

EVIDENCE 101: **QUICK REFERENCE GUIDE** **FOR MICHIGAN ATTORNEYS**



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EVIDENCE 101: QUICK ETHICS GUIDEBOOK REFERENCE GUIDE FOR MICHIGAN ATTORNEYS

Use this as a quick courtroom reference when offering evidence, objecting, or preserving the record. Always check the current Michigan Rules of Evidence, Michigan Court Rules, statutes, local rules, and controlling case law. The Michigan Rules of Evidence are maintained by the Michigan Supreme Court, and the Michigan Judicial Institute Evidence Benchbook is a useful companion resource.

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THE CORE QUESTION

Before offering or objecting to evidence, ask:

What is this evidence being offered to prove, and what rule allows or excludes it?

The same evidence may be admissible for one purpose but not for another.

ADMISSIBILITY ROADMAP

STEP	QUESTION
1	Does the evidence help or hurt my case? Should I offer the evidence at all (or object to my opponent's evidence)? <i>Note: Consider whether your opponent's evidence hurts your side's case. If it does not hurt your case, why object? Similarly, if the evidence does not move the ball forward for your side, why introduce it?</i>
2	Do the Michigan Rules of Evidence apply to this proceeding?
3	What fact is the evidence offered to prove?
4	Is that fact legally important?
5	Has foundation been laid?
6	Is the evidence relevant?
7	Is there a hearsay, privilege, character, expert, or other exclusion issue?
8	Does an exception or non-hearsay purpose apply?
9	Should or could the court exclude it under MRE 403?
10	Is a limiting instruction needed?
11	If excluded, do I need to make an offer of proof?

RELEVANCE

Relevance must be addressed first for all evidence. Evidence must help prove or disprove something that matters.

ASK YOURSELF

- What fact does this evidence make more or less likely?
- Does that fact matter to a claim, defense, damages issue, credibility issue, or requested relief?

COURTROOM LANGUAGE

OFFERING

"Your Honor, this is relevant because it tends to show _____, which is material to _____."

OBJECTING

"Objection, relevance. This does not make any fact of consequence more or less probable."

MRE 403

Relevant evidence can still be excluded if its value is substantially outweighed by unfair prejudice, confusion, misleading the jury, delay, waste of time, or needless cumulative presentation.

ASK YOURSELF

- Is the evidence truly unfairly prejudicial, or just damaging?
- Will it confuse the issue being addressed?
- Has the point already been made, or could it be made more concisely?

COURTROOM LANGUAGE

OBJECTING

"Objection under MRE 403. Any probative value is substantially outweighed by the risk of [unfair prejudice/confusion/cumulative presentation]."

RESPONDING

"Your Honor, the evidence is highly probative of _____, and any prejudice is not unfair prejudice within the meaning of MRE 403."

FOUNDATION

Foundation shows that the witness or exhibit is connected to the case and reliable enough for the court to consider.

BASIC WITNESS FOUNDATION

Ask:

- Were you present for the events?
- What did you personally see, hear, do, receive, or observe?

BASIC EXHIBIT FOUNDATION FOR AUTHENTICATION

First ask, "Your Honor, may I approach the witness?"

Once granted permission, provide the witness with the exhibit or show the witness the exhibit and ask:

- Do you recognize this?
- What is it?
- How do you recognize it?
- How was it created? [*for documents*]
- Is it a fair and accurate copy, image, or depiction?
- Is it in substantially the same condition? [*for physical items*]

COURTROOM LANGUAGE

OFFERING

"Your Honor, I move to admit [Party's] Exhibit ____."

OBJECTING

"Objection, lack of foundation."

RESPONDING

"Your Honor, the witness has identified the exhibit, explained how they recognize it, and testified that it fairly and accurately reflects ____."

WITNESS CONTROL (PRACTICAL SKILL)

The court controls the mode and order of witness examination. Your job is to ask questions that make the testimony clear, efficient, and admissible.

DIRECT EXAMINATION	CROSS-EXAMINATION
Use mostly open-ended, non-leading questions.	Use short, leading questions.
Let the witness tell the story in an organized way.	Keep control by asking one fact per question.
Build foundation before offering exhibits.	Do not ask questions unless you know the answer helps you. Ask questions so that the witness admits in their answer or their denial undercuts their credibility.
Prepare the witness before court so they understand the process, not so they memorize testimony.	Avoid open-ended questions like "why," "how," or "please explain."
Listen carefully and follow up when foundation, timeline, or clarity is missing.	Stop when you get the answer you need, unless it is helpful to emphasize the point by asking the question in a different way, or return to the point later if it helps your position.

COURTROOM LANGUAGE

IF LEADING IS OBJECTED TO ON DIRECT

"Your Honor, I can rephrase."

IF THE WITNESS IS ADVERSE OR HOSTILE

"Your Honor, permission to treat the witness as [hostile/adverse]?"

Note: The advantage of treating a witness as adverse or hostile is that you can use leading questions on direct examination when you otherwise would not be able to do so. Hostile refers to a witness who is raising their voice, aggressive, antagonistic, or refusing to cooperate. Adverse refers to a witness who, although called to testify by one party in a case, provides testimony that is unfavorable to that party or is aligned with the interests of the opposing side.

IF CROSS-EXAMINATION BECOMES ARGUMENTATIVE OR HARASSING

"Objection, [argumentative/harassing the witness/asked and answered]."

PRACTICE POINT

Cross-examination is where control is most easily lost. Open-ended questions invite explanations and surprises that may be damaging. Use short leading questions, move fact by fact, and stop once the point is made.

AUTHENTICATION

Authentication means showing the item is what you claim it is.

COMMON AUTHENTICATION EXAMPLES

EVIDENCE	POSSIBLE FOUNDATION
Photo	Witness says it fairly and accurately depicts the scene
Text message	Witness recognizes number, contact, content, context, or sender
Email	Witness recognizes address, sender, or content
Social media post	Witness recognizes account, profile, content, date, or identifying details
Business record	Custodian, qualified witness, certification, stipulation, or subpoenaed records
Recording/video	Witness explains source, accuracy, date, and lack of alteration

HEARSAY

BASIC DEFINITION

Hearsay is generally an out-of-court statement offered to prove the truth of what the statement asserts.

HEARSAY CHECKLIST

QUESTION	WHY IT MATTERS
Is there a statement?	Words, conduct intended as an assertion, written messages
Who is the declarant?	The person who made the statement
Was it made outside this hearing/trial?	If yes, continue analysis
Is it offered for the truth?	If not, it may not be hearsay
Is it defined as non-hearsay?	Check MRE 801(d)
Does an exception apply?	Check MRE 803, 803A, 804, 807, 1101 Common Exceptions You MUST Know: Admission by a party opponent Business records Present sense impression Excited utterance
Criminal case?	Consider Confrontation Clause issues

COMMON NON-HEARSAY PURPOSES

A statement may be offered to show:

- Effect on the listener
- Notice
- State of mind
- Verbal act or legally operative words (e.g., agreement to a contract)
- Impeachment
- Context, not truth

COURTROOM LANGUAGE

OBJECTING

"Objection, hearsay. This is an out-of-court statement offered for the truth of the matter asserted."

RESPONDING — NOT HEARSAY

"Your Honor, it is not offered for the truth. It is offered to show ____."

RESPONDING — HEARSAY EXCEPTION APPLIES

"Your Honor, this is admissible under MRE ____ because ____."

PRIVILEGE & CONFIDENTIALITY

Some evidence can be excluded even if it's relevant and reliable.

Privileged communications are confidential, but confidential communications are not necessarily privileged. Privilege shields information from compelled disclosure in court.

COMMON PRIVILEGES¹

PRIVILEGE	AUTHORITY
Attorney-client privilege	MCL 767.5a(2); MRPC 1.6
Attorney work-product privilege	MCR 2.302(B)(3)(a)
Clergy-penitent privilege	MCL 767.5a(2)
Confidential communication to crime stoppers organization	MCL 600.2157b
Confidential informant — journalists	MCL 767.5a(1)
Confidential informant — police	<i>People v Underwood</i> , 447 Mich 695, 703–707 (1994)
CPA-client privilege	MCL 339.732
Dentist-patient privilege	MCL 333.16648
Hospital records / peer-review privilege	MCL 333.21515
Mediation communications	MCR 2.411(C)(5); MCR 2.412
Physician-patient privilege	MCL 600.2157; MCL 767.5a(2)
Polygraph examiner privilege	MCL 338.1728(3)
Privilege against self-incrimination	US Const, Am V; Const 1963, art 1, § 17
Probation records and reports	MCL 791.229
Psychologist-patient privilege	MCL 333.18237
School official-student privilege	MCL 600.2165
Spousal communication privilege	MCL 600.2162
Trade secrets	MCR 2.302(C)(8)

¹ MJ1 - [Evidence Quick Reference Materials](#)

CHARACTER AND OTHER-ACTS EVIDENCE

Evidence that someone “usually acts this way” or “did something before” may create a character or propensity problem. Generally, character cannot be used to prove conduct.

ASK YOURSELF

- Is this being offered to prove conduct on a particular occasion?
- Is there a proper non-propensity purpose?
- If criminal case, is notice required under MRE 404(b)?
- Does MRE 403 still create a problem?

PROPER-PURPOSE EXAMPLES

Other-acts evidence may sometimes be offered for issues such as impeachment, motive, intent, knowledge, identity, absence of mistake, or common plan. In criminal cases, there is an exception when the defendant opens the door.

COURTROOM LANGUAGE

OBJECTING

“Objection. This is improper character/propensity evidence under MRE 404.”

RESPONDING

“Your Honor, this is not offered for propensity. It is offered for the limited purpose of showing ____.”

IMPEACHMENT = ATTACKING CREDIBILITY

Impeachment is used to challenge a witness’s credibility. The point is to give the judge or jury a reason to question whether the witness is accurate, reliable, unbiased, or truthful. **MRE 607–609; see also MRE 613.**

COMMON IMPEACHMENT TOOLS

IMPEACHMENT TOOL	USE IT TO SHOW
Prior inconsistent statement	The witness previously gave a different account.
Bias, interest, or motive	The witness may favor one side or have a reason to conceal the truth.
Character for untruthfulness	The witness has a reputation for truthfulness or untruthfulness.
Criminal conviction	The witness has a qualifying conviction admissible under MRE 609.
Contradictory evidence	Other testimony, documents, or exhibits conflict with the witness’s version of events.

COURTROOM LANGUAGE

IN RESPONSE TO A RELEVANCE OBJECTION

"Your Honor, this is offered for impeachment. It goes to the witness's credibility."

IN RESPONSE TO HEARSAY OBJECTION

"Your Honor, this is not offered for the truth of the matter asserted. It is offered to show the witness previously gave a different account."

PRACTICE POINT

Know whether the evidence is being offered only to attack credibility or also to prove a fact directly. If the evidence is admitted for a limited purpose, consider requesting a limiting instruction.

EXPERT TESTIMONY

ASK BEFORE COURT

- Is the witness qualified?
- Will the testimony help the judge or jury?
- What facts or data support the opinion?
- What methodology was used?
- Was the methodology reliably applied?
- Are there weaknesses for cross-examination?

COURTROOM LANGUAGE

OFFERING

"Your Honor, we offer this witness as an expert in ____."

OBJECTING

"Objection. The proponent has not established the necessary foundation for expert testimony under MRE 702."

OBJECTIONS

Immediately when you identify that evidence is objectionable, stand and state “Objection, _____.” Be concise unless the Court asks you to expand on the grounds of your objection. After objecting, continue standing until your objection is sustained or overruled. Objecting timely preserves issues from appeal and can prevent a judge or jury from hearing impermissible evidence. Interrupting others in the courtroom to state an objection is permissible, and is an exception to the general rule of refraining from interrupting others in court.

COMMON OBJECTIONS

OBJECTION	USE WHEN
Relevance	Evidence does not relate to a fact that matters
Foundation	Proponent has not connected the evidence to the case
Authentication	Item has not been shown to be what proponent claims
Hearsay	Out-of-court statement offered for truth
Leading	Question suggests the answer on direct examination
Speculation	Witness is guessing
Lack of personal knowledge	Witness did not personally observe or know
Improper opinion	Lay or expert opinion lacks proper basis
Asked and answered	Repetitive questioning
Cumulative	Needless repetition
MRE 403	Unfair prejudice, confusion, delay, or waste of time
Privilege	Protected communication or information
Best evidence/original writing	Contents of a writing, recording, or photo are at issue

PRESERVING THE RECORD

To preserve an evidentiary issue:

- Object timely.
- State the specific ground.
- Wait for a ruling.
- Move to strike if needed.
- Request a limiting instruction if appropriate.
- Make an offer of proof if evidence is excluded.

COURTROOM LANGUAGE

OFFER OF PROOF

"Your Honor, for the record, if permitted to answer, the witness would testify that _____. We offer this evidence to prove _____. We believe it is admissible because _____."

MOVE TO STRIKE

"Your Honor, I move to strike that testimony and ask that it not be considered by the court / that the jury be instructed to disregard it."

LIMITING INSTRUCTION

"Your Honor, if the court admits this evidence, we request a limiting instruction that the evidence may be considered only for _____ and not for _____."

PRE-COURT EVIDENCE CHECKLIST

Before a hearing or trial:

- Identify each fact you must prove.
- Match each fact to a witness or exhibit.
- Confirm foundation for every exhibit.
- Check hearsay issues.
- Identify hearsay exceptions or non-hearsay purposes.
- Anticipate likely objections and prepare responses.
- Prepare your own objections to the opposing party's anticipated evidence.
- Review court rules and the scheduling order.
- Confirm exhibit exchange requirements.
- Prepare the proper number of copies of exhibits
 - A copy for yourself
 - A copy for the witness
 - A copy for the Court
 - A copy for opposing counsel
 - A backup copy
- Confirm technology for video, audio, screenshots, or digital exhibits.
- Prepare offers of proof for evidence likely to be challenged.