

Evidence – Presented by: Ervin Gonzalez, Esq.

This seminar focuses on the fundamentals of evidence in Florida including documentary evidence, demonstrative evidence, expert testimony, trial objectives and objections and impeachment of witnesses.

I. DOCUMENTARY EVIDENCE

- A. Business Records
- B. Tape Recordings
- C. Photographs
- D. Authenticating a Letter
- E. Diagrams
- F. Refreshing Recollection
- G. Authenticating Handwriting in a Document

II. DEMONSTRATIVE EVIDENCE

- A. Introduction
 - 1. Importance of Demonstrative Evidence
 - 2. Nature and Definition
 - 3. Demonstrative Aids
- B. Admissibility
 - 1. In General
 - 2. Discretion of Court
 - 3. Pretrial Procedures
 - 4. Laying Foundation
- C. Types
 - 1. In General
 - 2. Charts
 - 3. Models
 - 4. Demonstrations and Experiments
 - 5. Photographs
 - a. Relevancy
 - b. Foundational Issues
 - c. Pictorial Testimony or Silent Witness
 - 6. Videotapes, DVD or Film
 - 7. Replicas
 - 8. Real Evidence
 - 9. Scientific Tests
 - a. General Standard
 - b. Particular Applications
 - i. X-Rays
 - ii. Magnetic Resonance Imaging (MRI)
 - iii. Liquid Crystal Thermography (LCT)
 - iv. Polygraphs

- v. DNA Evidence
 - vi. Sexual Abuse Legitimacy Scale
 - vii. Serum Blood Alcohol Test
 - viii. Computer Animation
- D. Practical Considerations
 - 1. Logistics
 - 2. Videotape/DVD
 - 3. Graphics
 - 4. Real Evidence
 - 5. Computer Animation and Simulation
 - 6. Disk-Based Litigation (CD-Rom and Laser Disk Presentation Devices)
 - 7. Conclusions

III. FOUNDATIONS FOR DOCUMENTARY EVIDENCE

- A. Business Records
- B. Tape Recordings
- C. Photographs
- D. Authenticating a Letter
- E. Diagrams
- F. Refreshing Recollection
- G. Authenticating Handwriting in a Document

IV. EXPERT TESTIMONY

- A. Overview
 - 1. Purpose of expert testimony
 - 2. Ethical considerations in using expert witnesses
 - 3. Who is an Expert?
 - 4. Required Showing of Qualifications
 - 5. Court's Discretion to Accept Qualifications
 - 6. Proper Subjects of Expert Testimony
 - 7. Matters Not Within Jury's Common Knowledge
 - 8. Ultimate issues; invasion of province of jury as finder of fact
 - 9. Opinion not binding on trier of fact
 - 10. Trial court's discretion to permit expert testimony
 - 11. Standard for admissibility of disputed scientific evidence
 - 12. Factors determining admissibility
 - 13. Scientific aids and theories
- B. Experts' Depositions
 - 1. Deposition of expert
 - 2. Use of Video Depositions
- C. Objections
- D. Preparing for an Expert's Deposition
- E. Trial Preparation
 - 1. Disclosing the Expert Witness List
 - 2. Reading the Expert's Publications and Articles

3. Reading the Expert's Previous Testimony
4. Preparing the Expert for Trial
- F. Direct Examination
 1. Laying the Foundation
 2. Sequence of Testimony
 3. Qualifying the Expert
 4. Tendering the Witness as an Expert
 5. Opposing Counsel's Right to Voir Dire
 6. Excusing the jury
 7. Using leading questions
 8. Stipulation to expert's qualifications
 9. Use of Demonstrative Aids
 10. Demonstrative Evidence Generally
 11. Types of Demonstrative Evidence
 12. Use of Demonstrative Evidence at Trial
 - a. What it Adds to Your Case
 - b. Admissibility
 13. Eliciting Expert Testimony
 14. Educate the Jury
 15. Develop the Expert's Testimony to set up the opinion
 16. Leading Questions
 17. Use Plain and Simple Language
 18. Focus on the Expert
- G. The Expert Opinion
 1. In General
 2. Basis for Opinion Testimony
 3. Expert's Opinion May Include Ultimate Issue of Fact
 4. Opinion must be Based upon Facts Supported in the Record
 5. Facts Observed by Expert or Within Expert's Knowledge
 6. Facts Derived from Multiple Sources
 7. Direct Personal Observation Not Required
 8. Other Documents
 9. Opinion Based on Inadmissible Information
 10. Statistics and Estimates
 11. Computer Simulations
 12. Published Treatises
 13. Hypothetical Questions
- H. Expert Testimony on Particular Topics
 1. Medicine
 2. Business
 3. Agriculture
 4. Real or personal property value
 5. Value of services
 6. Handwriting
 7. How an accident occurred
 8. Speed of moving objects

- 9. Ballistics
 - 10. DNA
 - 11. Fingerprint and footprint
 - 12. Other experiments, demonstrations and tests
 - I. Cross-Examination of Experts
 - 1. Allowable questions
 - 2. The Sequence of the Cross
 - 3. Attack the Expert's Witnesses
 - 4. Establish Bias
 - 5. Challenge the Expert's Qualifications
 - 6. Have the Opposing Expert Agree with You
 - 7. Failure to Consider Other Facts or Data
 - 8. Attack the Underlying Facts Using a Hypothetical Question
 - 9. Authoritative Texts
 - 10. Prior Inconsistent Statements
 - 11. Impeachment using Depositions
 - 12. Impeachment using Inconsistent Statements in Documents or Past Speeches
 - 13. Financial Interest
 - J. Request for an Examination by an Expert
 - 1. Physical examination; identifying blood group
 - 2. The request
 - 3. The response
 - 4. Disclosure of reports
 - 5. Sanction for failure to disclose reports
 - 6. Expert examiner as witness
- V. TRIAL OBJECTIVES
- A. Rulings on Evidence
 - B. Judicial Notice
 - C. Presumptions
 - D. Relevant Evidence and Admissibility of Certain Types of Evidence
 - E. Privileges
 - F. Witnesses Who May Testify and Exclusion of Witnesses
 - G. Expert Witnesses
 - H. Hearsay
 - I. Authentication and Introduction of Documents and Photographs
 - J. Public Records
- VI. FLORIDA EVIDENTIARY TRIAL OBJECTIONS
- A. Ambiguous
 - B. Argumentative
 - C. Asked and Answered
 - D. Assumes Facts Not in Evidence
 - E. Authentication Lacking
 - F. Best Evidence Rule.

- G. Beyond Scope (of direct, cross direct, etc.)
- H. Compound
- I. Conclusion
- J. Confusing and Unintelligible
- K. Counsel Testifying
- L. Cumulative
- M. Foundation Lacking
- N. Impeachment by Improper Means
- O. Improper Characterization
- P. Irrelevant
- Q. Leading
- R. Misquoting Witness
- S. Narrative
- T. Opinion
- U. Prejudice outweighed by Probative Value
- V. Privileged
- W. Speculation and Conjecture
- X. Unresponsive
- Y. Hearsay
 - 1. Hearsay, generally
 - 2. Non-Hearsay Prior Statements
 - 3. Hearsay within Hearsay
 - 4. Hearsay Exception: Absence of Entry in Business Records
 - 5. Hearsay Exception: Absence of Public Record or Entry
 - 6. Hearsay Exception: Admissions
 - 7. Hearsay Exception: Excited Utterance
 - 8. Hearsay Exception: Family Records
 - 9. Hearsay Exception: Former Testimony
 - 10. Hearsay Exception: Judgment of Previous Conviction
 - 11. Hearsay Exception: Market Reports and Commercial Publications
 - 12. Hearsay Exception: Marriage, Baptismal and Similar Certificates
 - 13. Hearsay Exceptions: Public Records and Reports
 - 14. Hearsay Exception: Records of Documents reflecting an Interest in Property
 - 15. Hearsay Exception: Recorded Recollection
 - 16. Hearsay Exception: Records of Regularly Conducted Activity (Business Records)
 - 17. Hearsay Exceptions: Records of Religious Organizations
 - 18. Hearsay Exception: Records of Vital Statistics
 - 19. Hearsay Exception: Reputation as to Character
 - 20. Hearsay Exception: Reputation Concerning Boundaries or General History
 - 21. Hearsay Exception: Reputation Concerning Personal or Family History
 - 22. Hearsay Exception: Requirement of Unavailability for Rule 90.804 Hearsay Exceptions

- 23. Hearsay Exception: Spontaneous Statement
- 24. Hearsay Exception: Statement Against Interest
- 25. Hearsay Exception: Statement in Ancient Documents
- 26. Hearsay Exception: Statement of Child Victim
- 27. Hearsay Exception: Statement in Documents Affecting an Interest in Property
- 28. Hearsay Exception: Statement of Personal or Family History
- 29. Hearsay Exception: Statement for Purposes of Medical Diagnosis or Treatment
- 30. Hearsay Exception: Statement Under Belief of Impending Death
- 31. Hearsay Exception: Then-Existing Mental or Emotional Condition
- 32. Hearsay Exception: Then-Existing Physical Condition

VII. IMPEACHMENT OF A WITNESS

- A. Depositions
- B. Use of Inconsistent Statements in Documents

VIII. IMPEACHMENT WITH AUTHORITATIVE TREATISES