

Table of Contents

CHAPTER 1. MOTION IN LIMINE LAW

I. OVERVIEW

- § 1:1 In limine law and procedure—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
- § 1:9 — —Caution regarding local rules
- § 1:10 — —Appellate review—Appellate jurisdiction
- § 1:11 — — —Standard of review
- § 1:12 Drafting suggestions—Overview
- § 1:13 — —File motions supported by facts
- § 1:14 — —Be succinct and precise
- § 1:15 — —Consider which evidence rules might apply / retroactivity

II. SAMPLES

- § 1:16 Sample in limine brief
- § 1:17 Sample in limine order

CHAPTER 2. PREJUDICIAL EVIDENCE

I. MOTION AUTHORITIES

- § 2:1 Motion to exclude prejudicial evidence, generally—Suggested motion text
- § 2:2 —Motion summary
- § 2:3 —Supporting authorities—Exclusion of prejudicial evidence—Generally
- § 2:4 — — —EEOC and similar state agency records
- § 2:5 — —Subsequent remedial measures
- § 2:6 —Opposing authorities—Generally
- § 2:7 — —Subsequent remedial measures
- § 2:8 — —EEOC and similar state agency records
- § 2:9 Motion to exclude evidence that will waste court's time—Suggested motion text

- § 2:10 —Motion summary
- § 2:11 —Supporting authorities—Exclusion of time-wasting evidence—Federal Rule of Evidence 403
- § 2:12 — — —Federal Rule of Evidence 611
- § 2:13 — — —Federal Rule of Civil Procedure 16
- § 2:14 — — —Generally
- § 2:15 —Opposing authorities
- § 2:16 Motion to exclude confusing or misleading evidence—Suggested motion text
- § 2:17 —Motion summary
- § 2:18 —Supporting authorities—Exclusion of confusing or misleading evidence
- § 2:19 —Opposing authorities
- § 2:20 Motion to exclude evidence used to create an emotional bias—Suggested motion text
- § 2:21 —Motion summary
- § 2:22 —Supporting authorities—Exclusion of prejudicial evidence, generally
- § 2:23 — — —Exclusion of evidence intended to inflame jurors’ emotions
- § 2:24 — — —Jurors’ self interest
- § 2:25 — — —“Golden rule” argument
- § 2:26 —Opposing authorities—Generally
- § 2:27 — — —Appealing to the jurors’ self-interests
- § 2:28 — — —“Golden rule” argument
- § 2:29 Motion to exclude or limit cumulative evidence—Suggested motion text
- § 2:30 —Motion summary
- § 2:31 —Supporting authorities—General authority—Federal Rule of Evidence 403
- § 2:32 — — —Federal Rule of Evidence 611
- § 2:33 — — —Excluding cumulative evidence—Generally
- § 2:34 — — —Cumulative articles, letters and notes
- § 2:35 — — —Cumulative credentials
- § 2:36 — — —Cumulative photographs
- § 2:37 — — —Cumulative reports, records and documents
- § 2:38 — — —Cumulative witness testimony
- § 2:39 — — —Number of witnesses
- § 2:40 — — —Cumulative videotape evidence
- § 2:41 —Opposing authorities—General authority
- § 2:42 — — —Videotape evidence, tape recordings and photographs
- § 2:43 — — —Summary charts

II. SAMPLE MOTIONS

- § 2:44 Motion to exclude cumulative evidence

TABLE OF CONTENTS

- § 2:45 Motion to exclude evidence of subsequent remedial measures
- § 2:46 Motion to exclude evidence of plaintiff's financial status
- § 2:47 Motion to exclude prejudicial evidence
- § 2:48 Motion to exclude evidence of defendant's poverty
- § 2:49 Motion to preclude golden rule argument
- § 2:50 Motion to exclude evidence regarding prior accident
- § 2:51 Opposition to motion to exclude prejudicial evidence
- § 2:52 Opposition to motion to exclude expert witnesses' testimony
- § 2:53 Motion to exclude evidence that will confuse the jury
- § 2:54 Motion to prevent improper voir dire that will prejudice the jury
- § 2:55 Motion to bar premature rebuttal to affirmative defense
- § 2:56 Motion to exclude evidence regarding party's prior injuries
- § 2:57 Opposition to motion to exclude evidence that will confuse the jury

CHAPTER 3. IRRELEVANT EVIDENCE

I. MOTION AUTHORITIES

- § 3:1 Motion to exclude irrelevant evidence—Suggested motion text
- § 3:2 —Motion summary
- § 3:3 —Supporting authorities—Exclusion of irrelevant evidence, generally
- § 3:4 — — —Matters not in dispute
- § 3:5 — — —Outside pleadings
- § 3:6 — — —Relevant but prejudicial evidence
- § 3:7 — — —Speculative evidence
- § 3:8 —Opposing authorities—Generally
- § 3:9 — —Where speculation may be permitted
- § 3:10 — —Otherwise improper evidence also admissible for proper purpose
- § 3:11 — —Context evidence
- § 3:12 — —Party not required to accept stipulation
- § 3:13 Motion to exclude evidence of matters not in controversy—Suggested motion text
- § 3:14 —Motion summary
- § 3:15 —Supporting authorities—Exclusion of irrelevant evidence, generally
- § 3:16 — — —Admitted or uncontroverted matters

- § 3:17 — — —Collateral or unpleaded issues
- § 3:18 —Opposing authorities
- § 3:19 — — —Collateral issues—Admissibility
- § 3:20 — — —Unpleaded issues or admitted matters
- § 3:21 — — —Where relevant to other issues

II. SAMPLE MOTIONS

- § 3:22 Motion to exclude irrelevant evidence of plaintiff's alcohol use
- § 3:23 Motion to exclude evidence of physical conditions not at issue
- § 3:24 Motion to exclude evidence of statute violation
- § 3:25 Motion to exclude improper damage evidence (speculative evidence of lost profits)
- § 3:26 Motion to exclude collateral and irrelevant evidence
- § 3:27 Motion to exclude evidence of damages in bifurcated trial
- § 3:28 Motion to exclude evidence relating to unpleaded issues
- § 3:29 Motion to exclude speculative evidence
- § 3:30 Motion to exclude matters not in controversy
- § 3:31 Motion to exclude evidence of failure to properly secure child in child safety seat

CHAPTER 4. WRITINGS & PHYSICAL EVIDENCE

I. MOTION AUTHORITIES

- § 4:1 Motion to exclude evidence lacking foundation—Suggested motion text
- § 4:2 —Motion summary
- § 4:3 —Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:4 — — —Preliminary facts—Definitions
- § 4:5 — — —Offer of proof requirement
- § 4:6 — — —Determination out of jury presence
- § 4:7 — — —Inadmissibility of proffered evidence, generally
- § 4:8 — — —Other preliminary fact determinations
- § 4:9 — — —Judicial notice not proper
- § 4:10 — — —Examples of improper foundations—Photographs lacking foundation
- § 4:11 — — —Tape recordings lacking foundation
- § 4:12 — — —Tests and experiments lacking foundation
- § 4:13 — — —Videotapes and motion pictures lacking foundation

TABLE OF CONTENTS

§ 4:14 — — —Expert witness testimony lacking foundation

§ 4:15 — — —Lay witness testimony lacking foundation

§ 4:16 — — —Writings lacking foundation

§ 4:17 — — —Medical reports lacking foundation

§ 4:18 —Opposing authorities—Opposing foundation challenges, generally

§ 4:19 — —Examples of proper foundations— Admissible photographs

§ 4:20 — — —Admissible tape recordings

§ 4:21 — — —Admissible tests and experiments

§ 4:22 — — —Admissible videotapes

§ 4:23 — — —Admissible expert witness testimony

§ 4:24 — — —Admissible lay witness testimony

§ 4:25 — — —Admissible writings

§ 4:26 — — —Admissible medical records

§ 4:27 — —Conditional admissibility

§ 4:28 — —Judicial Notice

§ 4:29 Motion to exclude writings, generally— Suggested motion text

§ 4:30 —Motion summary

§ 4:31 —Supporting authorities—“Writing” defined

§ 4:32 — —Unauthenticated writings—General authentication requirement

§ 4:33 — — —Exclusion of unauthenticated writings

§ 4:34 — —Inadmissible hearsay—Generally

§ 4:35 — — —Examples of inadmissible written hearsay

§ 4:36 — —Inadmissible secondary evidence

§ 4:37 — —Reports and records

§ 4:38 — —Settlement Negotiations

§ 4:39 — —Liability Insurance

§ 4:40 —Opposing authorities—Authentication

§ 4:41 Motion to exclude writings—Opposing authorities—Telecommunications Relay Service (“TRS”) communications

§ 4:42 Motion to exclude writings, generally—Opposing authorities—Hearsay—Hearsay exceptions, generally

§ 4:43 — — — —Where witness is available

§ 4:44 — — — —Where witness is unavailable

§ 4:45 — — — —Residual exception

§ 4:46 — — — —Not hearsay by definition

§ 4:47 — —Secondary evidence

§ 4:48 — —Doctrine of completeness

§ 4:49 — —Settlement negotiations admissible

§ 4:50 — —Liability insurance admissible

FEDERAL MOTIONS IN LIMINE

- § 4:51 — — Properly authenticated
- § 4:52 Motion to exclude gruesome or inflammatory photographs—Suggested motion text
- § 4:53 — Motion summary
- § 4:54 — Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:55 — — Exclusion of irrelevant evidence, generally
- § 4:56 — — Gruesome or inflammatory photographs
- § 4:57 — — Other grounds
- § 4:58 — Opposing authorities
- § 4:59 Motion to exclude prejudicial film or videotapes—Suggested motion text
- § 4:60 — Motion summary
- § 4:61 — Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:62 — — Exclusion of videotape evidence
- § 4:63 — — Other grounds
- § 4:64 — Opposing authorities—Generally
- § 4:65 — — Relevance
- § 4:66 — — Cautionary admonition
- § 4:67 Motion to exclude published articles—Suggested motion text
- § 4:68 — Motion summary
- § 4:69 — Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:70 — — — Prejudicial articles
- § 4:71 — — Exclusion of published materials—Where cumulative of other evidence
- § 4:72 — — — Hearsay
- § 4:73 — — — Other grounds
- § 4:74 — Opposing authorities—Where relevant to issues
- § 4:75 — — Nonhearsay
- § 4:76 — — For impeachment
- § 4:77 Motion to exclude law enforcement and accident reports—Suggested motion text
- § 4:78 — Motion summary
- § 4:79 — Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:80 — — Inadmissible hearsay
- § 4:81 — — — Exclusion from public record hearsay exception—Criminal cases
- § 4:82 — — Statements and opinions in reports
- § 4:83 — — Other grounds
- § 4:84 — Opposing authorities—Report used to refresh recollection
- § 4:85 — — Diagrams made at scene
- § 4:86 — — Business records exception to hearsay rule

TABLE OF CONTENTS

§ 4:87	— —Public records exception to hearsay rule
§ 4:88	— —As impeachment
§ 4:89	Motion to exclude letters & emails—Suggested motion text
§ 4:90	—Motion summary
§ 4:91	—Supporting authorities—Exclusion of prejudicial evidence, generally
§ 4:92	— —Exclusion of letters—Generally
§ 4:93	— — —Hearsay
§ 4:94	— —Exclusion of emails—Insufficient evidence
§ 4:95	— — —Unduly prejudicial
§ 4:96	— — —Inadmissible Hearsay
§ 4:97	— —Settlement Evidence
§ 4:98	—Supporting Authorities—Privilege
§ 4:99	—Supporting authorities—Other grounds
§ 4:100	—Opposing authorities—Generally
§ 4:101	— —Exceptions to hearsay rule
§ 4:102	— — —Business records exception
§ 4:103	— — —Public records exception
§ 4:104	— —Relevant
§ 4:105	— —Not-Privileged
§ 4:106	—Admissibility of emails—Where relevant evidence
§ 4:107	Motion to exclude maps, models & charts—Suggested motion text
§ 4:108	—Motion summary
§ 4:109	—Supporting authorities—Exclusion of prejudicial evidence, generally
§ 4:110	— —Exclusion of maps, models or charts
§ 4:111	— —Other grounds
§ 4:112	—Opposing authorities—Illustrative purposes
§ 4:113	— —Where accuracy not disputed
§ 4:114	— —Relevant to issues
§ 4:115	Motion to exclude improper medical records, reports or bills—Suggested motion text
§ 4:116	—Motion summary
§ 4:117	—Supporting authorities—Exclusion of prejudicial matter, generally
§ 4:118	— —Improper foundation, generally
§ 4:119	— —Medical opinions—Improper hearsay evidence
§ 4:120	— — —Opinions of others—Lack of personal knowledge
§ 4:121	— —Patient medical history
§ 4:122	— — —Improper prior consistent statement
§ 4:123	— — —Improper extrinsic impeachment evidence
§ 4:124	— —Billing records—Lack of foundation

- § 4:125 — —Other grounds
- § 4:126 — —Opposing authorities—Hearsay exceptions, generally
- § 4:127 — —Proper authentication
- § 4:128 — —Opinions of others—Opinion used in formation of diagnosis and treatment
- § 4:129 — — —Business records exception
- § 4:130 — —Patient history—Observations of physician
- § 4:131 — — —Pertinent to medical diagnosis
- § 4:132 — — —General facts regarding patient treatment
- § 4:133 — —Medical billing records—Reasonableness of charges
- § 4:134 — — —Paid bill
- § 4:135 — —To refresh recollection
- § 4:136 Motion to exclude social media evidence—
Suggested motion text
- § 4:137 Motion summary
- § 4:138 Supporting authorities—Exclusion of prejudicial evidence, generally
- § 4:139 — —Exclusion of social media evidence—Generally
- § 4:140 — —Hearsay
- § 4:141 — —Lack of foundation or authentication
- § 4:142 — —Other grounds
- § 4:143 Opposing authorities—Generally
- § 4:144 — —Nonhearsay
- § 4:145 — —Proper foundation or authentication

II. SAMPLE MOTIONS

- § 4:146 Motion to exclude gruesome photographs
- § 4:147 Motion to exclude surveillance video
- § 4:148 Motion to exclude demonstration
- § 4:149 Motion to exclude emailed letter
- § 4:150 Motion to exclude plaintiff’s medical history
- § 4:151 Motion to exclude settlement evidence
- § 4:152 Motion to exclude liability insurance evidence
- § 4:153 Motion to exclude newspaper article
- § 4:154 Motion to exclude social media evidence
- § 4:155 Opposition to motion to exclude social media evidence
- § 4:156 Opposition to motion to exclude prejudicial photographs
- § 4:157 Motion to exclude map
- § 4:158 Motion to exclude unauthenticated video recording
- § 4:159 Motion to exclude accident report
- § 4:160 Motion to exclude text messages
- § 4:161 Opposition to motion to exclude text messages

TABLE OF CONTENTS

§ 4:162 Motion to exclude medical bills

CHAPTER 5. TESTS & SCIENTIFIC EVIDENCE

I. MOTION AUTHORITIES

- § 5:1 Motion to exclude tests, experiments and related testimony—Suggested motion text
- § 5:2 —Motion summary
- § 5:3 —Supporting authorities—Expert not qualified to testify on subject
- § 5:4 — —Not generally accepted—Daubert decision
- § 5:5 — — —Other examples
- § 5:6 — —Not made under ‘substantially similar’ conditions
- § 5:7 — —Not reliable
- § 5:8 — —Scientific procedures not proper
- § 5:9 — —Speculative or conjectural
- § 5:10 — —Too many variables
- § 5:11 — —Too time-consuming / collateral issues
- § 5:12 — —Not helpful to jury
- § 5:13 — —Not based upon specialized knowledge
- § 5:14 — —Not relevant
- § 5:15 — —Other grounds
- § 5:16 —Opposing authorities—Court’s discretion
- § 5:17 — —Proper qualifications
- § 5:18 — —Helpful to the jury
- § 5:19 — —Reliable
- § 5:20 — —No need for specific degree of certainty
- § 5:21 — —Identical conditions not required
- § 5:22 — —Level of acceptance in scientific community
- § 5:23 — —Weight vs. admissibility / careless testing
- § 5:24 — —Outside realm of Daubert requirements / judicial notice
- § 5:25 Motion to exclude “junk science” and related evidence—Suggested motion text
- § 5:26 —Motion summary
- § 5:27 —Supporting authorities—Exclusion of new scientific evidence—Generally
- § 5:28 — —Hedonic damage evidence
- § 5:29 — —‘Truth-serum’ evidence
- § 5:30 — —Polygraph evidence
- § 5:31 — — —Refusal to take polygraph test
- § 5:32 — —Psychological tests and syndromes—In general
- § 5:33 — — —Rape trauma syndrome
- § 5:34 — — —Child molestation syndrome

- § 5:35 — — —Electronic penile plethysmograph test
- § 5:36 — — —Federal Rule of Evidence 704(b)—
Impermissible opinion regarding defendant’s
mental state—Criminal cases
- § 5:37 — —Hypnosis evidence
- § 5:38 — —Voiceprint identification
- § 5:39 — —Accident reconstruction evidence
- § 5:40 — —Biomechanic evidence
- § 5:41 — — —Low-speed impact cases
- § 5:42 — —Statistical evidence—Disapproved statistics
evidence, generally
- § 5:43 — — —Statistics in products liability or
negligence cases
- § 5:44 — — —Statistics in employment discrimination
cases
- § 5:45 —Opposing authorities—General acceptance
- § 5:46 — — —When—Daubert test not required
- § 5:47 — — —Approved tests
- § 5:48 — —Handwriting analysis
- § 5:49 — —Hedonic damages
- § 5:50 — —Polygraph evidence—Stipulation of parties
- § 5:51 — — —Where used for investigative purposes
- § 5:52 — — —Where used as basis for expert opinion
- § 5:53 — — —For impeachment or corroboration
- § 5:54 — —Psychological tests and opinions—
Psychological tests and opinions, generally
- § 5:55 — — —Rape trauma syndrome
- § 5:56 — —Hypnosis evidence
- § 5:57 — —Voiceprint identification
- § 5:58 — —Penile plethysmograph
- § 5:59 — —Statistics evidence—General acceptance
- § 5:60 — — —To prove knowledge
- § 5:61 — — —Weight vs. admissibility
- § 5:62 — — —Psychological / criminal profiling
- § 5:63 — — —Judicial notice
- § 5:64 — —Accident reconstruction and biomechanic
evidence
- § 5:65 — —test results to demonstrate probable cause

II. SAMPLE MOTIONS

- § 5:66 Motion to exclude evidence of statistical analysis
- § 5:67 Motion to admit evidence of laboratory testing
regarding firearm residue
- § 5:68 Motion to exclude evidence of computerized
valuations of plaintiff’s business, with
alternative motion for a *Daubert* hearing
regarding the reliability of the methodology

TABLE OF CONTENTS

- § 5:69 Motion to exclude evidence of polygraph examination
- § 5:70 Motion to exclude evidence of hypnotic interview
- § 5:71 Motion to exclude expert testimony
- § 5:72 Motion to exclude expert testimony (credibility of witness)
- § 5:73 Motion to exclude biomechanic evidence
- § 5:74 Motion to exclude expert testimony on grounds that it is not the product of reliable principles and methods

CHAPTER 6. DISCOVERY MOTIONS

I. MOTION AUTHORITIES

- § 6:1 Motion for evidentiary sanctions—Suggested motion text
- § 6:2 —Motion summary
- § 6:3 —Supporting authorities—Generally—Available sanctions, generally
- § 6:4 — —Generally Rule 37(c) failure to disclose;— False or misleading disclosure;—Refusal to admit
- § 6:5 — —Generally Rule 37(d) failure to disclose;— False or misleading disclosure;—Failure of party to appear at deposition or serve answers to interrogatories or respond to request for inspection
- § 6:6 — —Evidence sanction
- § 6:7 — —Adverse presumption from missing evidence
- § 6:8 — —Issue sanction
- § 6:9 — —Terminating sanctions
- § 6:10 — —Matters deemed admitted as discovery sanction
- § 6:11 — —Physical and mental examinations of persons—FRCP Rule 35
- § 6:12 — — —Supporting case law
- § 6:13 — —Other grounds
- § 6:14 — —Opposing authorities—Generally
- § 6:15 — —Evidence/issue exclusion—Rule 37 exceptions
- § 6:16 — —Terminating sanction
- § 6:17 — —Matters deemed admitted
- § 6:18 — —Physical and medical examinations
- § 6:19 — —No adverse presumption from missing evidence
- § 6:20 Motion to conclusively establish admitted matters—Suggested motion text
- § 6:21 —Motion summary
- § 6:22 —Supporting authorities—Federal Rule of Civil Procedure 36

- § 6:23 — —Purpose of rule
- § 6:24 — — —Exclusion of evidence
- § 6:25 —Opposing authorities
- § 6:26 Motion to exclude evidence of claims denied or changed since discovery—Suggested motion text
- § 6:27 —Motion summary
- § 6:28 —Supporting authorities—Exclusion of prejudicial evidence, generally
- § 6:29 — — —Unfair surprise
- § 6:30 — — —Where privilege raised during discovery
- § 6:31 — —Other grounds
- § 6:32 —Opposing authorities
- § 6:33 Motions regarding expert declarations and expert depositions—Suggested motion text
- § 6:34 —Motion summary
- § 6:35 —Supporting authorities—Improper expert witness exchange
- § 6:36 — — —Undisclosed witness / expert testimony not properly or timely revealed
- § 6:37 —Opposing authorities—Expert testimony admitted
- § 6:38 — —Continuance to depose expert or opportunity to redepose
- § 6:39 — —Compare: treating physicians

II. SAMPLE MOTIONS

- § 6:40 Motion to exclude evidence of claim denied during discovery
- § 6:41 Motion to exclude evidence of medical bills for services obtained after *[Date]*
- § 6:42 Motion to exclude testimony of undisclosed witness
- § 6:43 Motion to exclude evidence produced beyond discovery deadline
- § 6:44 Motion to deem matters admitted
- § 6:45 Motion for sanction establishing facts
- § 6:46 Opposition to defendants' motion to limit plaintiff's expert's opinions
- § 6:47 Opposition to motion for missing evidence instruction
- § 6:48 Motion to exclude expert testimony relating to matters not disclosed during discovery
- § 6:49 Motion for order rendering default judgment as discovery sanction
- § 6:50 Motion for evidentiary sanctions for failure to serve answers/objections to interrogatories
- § 6:51 Motion to dismiss action as discovery sanction

CHAPTER 7. CHARACTER EVIDENCE

I. MOTION AUTHORITIES

- § 7:1 Overview of character evidence
- § 7:2 —Admissible character evidence
- § 7:3 —Character evidence subject to exclusion
- § 7:4 Motion to exclude character evidence used for impeachment—Suggested motion text
- § 7:5 —Motion summary
- § 7:6 —Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:7 — —Exclusion of irrelevant evidence, generally
- § 7:8 — —Exclusion of improper impeachment evidence, generally
- § 7:9 — — —Alcohol consumption
- § 7:10 — — —Arrests, probation violations or misdemeanor convictions
- § 7:11 — — —Drug use
- § 7:12 — — —Felony convictions
- § 7:13 — — —Fraudulent acts
- § 7:14 — — —Good character of witness or defendant
- § 7:15 — — —Religious belief
- § 7:16 — — —Sexual preference or behavior
- § 7:17 — —Other grounds
- § 7:18 —Opposing authorities—Facts at issue
- § 7:19 — —A note on witness perceptions
- § 7:20 — —Impeachment, generally
- § 7:21 — — —Witness veracity
- § 7:22 — — —Crimes involving dishonesty or false statement
- § 7:23 Motion to exclude character evidence used to prove conduct—Suggested motion text
- § 7:24 —Motion summary
- § 7:25 —Supporting authorities—Exclusion of prejudicial evidence, generally
- § 7:26 — —Exclusion of irrelevant evidence, generally
- § 7:27 — —Exclusion of improper character evidence
- § 7:28 — — —General care or skill in negligence cases
- § 7:29 — — —Crimes evidence and disposition to commit crime in question
- § 7:30 — —Other grounds
- § 7:31 —Opposing authorities—Court’s discretion, generally
- § 7:32 — —Relevant to material issue
- § 7:33 — —Witness impeachment
- § 7:34 — —Trait at issue
- § 7:35 — —Inapplicable to inanimate objects

- § 7:36 Motion to exclude evidence of prior felony conviction—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, generally
- § 7:41 — —Exclusion of improper impeachment evidence
- § 7:42 — —Other crimes as improper character evidence
- § 7:43 — —Other grounds
- § 7:44 —Opposing authorities—Impeachment by evidence of conviction of crime—Expressly allowed
- § 7:45 — —Moral turpitude crimes

II. SAMPLE MOTIONS

- § 7:46 Motion to exclude evidence of alcoholism of percipient witness
- § 7:47 Motion to exclude evidence of failure to file income tax returns
- § 7:48 Motion to exclude evidence of defendant’s prior DUI
- § 7:49 Motion to exclude evidence of prior traffic citations
- § 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 (juvenile adjudication)
- § 7:53 Motion to exclude improper character evidence (prescription drug abuse)
- § 7:54 Motion to exclude evidence of prior arrest of witness
- § 7:55 Motion to exclude improper argument regarding the deceased’s marijuana use during opening statement
- § 7:56 Motion to exclude evidence regarding witness’s mental health
- § 7:57 Motion to exclude that driver was unlicensed
- § 7:58 Motion to exclude improper terminology regarding Plaintiff’s expert
- § 7:59 Opposition to motion to exclude inflammatory evidence

CHAPTER 8. WITNESS EVIDENCE

I. MOTION AUTHORITIES

- § 8:1 Motion to exclude improper expert opinion—Suggested motion text

TABLE OF CONTENTS

§ 8:2	—Motion summary
§ 8:3	—Supporting authorities—Exclusion of improper expert opinion, generally
§ 8:4	— —Hypothetical questions
§ 8:5	— —Inadmissible hearsay, generally
§ 8:6	— — —Hearsay example: Opinions of others
§ 8:7	— — —Hearsay example: Statements of others
§ 8:8	— — —Hearsay example: Treatises, documents & texts
§ 8:9	— —Legal questions
§ 8:10	— — —Compare: Ultimate issues
§ 8:11	— —Matters of common experience
§ 8:12	— —Not reasonably relied upon by experts
§ 8:13	— —Not perceived or personally known
§ 8:14	— —Precluded by law—Example: Defendant’s mental state
§ 8:15	— —Speculation or conjecture
§ 8:16	— —Too many variables
§ 8:17	— —Uncooperative witness
§ 8:18	— —Usurping jury function
§ 8:19	— —Testimony on irrelevant matters
§ 8:20	— —Unreliable
§ 8:21	— —Not helpful to the jury
§ 8:22	— —Other grounds
§ 8:23	—Opposing authorities—Court’s discretion, generally
§ 8:24	— —Hearsay
§ 8:25	— — —Statements of others
§ 8:26	— — —Treatises, documents and text
§ 8:27	— —Hypothetical questions
§ 8:28	— —No need for specific degree of certainty
§ 8:29	— —Legal questions vs. ultimate issues
§ 8:30	— —Uncooperative witness
§ 8:31	— —Helpful to the jury
§ 8:32	— —Reliable
§ 8:33	Motion to exclude testimony of non-qualified expert—Suggested motion text
§ 8:34	—Motion summary
§ 8:35	—Supporting authorities—Exclusion of non-qualified experts
§ 8:36	— —Improper qualifications: examples
§ 8:37	—Other grounds
§ 8:38	—Opposing authorities—Generally
§ 8:39	— —Proper qualifications
§ 8:40	Motion to exclude opinion of non-expert—Suggested motion text
§ 8:41	—Motion summary

- § 8:42 —Supporting authorities—Exclusion of non-expert opinion—Personal knowledge requirement
- § 8:43 — — — —Causation
- § 8:44 — — — —Legal opinions
- § 8:45 — — — —Lay experiments
- § 8:46 — — — —Not helpful to jury
- § 8:47 — — — —No specialized knowledge
- § 8:48 — —Other grounds
- § 8:49 —Opposing authorities—Perceptions of witness
- § 8:50 — — —Sanity
- § 8:51 — —Helpful to clear understanding
- § 8:52 — —Lay experiments
- § 8:53 Motion to exclude testimony of incompetent witness—Suggested motion text
- § 8:54 —Motion summary
- § 8:55 —Supporting authorities—Inability to express self or tell truth—Children
- § 8:56 — —Lack of mental competence
- § 8:57 — —Lack of personal knowledge of subject matter
- § 8:58 — —Other grounds
- § 8:59 —Opposing authorities—General rule of competency
- § 8:60 — —Children
- § 8:61 — —Mental competence
- § 8:62 Motion to exclude privileged testimony—Suggested motion text
- § 8:63 —Motion summary
- § 8:64 —Supporting authorities
- § 8:65 —Opposing authorities
- § 8:66 Motion to exclude testimony of judge, arbitrator, mediator, attorney or juror—Suggested motion text
- § 8:67 —Motion summary
- § 8:68 —Supporting authorities—Judge as witness
- § 8:69 — —Arbitrator or mediator as witness
- § 8:70 — —Juror as witness
- § 8:71 — —Attorney as witness
- § 8:72 —Opposing authorities—Attorney as witness
- § 8:73 — —Mediator as witness
- § 8:74 — —Judge as witness
- § 8:75 — —Juror as witness
- § 8:76 Motion to exclude witness from courtroom prior to testifying—Suggested motion text
- § 8:77 —Motion summary
- § 8:78 —Supporting authorities—Exclusion of non-party witnesses from courtroom

TABLE OF CONTENTS

§ 8:79	—Opposing authorities—Discretionary decision
§ 8:80	— —Restriction against excluding party
§ 8:81	— —Where testimony of witness allowed
§ 8:82	— —Where no violation of sequestration order occurred
§ 8:83	Motion to exclude comment on exercise of privilege (not to testify)—Suggested motion text
§ 8:84	—Motion summary
§ 8:85	—Supporting authorities—No-comment rule
§ 8:86	—Opposing authorities—Allowable inferences
§ 8:87	— —Civil consequences of silence
§ 8:88	— —Waiver
§ 8:89	Motion to exclude evidence of non-called witnesses—Suggested motion text
§ 8:90	—Motion summary
§ 8:91	—Supporting authorities—Exclusion of prejudicial evidence, generally
§ 8:92	— —Where witness was equally available to testify
§ 8:93	— —Where other adequate testimony—Cumulative
§ 8:94	— —Where no advance ruling
§ 8:95	— —Where witness pled fifth amendment
§ 8:96	— —Other grounds
§ 8:97	—Opposing authorities—Generally
§ 8:98	— —Non-calling of material witness
§ 8:99	— —Question of weight, not admissibility
§ 8:100	Motion to exclude hearsay evidence
§ 8:101	—Suggested motion text
§ 8:102	—Motion summary
§ 8:103	—Supporting authorities—General authority for exclusion
§ 8:104	— —Purpose of rule
§ 8:105	— —Silence as Hearsay
§ 8:106	— —Spoken Hearsay—Examples of Exclusion
§ 8:107	— —Written hearsay—General authority for exclusion
§ 8:108	— — —Examples
§ 8:109	—Opposing authorities—Hearsay exceptions, generally
§ 8:110	— — —Federal Rule of Evidence 803—Declarant available
§ 8:111	— — —Federal Rule of Evidence 804—Declarant unavailable
§ 8:112	— — —Federal Rule of Evidence 807—Residual exception
§ 8:113	— — —Hearsay exceptions, examples

- § 8:114 — — — Purpose of exceptions to hearsay rule
- § 8:115 — — — Non-hearsay evidence
- § 8:116 — — — Non-assertive conduct
- § 8:117 — — — Multiple hearsay
- § 8:118 — — — Hearsay used to impeach witness credibility

II. SAMPLE MOTIONS

- § 8:119 Motion to exclude speculative expert opinion
- § 8:120 Motion to exclude reference to non-called witnesses
- § 8:121 Motion to exclude testimony and opinions of medical doctor
- § 8:122 Motion to exclude mediation evidence
- § 8:123 Motion to exclude lay witness testimony (causation)
- § 8:124 Motion to exclude witness from courtroom prior to testifying
- § 8:125 Motion to exclude testimony of witness for lack of personal knowledge of subject matter
- § 8:126 Opposition to motion to exclude lay witness evidence
- § 8:127 Motion to exclude testimony of mediator
- § 8:128 Motion to exclude testimony of incompetent witness
- § 8:129 Motion to exclude comment regarding exercise of privilege
- § 8:130 Motion to exclude improper expert opinion (usurps jury function)

Table of Laws and Rules

Table of Cases

Index