- § 7:55 —Exclusion of prior arrest, misdemeanor conviction, or pending charges
- § 7:56 —Exclusion of uncharged conduct or dismissed charges
- § 7:57 —Exclusion of juvenile adjudications
- § 7:58 —Other grounds
- § 7:59 Opposing authorities—Impeachment expressly allowed regarding felonies
- § 7:60 — —Admissibility of underlying facts—Opening door doctrine
- § 7:61 —Crimes involving dishonesty or false statement
- § 7:62 —Remoteness of conviction
- § 7:63 —Uncharged offenses

II. SAMPLE MOTIONS

- § 7:64 Motion to exclude evidence of alcoholism of percipient witness
- § 7:65 Motion to exclude evidence of prior felony conviction
- § 7:66 Motion to exclude evidence of witness's habit of intemperance
- § 7:67 Motion to exclude improper character evidence (marital infidelity)
- § 7:68 Motion to exclude evidence of religious beliefs
- § 7:69 Motion to exclude improper character evidence (juvenile adjudication)

TABLE OF CONTENTS

- § 7:70 Motion to exclude improper character evidence
(prescription drug abuse)
- § 7:71 Motion to exclude evidence of prior arrest of witness
- § 7:72 Motion to exclude evidence regarding witness's mental
health
- § 7:73 Opposition to motion to exclude inflammatory 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
- § 8:4 — —Inadequate foundation
- § 8:5 — —Hypothetical questions
- § 8:6 — —Inadmissible hearsay
- § 8:7 — —Opinions of others
- § 8:8 — —Treatises, documents & texts
- § 8:9 — —Legal questions
- § 8:10 — —Compare: ultimate issues
- § 8:11 — —Matters of common experience/not helpful to jury
- § 8:12 — —Gang expert testimony
- § 8:13 — —Not reasonably relied upon by experts
- § 8:14 — —Not perceived or personally known
- § 8:15 — —Speculation or conjecture
- § 8:16 — —Usurping jury function
- § 8:17 — —Irrelevant matters
- § 8:18 — —Improper profile evidence
- § 8:19 — —Outside area of specialty or expertise
- § 8:20 — —Cumulative testimony
- § 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 — —Legal questions vs. ultimate issues

B. MOTION TO EXCLUDE TESTIMONY OF NON- QUALIFIED EXPERT

- § 8:28 Suggested motion text

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

C. MOTION TO EXCLUDE LAY WITNESS TESTIMONY

- § 8:34 Suggested motion text
- § 8:35 Motion summary
- § 8:36 Supporting authorities—Exclusion of non-expert opinion, generally
- § 8:37 —Causation
- § 8:38 —Legal opinions
- § 8:39 —Other grounds
- § 8:40 Opposing authorities—Perceptions of witness
- § 8:41 — —Sanity and mental condition
- § 8:42 — —Health
- § 8:43 — —Intoxication
- § 8:44 — —Damages or value
- § 8:45 — —Speed of vehicles
- § 8:46 —Helpful to clear understanding
- § 8:47 —Malpractice cases—“Common knowledge” exception

D. MOTION TO EXCLUDE TESTIMONY OF INCOMPETENT WITNESS

- § 8:48 Suggested motion text
- § 8:49 Motion summary
- § 8:50 Supporting authorities—Exclusion of incompetent witnesses, generally
- § 8:51 —Children
- § 8:52 —Lack of mental competence/insanity
- § 8:53 —Lack of personal knowledge of subject matter
- § 8:54 —Other grounds
- § 8:55 Opposing authorities—General authority
- § 8:56 —Children
- § 8:57 —Mental competence/insanity
- § 8:58 —Lack of personal knowledge of subject matter

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

- § 8:59 Suggested motion text

TABLE OF CONTENTS

- § 8:60 Motion summary
- § 8:61 Supporting authorities—Judge as witness
- § 8:62 —Arbitrator or mediator as witness
- § 8:63 —Attorney as witness
- § 8:64 —Juror as witness
- § 8:65 Opposing authorities—Judge as witness
- § 8:66 —Juror as witness
- § 8:67 —Attorney testimony, generally
- § 8:68 — —Uncontested matter
- § 8:69 — —Value of legal services
- § 8:70 — —Substantial hardship
- § 8:71 — —Testimony of other attorney in firm or office

F. MOTION TO EXCLUDE WITNESS FROM COURTROOM PRIOR TO TESTIFYING

- § 8:72 Suggested motion text
- § 8:73 Motion summary
- § 8:74 Supporting authorities—Exclusion of non-party witnesses from courtroom
- § 8:75 Opposing authorities—Discretionary decision
- § 8:76 —Purpose of rule

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

- § 8:77 Suggested motion text
- § 8:78 Motion summary
- § 8:79 Supporting authorities—General authorities
- § 8:80 —Improper comments
- § 8:81 Opposing authorities—Allowable inferences
- § 8:82 —Civil consequences of silence
- § 8:83 —Waiver

H. MOTION TO EXCLUDE EVIDENCE OF NON-CALLED WITNESSES

- § 8:84 Suggested motion text
- § 8:85 Motion summary
- § 8:86 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 8:87 —Improper comments—Criminal cases—Where witness equally available
- § 8:88 — — —Burden of proof
- § 8:89 — —Civil cases
- § 8:90 —Other grounds

- § 8:91 Opposing authorities—Criminal cases—Proper
comments in criminal cases—Generally
- § 8:92 — — —Affirmative defenses
- § 8:93 —Civil cases, generally

I. MOTION TO EXCLUDE HEARSAY EVIDENCE

- § 8:94 Suggested motion text
- § 8:95 Motion summary
- § 8:96 Supporting authorities—General authority for
exclusion
- § 8:97 —Purpose of rule
- § 8:98 —Written hearsay—General authority for exclusion
- § 8:99 — —Examples
- § 8:100 — —Multiple hearsay
- § 8:101 Opposing authorities—Hearsay exceptions, generally
- § 8:102 —Non-hearsay evidence
- § 8:103 —Non-assertive conduct
- § 8:104 —Multiple hearsay
- § 8:105 —Hearsay used to impeach witness credibility

II. SAMPLE MOTIONS

- § 8:106 Motion to exclude speculative expert opinion
- § 8:107 Motion to exclude reference to non-called witnesses
- § 8:108 Motion to exclude evidence of computerized
valuations of plaintiff's business
- § 8:109 Motion to exclude testimony and opinions of medical
doctor
- § 8:110 Motion to exclude lay witness testimony (causation)
- § 8:111 Motion to exclude witness from courtroom prior to
testifying
- § 8:112 Motion to exclude testimony of witness for lack of
personal knowledge of subject matter
- § 8:113 Motion to exclude testimony of mediator
- § 8:114 Motion to exclude testimony of incompetent witness
- § 8:115 Opposition to motion to exclude lay witness evidence
- § 8:116 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

TABLE OF CONTENTS

- § 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
- § 9:8 —Reference to insurance

B. MOTION TO EXCLUDE IMPROPER ARGUMENT IN OPENING STATEMENT

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

C. MOTION TO BAR PREMATURE REBUTTAL TO AFFIRMATIVE DEFENSES

- § 9:15 Suggested motion text
- § 9:16 Motion summary
- § 9:17 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 9:18 —Order of proof
- § 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 — —A note on tort of spoliation of evidence
- § 9:25 —Negative presumption
- § 9:26 —Other grounds
- § 9:27 Opposition citations—Generally
- § 9:28 —Other remedies

E. MOTION TO EXCLUDE ARBITRATION OR MEDIATION EVIDENCE AND FINDINGS

- § 9:29 Suggested motion text

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

F. MOTION TO EXCLUDE EVIDENCE OF DAMAGES IN BIFURCATED TRIAL

- § 9:34 Suggested motion text
- § 9:35 Motion summary
- § 9:36 Supporting authorities—Statutory authority
- § 9:37 —Policy considerations
- § 9:38 —Other grounds
- § 9:39 Opposing authorities—Liability issues relevant to damages
- § 9:40 —No prejudice

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 —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
- § 9:50 —Terms containing legal conclusions
- § 9:51 —Testimony on ultimate issues—Exclusion of ultimate issue evidence
- § 9:52 — —General admissibility of ultimate issue opinions
- § 9:53 —Misused terms
- § 9:54 —Preconditioning jury
- § 9:55 —Usurping jury function
- § 9:56 Opposing authorities—Legal questions vs. ultimate issues
- § 9:57 — —Compare: legal conclusions (non-jury case)

TABLE OF CONTENTS

I. MOTION TO SUBMIT SUPPLEMENTAL JUROR QUESTIONNAIRE

- § 9:58 Suggested motion text
- § 9:59 Motion summary
- § 9:60 Supporting authorities—Generally
- § 9:61 Opposing authorities—Court’s discretion

II. SAMPLE MOTIONS

- § 9:62 Motion to exclude reference to lost or destroyed evidence
- § 9:63 Opposition to motion for missing evidence instruction
- § 9:64 Motion to allow use of jury questionnaire during voir dire
- § 9:65 Motion to exclude mediation evidence
- § 9:66 Motion to preclude golden rule argument
- § 9:67 Motion to exclude evidence of damages in bifurcated trial
- § 9:68 Motion to prevent improper voir dire (preconditioning)
- § 9:69 Motion to exclude improper argument during opening statement
- § 9:70 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—Prejudicial evidence, generally
- § 10:4 —Exclusion of irrelevant evidence, generally
- § 10:5 —Exclusion of collateral source evidence pursuant to Minn. Stat. 548.251—Minn. Stat. 548.251
- § 10:6 — —Where no reduction in damages allowed
- § 10:7 —Exclusion under common law rule
- § 10:8 —Other grounds
- § 10:9 Opposing authorities—Where relevant to other issues
- § 10:10 —Not “wholly independent” source under common law

B. MOTION TO EXCLUDE EVIDENCE OF LIABILITY INSURANCE

- § 10:11 Suggested motion text
- § 10:12 Motion summary
- § 10:13 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 10:14 —Exclusion of irrelevant evidence, generally
 - § 10:15 —Exclusion of liability insurance evidence
 - § 10:16 — —Evidence of defendant’s lack of insurance
 - § 10:17 —Irrelevant
 - § 10:18 —Other grounds
- § 10:19 Opposing authorities—Cross-examination
 - § 10:20 —Where relevant to issues or otherwise admissible
 - § 10:21 —Incidental reference to insurance
 - § 10:22 —Non-prejudicial references to insurance
 - § 10:23 —To prove ownership or employment

C. MOTION TO EXCLUDE SETTLEMENT EVIDENCE

- § 10:24 Suggested motion text
- § 10:25 Motion summary
- § 10:26 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 10:27 —Exclusion of irrelevant evidence, generally
 - § 10:28 —Exclusion of settlement evidence used to show liability
 - § 10:29 — —Prior settlements
 - § 10:30 —Other grounds
 - § 10:31 Opposing authorities—Purpose other than to show liability
 - § 10:32 —No disputed claim

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

- § 10:33 Suggested motion text
- § 10:34 Motion summary
- § 10:35 Supporting authorities—Exclusion of prejudicial evidence, generally
 - § 10:36 —Exclusion of irrelevant evidence, generally
 - § 10:37 —Exclusion of evidence of prior-accident or incident—Absence of prior accidents
 - § 10:38 — —Evidence of prior accident or incident, generally
 - § 10:39 — —Lack of similarity: dangerous condition/defective products

TABLE OF CONTENTS

- § 10:40 —Exclusion of subsequent accident evidence
- § 10:41 —Other claims or lawsuits
- § 10:42 —Other grounds
- § 10:43 Opposing authorities—Evidence of prior accidents, generally
- § 10:44 — —Absence of prior accidents
- § 10:45 — —Similarity: dangerous condition / defective products
- § 10:46 — —Notice and/or knowledge
- § 10:47 —Evidence of subsequent accidents or incidents, generally

E. MOTION TO EXCLUDE EVIDENCE OF SUBSEQUENT REPAIRS

- § 10:48 Suggested motion text
- § 10:49 Motion summary
- § 10:50 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:51 —Exclusion of irrelevant evidence, generally
- § 10:52 —Exclusion of subsequent repair evidence—Inadmissible to show negligence
- § 10:53 — —Strict liability
- § 10:54 —Other grounds
- § 10:55 Opposing authorities—Admission of subsequent repair evidence, generally
- § 10:56 —Relevant to issues
- § 10:57 —Strict products liability

F. MOTION TO EXCLUDE EVIDENCE OF STATUTE VIOLATION

- § 10:58 Suggested motion text
- § 10:59 Motion summary
- § 10:60 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:61 —Exclusion of irrelevant evidence, generally
- § 10:62 —Exclusion of traffic citation evidence, generally
- § 10:63 —Negligence per se not applicable—Not proximate cause/injury not one meant to prevent
- § 10:64 — —Party not within protected class
- § 10:65 —Other grounds
- § 10:66 Opposing authorities—Admission of prior violations, generally
- § 10:67 —Negligence per se

G. MOTION TO EXCLUDE EVIDENCE THAT DRIVER WAS UNLICENSED

- § 10:68 Suggested motion text
- § 10:69 Motion summary
- § 10:70 Supporting authorities—Absence of license not evidence of negligence
- § 10:71 —Other grounds
- § 10:72 Opposing authorities—Lack of prejudice
- § 10:73 —Relevant to issues

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

- § 10:74 Suggested motion text
- § 10:75 Motion summary
- § 10:76 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:77 —Exclusion of irrelevant evidence, generally
- § 10:78 —Exclusion of seat-belt evidence pursuant to statute
- § 10:79 — —Exclusions
- § 10:80 —Other grounds
- § 10:81 Opposing authorities—Exception to seat belt gag rule

I. MOTION TO EXCLUDE EVIDENCE OF ALCOHOL CONSUMPTION

- § 10:82 Suggested motion text
- § 10:83 Motion summary
- § 10:84 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:85 —Exclusion of irrelevant evidence, generally
- § 10:86 —Exclusion of alcohol evidence, generally
- § 10:87 — —Lack of foundation—Proof of inebriation
- § 10:88 — — —Blood alcohol tests
- § 10:89 —Exclusion in automobile cases, generally
- § 10:90 —Other grounds
- § 10:91 Opposing authorities—Where relevant to issues, generally
- § 10:92 — —Witness perceptions
- § 10:93 — —Proximate cause
- § 10:94 — —Relevant to punitive damages claim
- § 10:95 —Admissible evidence of drinking habit, generally
- § 10:96 — —Where used for impeachment

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

- § 10:97 Suggested motion text

TABLE OF CONTENTS

- § 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 and misdemeanor convictions
- § 10:103 — —Exclusion of felony convictions where probative value does not outweigh risk of undue prejudice
- § 10:104 —Exclusion of D.W.I. evidence where used to prove improper conduct
- § 10:105 —Other grounds
- § 10:106 Opposing authorities—Generally
- § 10:107 —Use of felony conviction for impeachment
- § 10:108 —Relevant to issues
- § 10:109 — —Admissibility of underlying facts; opening door doctrine

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
- § 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 “plopping 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 — —Point of impact
- § 10:144 — —Photographs depicting “no damage” to vehicles
- § 10:145 — —Biomechanic evidence—Cases where admitted
- § 10:146 — —A note on opposing motions to exclude low-impact tests

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—Plaintiff’s financial status
- § 10:152 — —Defendant’s financial status
- § 10:153 — —Punitive damages cases
- § 10:154 — —Other grounds
- § 10:155 Opposing authorities—Relevant to issues—Generally
- § 10:156 — —Punitive damages claim

N. MOTION TO EXCLUDE TAX EVIDENCE

- § 10:157 Suggested motion text
- § 10:158 Motion summary

TABLE OF CONTENTS

- § 10:159 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 10:160 —Exclusion of irrelevant evidence, generally
- § 10:161 —Exclusion of tax evidence
- § 10:162 —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
- § 10:171 — —Admissions made during settlement negotiations
- § 10:172 — —Inadmissible legal opinions by lay witnesses
- § 10:173 —Other grounds
- § 10:174 Opposing authorities—Relevance
- § 10:175 —Admission of fault

P. MOTION TO EXCLUDE IMPROPER DAMAGE EVIDENCE

- § 10:176 Suggested motion text
- § 10:177 Motion summary
- § 10:178 Supporting authorities—Unpleaded, undisputed or surprise claims—Unpleaded matters
- § 10:179 — —Undisputed matters
- § 10:180 — —Surprise claims
- § 10:181 —Speculative damages, generally
- § 10:182 — —Exclusion of evidence relating to speculative damages
- § 10:183 —Lost profits
- § 10:184 Opposing authorities—Unpleaded or denied claims
- § 10:185 —Speculative damages—Generally
- § 10:186 — —“Reasonably certain” damages
- § 10:187 —Punitive damages

II. SAMPLE MOTIONS

- § 10:188 Motion to exclude evidence of collateral source payments

MINNESOTA MOTIONS IN LIMINE

- § 10:189 Motion to exclude evidence of defendant's liability
- § 10:190 Motion to admit evidence of laboratory testing
regarding firearm residue
- § 10:191 Motion to exclude surveillance video
- § 10:192 Motion to exclude evidence of subsequent remedial
measures
- § 10:193 Opposition to motion to exclude evidence of
subsequent repairs
- § 10:194 Motion to exclude evidence of statute violation
- § 10:195 Motion to exclude evidence of failure to file income
tax returns
- § 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 Opposition to motion to exclude evidence of
defendant's financial status
- § 10:200 Motion to exclude evidence of defendant's prior DUI
- § 10:201 Motion to exclude evidence of prior traffic citations
- § 10:202 Motion to exclude improper damage evidence
(speculative evidence of lost profits)
- § 10:203 Motion to exclude evidence regarding prior accident
- § 10:204 Motion to exclude evidence regarding party's prior
injuries
- § 10:205 Motion to exclude that driver was unlicensed

Table of Laws and Rules

Table of Cases

Index