

Foreword

In the present volume, Joelyn Marlowe and Suzanne Cummins have drawn on their rich and diverse legal experience to provide an eminently readable and useful exposition of trial evidence for paralegals and legal assistants. Replete with practical, easily graspable examples, case extracts, end-of-chapter summaries, and chapter review questions, the book can be read cover to cover or kept on the desk as a reference. I would recommend doing both.

This book explores the rules of evidence to just the right degree. It also contains helpful hints on such matters as gathering evidence, interviewing witnesses, and researching and fashioning evidentiary arguments, all tasks likely to be performed by paralegals and legal assistants.

Stressing the crucial role of legal argumentation, the authors accurately impart a feel for the imperfect and chancey process by which judges arrive at evidentiary decisions. The degree of elasticity of the rules emerges clearly. Ethical limits are conveyed well.

Not only those engaged in litigation work will benefit from this knowledge of evidence. The benefit extends also to those working on any legal matter that potentially could wind up in court. Paralegals and legal assistants are involved in planning, organizing, and drafting many documents, arrangements, and transactions. They work on tax planning; wills and estates; formation of corporations, partnerships, and other business entities; corporate mergers; pre-nuptial agreements; real estate deals; commercial contracts; securities issues; financial reorganizations; business loans; and so on.

Whatever your role may be, some knowledge of evidence is desirable. You should always have an eye on the practicalities of proof—on whether and how clients could marshal admissible evidence needed to vindicate their rights if the matter had to go to court. Your rights are hollow if you cannot prove your case. The prospect of what would happen if transactions went to court is the practical measure of a client's rights.

Good planning takes account of what admissible proof the client could produce; may provide for the accumulation and keeping of

such proof; and may even prescribe what shall be sufficient proof in certain circumstances. Proper planning in these respects is probably the best way to keep the matter out of court. Those who would like to take advantage of your firm's client will be considerably discouraged from trying to do so if they know the client's case could be proved.

A knowledge of evidence can also guide you through a myriad of office functions and communications, particularly those involving potential adversaries of the firm's clients. For example, it is useful to know that a contemporaneous note on a calendar may be admissible evidence of the meeting or conversation it records; that a failure to respond to a letter can in certain circumstances be admissible evidence of acquiescence in the facts stated in the letter; and that legal assistants and paralegals might be treated as agents not only of their law firms but of the law firm's clients, for some evidentiary purposes. Their statements may be usable against the client in a number of situations. In some circumstances (but not others), communications to or from a paralegal or legal assistant may be privileged.

Knowing these things, you may be able to avoid mistakes; actively fortify your firm's clients' evidentiary positions; and appreciate better the strengths and weaknesses of a potential adversary's evidentiary position. Forewarned is forearmed!

Marlowe and Cummins are to be congratulated for providing a clear and concise roadmap in an area of the legal landscape where it is easy to go astray.

The book is also quite enjoyable.

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