

Experts, Emails, and Evidence for the Family Law Practitioner

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This paper is derived from many CLEs, consulting with and observing great lawyers, and, most importantly, trial experience examining prosecution experts, DRE's, persons trained in SFST's, chemical analysts, pharmacologists, medical examiners, DNA geneticists, ballistics and handwriting experts, psychiatrists, psychologists, and more in approximately 100 jury trials ranging from capital murder, personal injury, torts, to an array of civil trials. I have had various experts excluded; received not guilty verdicts in capital murder, habitual felon, rape, trafficking, and myriad other criminal trials; and won substantial monetary verdicts in criminal conversation, alienation of affection, malicious prosecution, assault and other civil jury trials. I attribute any success to those willing to help me, the courage to try cases, and God's grace. My approach to seminars is simple: if it does not work, I am not interested. Largely in outline form, the paper is crafted as a practice guide.

As a practical matter, there are two types of witnesses at trial: a lay witness who has first-hand knowledge of relevant facts, and an expert witness who has special expertise which will assist the trier of fact in interpreting facts of the case. Now for the law on experts.

I. Experts:

The succeeding information includes the history and current state of the rule, relevant case law, common expert issues, and guidelines for introducing and barring expert testimony.

A. Rule 702 (before August 21, 2006):

(a)“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion.”

Previously, Rule 702(a) allowed a qualified person to testify in the form of an opinion “if scientific, technical or other specialized knowledge” would “assist the trier of fact to understand the evidence or determine a fact in issue.” At that time our highest court decreed the “North Carolina approach is decidedly less mechanistic and rigorous than the ‘exacting standards or reliability’ demanded by the federal approach.” *Howerton v. Arai Helmet*, 358 N.C. 440, 464 (2004) (any lingering questions concerning the quality of the expert's conclusions go to weight

rather than admissibility) *Id.* at 461. Broadly construed by the courts, a peanut farmer qualified.

B. Rule 702 (amended August 21, 2006): Added a new subsection (a1).

(a1)“In an impaired driving action under Chapter 20 of the General Statutes, a witness, qualified under subsection (a) of this section and with proper foundation, may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:

- (1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.
- (2) Whether a person was under the influence of one or more impairing substances, and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services, shall be qualified to give the testimony under this subdivision.”

The new language of amended Rule 702 (a1) specifically allowed two types of expert testimony on impairment: (1) results of a HGN test by a witness who successfully completed such training; and (2) DRE testimony by a witness who has received training and holds a current certification issued by DHHS. For both, testimony is admissible only on the issue of impairment and not a specific alcohol concentration. Training and expertise are based upon standardized curricula developed by the National Highway Transportation Safety Administration (NHTSA).

C. Rule 702 (since October 1, 2011): Modified subsection (a).

(a)“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply:

- (1) The testimony is based upon sufficient facts or data.
- (2) The testimony is the product of reliable principles and methods.
- (3) The witness has applied the principles and methods reliably to the facts of the case.”

Amended Rule 702(a) raises the bar for expert testimony and is substantively similar to its federal corollary, Fed. R. Evid. 702. The rule expressly states, if a qualified witness has specialized knowledge which assists the trier of fact, he may testify in the form of an opinion only if the testimony is based upon sufficient facts, is the product of reliable principles/methods, and the witness applied the

principles/methods in a reliable manner to the facts. The rule requires sufficiency, reliability, and application to the facts. The rule governs admissibility, performing four distinct functions: (1) it expressly authorizes expert testimony; (2) establishes standards to be applied in determining whether expert testimony should be admitted; (3) provides criteria to be applied in determining whether an individual qualifies; and (4) governs the form of expert testimony. Blakey, Loven, Weissenberger, *North Carolina Evidence Courtroom Manual* 325 (2014).

The current state of the law: State judges are now gatekeepers who, at the outset, hear proffers of expert testimony and determine admissibility. See *State v. McGrady*, 753 S.E.2d 361 (N.C. Ct. App. January 21, 2014) *cert. granted*, 2014 WL 2652419 (N.C. June 11, 2014) (amended Rule 702(a) implements the standards set forth in *Daubert*); *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) (defines the judge’s gatekeeping role under Fed. R. Evid. 702); *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999) (recognized *Daubert* principles apply to all types of expert testimony under Rule 702). As a threshold, expert testimony must be relevant and reliable. *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999) (judges “make certain that an expert...employs in the court room the same level of intellectual rigor that characterizes the practice of an expert in the relevant field”). *Id.* at 152. The judge’s gatekeeping obligation includes not only scientific testimony, but all expert testimony, and traditional fields of knowledge may be subject to review as well as novel or unconventional subject matter. *Kumho Tire* at 137.

The court must preliminarily assess whether (1) the methodology is scientifically valid, and (2) then determine if the methodology can be applied reliably to the facts. Reliability is the touchstone. In other words, does the state of the art in a particular discipline permit a reliable opinion to be asserted? Blakey, *et al.*, at 541. Judges consider if the expert is testifying about matters “growing naturally and directly out research they have conducted”; there is “too great an analytical gap between the data and the opinion proffered”; there is consideration of other causes or alternative explanations; the expert’s opinions are sufficiently supported by the studies or grounded in the scientific methodology upon which they rely; the expert “employs in the court room the same level of intellectual rigor” as practiced in the relevant field; the field of expertise is known to have reliable results consistent with the opinion given; and if the subject matter has a sufficient logical connection to the facts, requiring more than the *ipse dixit* of the proffered expert. See *Daubert* at 1317; *GE v. Joiner*, 522 U.S. 136, 146 (1997); *Claar v. Burlington N. R.R.*, 29 F.3d 499 (9th Cir. 1994); *Joiner* at 144; *Kumho Tire Co.* at 1176; *Id.* at 1175; *Joiner* at 146.

Caution: Pre-amendment appellate cases suggest *Daubert*, or at least the approach post *Howerton*, did not require trial courts to re-determine reliability of a field of specialized knowledge consistently accepted by our courts, absent new evidence calling reliability into question. *State v. Berry*, 143 N.C. App. 187, 546 S.E. 2d 145 (2001); *State v Speight*, 166 N.C. App. 106, 602 S.E. 2d 4 (2004). Response: Would

the 2009 report by the National Academy of Sciences, entitled *Strengthening Forensic Science in the United States: A Path Forward*, finding the current forensic science approach nationwide was “seriously wanting,” and, with the exception of nuclear DNA analysis, concluding no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source, constitute “new evidence calling reliability [of traditional forensic science disciplines] into question”?

Standard of review: Rulings on expert admissibility are reviewed for “abuse of discretion.” *Howerton*, 358 N.C. at 469; *State v. Cooper*, 747 S.E.2d 398 (N.C. Ct. App. Sept. 9, 2013); *see also Joiner*, 522 U.S. at 138.

There is no exhaustive or dispositive list of factors. *Daubert* factors may be inapplicable to certain types of expert testimony. A compilation of various case factors is listed below:

- A. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993): (1) whether the theory or technique can be or has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error of a particular scientific technique; (4) explicit identification of a relevant scientific community and an express determination of a particular degree of acceptance of the theory or technique within the community; and (5) a focus upon principles and methodology, not conclusions that such principles and methodology generate.
- B. An illustration of individualized case factors is found in *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999). The Supreme Court addressed the following considerations for an engineer’s analysis of tire failure: (1) actual inspection of the tire; (2) qualifications in terms of degree(s) and experience; (3) inability to determine precisely the number of miles the tire had been driven; (4) formation of an opinion based on photographs; (5) inspection of the tire on the day of deposition; (6) data the witness relied upon contained errors; (7) subjective nature of the analysis; and (8) reliance upon a theory without evidence any other experts had used this theory or any published articles or papers had relied upon the theory.
- C. *Elock v. Kmart Corp.*, 233 F.3d 734, 745-46 (3rd Cir 2000): (1) whether a method consists of a testable hypothesis; (2) the existence and maintenance of standards controlling the technique’s operation; (3) the relationship of the technique to methods which have been established to be reliable; (4) the qualifications of the expert to employ the methodology; (5) the non-judicial uses to which the method has been put; and (6) other *Daubert* factors.
- D. *State v. Davis*, 721 S.E.2d 763 (N.C. Ct. App. February 7, 2012) (unpublished opinion): (1) is the proffered method of proof sufficiently

reliable as an area for expert testimony; (2) is the witness qualified as an expert in that area of testimony; (3) is the testimony relevant; (4) is there precedential guidance, or is the court faced with novel scientific theories, unestablished techniques, or compelling new perspectives on otherwise settled theories or techniques; (5) are there “indices of reliability,” including the use of established techniques, professional background in the field, use of visual aids, and independent [tests or] research [or verification of same], so the jury is not asked to sacrifice its independence by accepting scientific hypotheses on faith; and (6) relevant statutory requirements for admissibility.

D. Effective Date:

Amended N.C. R. Evid. 702 applies to “actions arising on or after” October 1, 2011 in both civil and criminal contexts. *Pope v. Bridge Broom Inc.*, 770 S.E.2d 702 (2015) at fn.1 (in civil cases, the filing of the complaint controls); *Swartzberg v. Reserve Life Ins. Co.*, 252 N.C. 270, 276 (1960) [a civil action “arises” when a party has a right to apply to the court for relief (or when the statute of limitations begins)]; *State v. Meadows*, 752 S.E.2d 256 (N.C. Ct. App. October 1, 2013) (holding amended Rule 702(a) governed admissibility of expert testimony in a criminal case); N.C. R. Evid. 1101(a) [evidence rules apply to all court proceedings unless excepted in 1101(b)].

E. Case Law: Cases illustrating standards for admissibility of expert evidence follow:

State v. Pennington, 327 N.C. 89 (1990) (in determining whether an expert’s method of proof is sufficiently reliable for expert testimony, the court should focus on indices of reliability including the expert’s use of established techniques, professional background in the field, use of visual aids, independent research, and more, so the jury is not asked to sacrifice its independence by accepting scientific hypotheses on faith).

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) (trial court may consider, among other things, five factors including whether a theory can be or has been tested, has been subjected to peer review and publication, has standards controlling a technique’s operation, is generally accepted as reliable in the relevant scientific community, and the known or potential rate of error).

General Electric Co. v. Joiner, 522 U.S. 136 (1997) (refined the judicial gatekeeping process, focusing upon whether the expert’s opinions were sufficiently supported by the studies upon which they rely and the logical connection of the subject matter to the facts).

Kumho Tire v. Carmichael, 526 U.S. 137 (1999) (recognized *Daubert* principles apply to all types of expert testimony under Rule 702).

Department of Transportation vs. Haywood Co. 167 N.C. App. 55, 604 S.E. 2d 338 (2004) (expert’s opinion need not be proven conclusively reliable or indisputably valid

before admitted; if evidence is more than mere speculation, the jury decides the weight to be given).

State v. Speight, 166 N.C. App. 106, 602 S.E. 2d 4 (2004) (trial court is to be given flexibility as to what factors to consider when determining reliability of expert testimony; absent new evidence, a trial court need not re-determine in every case reliability of a particular field of knowledge consistently accepted by our courts).

Landmark Decision: *State v. McGrady*, ___ N.C. ___ (June 10, 2016) [holding Rule 702(a) of the North Carolina Rules of Evidence incorporates the standards set forth in *Daubert*; trial court did not err excluding testimony from an expert in law enforcement training about Defendant’s conscious and unconscious responses to a perceived threat from victim]. When evaluating admissibility of expert testimony, *McGrady* explains the rule requires the witness must:

1. Have “specialized knowledge” which “assists the trier of fact” to understand evidence or determine a fact in issue;
 - a. A “relevance inquiry,” having some probative value, but requiring more than relevance as “it must provide insight beyond...conclusions that jurors can readily draw from their own experience”;
2. Be “qualified” as an expert by knowledge, skills, experience, training, or education;
 - a. Does the “witness have enough expertise to be in a better position than the trier of fact to have an opinion on the subject?”; court can screen evidence beyond expert’s qualifications; and court has “discretion” to decide if witness is “sufficiently qualified” in the given field; and
3. Offer testimony that meets “the three pronged reliability test...new to the amended rule”;
 - a. A “reliability inquiry” from *Daubert*, *Joiner*, and *Kumho Tire*; primary focus is reliability of witness’s principles and methodology, not on conclusions; and is a “flexible inquiry,” granting trial court the same latitude in deciding how to test the expert’s reliability as deciding whether the expert’s relevant testimony is reliable.

McGrady further extols the five *Daubert* factors (page 5, *supra*) and five other factors:

- a. Is the expert testifying about matters found independent of litigation?

- b. Has the expert “unjustifiably extrapolated” from an accepted premise to an unfounded conclusion?
- c. Has the expert “adequately accounted for alternative explanations?”
- d. Was the expert as careful in his consulting work as his regular professional work?
- e. Is the expert’s field of expertise known to reach reliable results for the type of opinion given?

Finally, *McGrady* posits the trial court may use other factors so long as “reasonable measures” of the three prongs under Rule 702(a).

F. Expert Issues Common to Domestic Cases:

Impermissible vouching:

State v. Harris, 778 S.E.2d 875 (Nov. 3, 2015) (testimony from victim’s therapist did not constitute impermissible vouching for victim’s credibility; the therapist in a child sexual assault case was properly allowed to state she recommended the victim for therapy, use a “trauma narrative” describing what occurred, and use the term “non-offending caregiver”; the narrative was corroborative and the terminology was an organizational term; that the above, while supporting the victim’s credibility, did not render it inadmissible by impermissibly bolstering the victim’s credibility and constituting opinion evidence as to guilt); *See also* N.C. R. Evid. 405(a) (expert testimony on character or trait of character is not admissible as circumstantial evidence of behavior).

Proper foundation:

State v. Jeffries, 776 S.E.2d 872 (Oct. 6, 2015) (trial court did not err by allowing the State’s expert in fire investigation, a fire marshal, to testify a fire was intentionally set; that, with proper foundation, a fire marshal may offer an expert opinion about whether a fire was intentionally set); *See also* N.C. R. Evid. 702(a) (1-3).

Sex crimes:

State v. Stancil, 355 N.C. 266 (2002) (an expert cannot testify that sexual abuse has in fact occurred absent physical evidence supporting such a diagnosis; however, the expert may testify as to the profile of a sexually abused child and whether complainant exhibits such symptoms).

State v. Purcell, 774 S.E.3d 392 (July 7, 2015) (no error permitting an expert medical witness in a child sexual assault case to testify the victim’s delay in reporting anal penetration was “consistent with” the general behavior of children who have been sexually abused in that manner).

State v. Chavez, 773 S.E.2d 108 (June 16, 2015) (State’s expert, a medical doctor, was properly allowed to explain the victim’s normal physical examination, stating 95% of children examined for sex abuse have normal exams, “it’s more of a surprise when we do find something,” no signs of injury could be explained by the “stretchy” nature of the hymen tissue and its ability to heal quickly, and that “cutting behavior” was significant because “cutting, unfortunately, is a very common behavior seen in children who have been abused and frequently sexually abused”).

Case law is conflicted, but the more recent cases allow doctors, SANE nurses, and even DSS workers to testify about characteristics, traits, symptoms, and profiles of sexually abused children, including reasons for lack of physical evidence (e.g., healing, etc.) and reactions of abused victims (e.g., delay in reporting, etc.). See generally *State v. Purcell*, 774 S.E.2d 392 (2015) (allowing traits of sexually abused children); *State v. Davis*, 768 S.E.2d 903 (2015) (allowing evidence the victim improved after treatment); *State v. King*, 760 S.E.2d 377 (2014) (holding DSS workers are implicitly experts on characteristics of sexually abused children); See *contra State v. Towe*, 366 N.C. 56 (2012) (without physical evidence supporting child abuse, an expert may not testify to characteristics of sexually abused children and whether a victim has symptoms consistent therewith; a statement that 70 to 75% of sexually abused children show no clear signs of abuse was error).

G. Civil Pattern Jury Instructions on Experts:

Consider the civil pattern jury instruction on testimony of expert witnesses. The instructions cite an expert may give opinion testimony in a field where he purports to have specialized skill and knowledge, addresses considerations of credibility (e.g., the witness’s training, whether the opinion is supported by facts, reasonableness of the opinion, and if the opinion is consistent with other believable evidence), and the fact finder is to consider the opinion proffered but is not required to accept the opinion to the exclusion of other facts and circumstances. N.C.P.I.-Civil 101.25.

H. Expert Witness Qualification:

I recommend you **consider filing a “Motion for a Rule 702(a) hearing” to *voir dire* proposed experts**. This will allow the judge (and you) to consider the expert’s credentials, knowledge of the case facts, application of principles/methods to the case, and validity of the field. See N.C. R. Evid. 705 (*unless an adverse party requests a voir dire, the expert may testify without prior disclosure of underlying facts or data*). The outline below is designed for a voir dire examination, both for cross and to tender your expert. Variations may be necessary based on the judge, field of expertise, and stage of the examination.

Background.

Education.

Employment.

Training in related area(s) of expertise? Discipline(s)/Sub-discipline(s)?

Licensed?

Published?

Membership in professional organizations?

Qualified as an expert? Appeared in or consulted with the courts? Prosecution and/or defense? Denied expert status? Fact witness?

Describe the area of expertise. Explain what you do.

[At trial, tender as an expert]

Do you follow a standard procedure? Describe the process for the jury.

Know defendant?

Describe your history with defendant. Did you follow your standard procedure?

- Cover case facts (“sufficient facts or data”).
- Discuss principles and methods utilized.
- Discuss the reliability of the principles and methods used. Use “indices of reliability”: (e.g., professional background in the field, use of established techniques, relevant studies, independent research, theory(ies) tested, subject to peer review, publications, visual aids, is the theory deemed reliable in the relevant scientific community, what is the known or potential rate of error, etc.).
- Demonstrate how the expert applied the principles and methods reliably to the facts.

Summarize your findings.

Render opinion.

Tender as an expert.

- These sections are required by the new rule.

A copy of the expert witness qualification outline is attached hereto as **Exhibit A**.

I. The Basics: The new rule and examination techniques.

The new rule is about relevance and reliability.

The basic premise: If the expert (a) applied reliable methodology (b) to the facts of the case (c) in a reliable manner, it is admissible.

The tension: Junk science makes proceedings fundamentally unfair violating the opposing's due process rights versus excluding reliable expert testimony violates the proponent's due process rights to present evidence insuring a fundamentally fair trial.

Evidentiary methods of impeachment: Those typically applicable to experts are italicized and include: (1) *prior inconsistent statement*; (2) *impeachment (self-contradiction)*; (3) *contradiction*; (4) first aggressor (victim); (5) prior bad acts; (6) convictions; (7) character impeachment (lack of truthfulness); (8) specific instances (untruthfulness); (9) mental incapacity; (10) perceptual incapacity; (11) *personal knowledge*; (12) *opinion and/or reputation*; (13) *learned treatises*; and (14) *bias, interest, motive or prejudice*.

Fertile areas of expert impeachment include: (1) lack of knowledge of material case facts; (2) published articles; (3) prior testimony; (4) employment with and history as an expert witness for the prosecution; (5) publications by other experts in the field contrary to the position espoused by the testifying expert; (6) reliability of the principles and methods cited by the expert; and (7) the expert's application of the principles and methods used in a reliable manner to the facts.

Law of cross-examination: *State v. Williams*, 330 N.C. 711 (1992) (a witness may be examined on any matter relevant to any issue in the case, including credibility); *See also* N.C. R. Evid. 611(b) (rule is cited by *Williams*); *State v. Hunt*, 324 N.C. 343 (1989) (if witness either denies or testifies differently from a prior inconsistent statement, you may impeach the witness with the substance of the prior inconsistent statement); *See also* N.C. R. Evid. 613 (witness may be examined concerning a prior statement).

J. Practice Strategies/Tips:

Know the facts. Thoroughly. The rule requires knowledge of "sufficient facts." Experts frequently gloss over case facts. A fertile area for examination and argument, often highlighting lack of knowledge to the jury and bolstering a legal challenge for insufficient factual knowledge.

Do your own research on the subject. Consult with other experts in the field. Get your expert's view of the opposing expert's analysis and opinion. Then frame your cross-examination.

Have your expert listen to relevant pretrial/trial testimony. *State v. Lee*, 154 N.C. App. 410 (2002) (appellate court upheld denial of proffered defense expert as he did not interview witnesses, visit the crime scene, or observe testimony of witnesses).

Tell the judge why you are asking for a pretrial hearing. Are there issues with the expert, the field of expertise, or the intended use of the expert? Can the expert meet the rigorous requirements of the statute? Would a pretrial hearing avert a mistrial? Is there new evidence challenging reliability of the field of specialized knowledge? The list goes on.

Ask the court to hear from your expert before it rules on the opposing's expert. Consider submitting your expert's affidavit for the court's consideration prior to ruling.

Anticipate the opposing's objection(s) to your expert. Demonstrate conformity to the rule and how your expert's opinion assists the trier of fact.

Critically analyze the expert's report. Limit the expert from testifying beyond the scope of his expert status as well as his report. Expert reports are routinely sparse. Use it. Argue embellishment is a discovery violation infringing confrontation and due process rights. The highest art form. N.C. Civ. Pro. 26(b)(4)a.1. (pursuant to discovery rules, a party must disclose the identity of any witness to present evidence under rules 702, 703, or 705; the rule details timing and material requirements).

If appropriate, consider drafting a concise stipulation or stipulating to the report. A good tactic to minimize courtroom emotion, limit evidence, and improve closing argument.

If the expert takes materials to the stand and either reviews the same while testifying or admits to earlier review to refresh his recollection, ask the court for permission to examine the expert's notes/materials before you begin your cross. The occasional gold mine. N.C. R. Evid. 612(a) and (b).

Consider exploring the basis of the expert's opinion, including identification of all articles, studies, data, testing, methods, or other experts in the field relied upon to form the opinion.

Frame the examination to gain admissions. Lead the witness. Listen to the answers. I repeat: listen to the answers. Nuggets come unexpectedly. Administer the witness's demise by a thousand nicks.

Style your cross-examination using closing argument themes. Craft closing argument with quotes, concessions, and principles gleaned from cross.

Recast the expert's technical terms/esoteric language into plain and simple terms.

Ask the judge for a moment to review your materials before ending your examination. Scan your notes. Take a moment with your client. A valuable technique.

Be mindful of rebuttal testimony. Consider keeping your expert around.

Consider how expert testimony may infringe upon evidence rules, statutes, and constitutional protections. *See State v. McGrady*, ___ N.C. ___ (2016) [holding, among other things, constitutional rights are not absolute but are constrained by the rules of evidence (citing *Taylor v. Illinois*, 484 U.S. 400 (1988))]; N.C. R. Evid. 405(a) (expert testimony on character is not admissible as circumstantial evidence of behavior); *State v. Kennedy*, 320 N.C. 20 (1987) (expert cannot testify to credibility of a witness); N.C.

R. Evid. 609 [convictions prescribed by the rule shall be elicited from the witness on cross examination or thereafter].

File a detailed written motion to exclude the opposing's expert. Consider attaching an affidavit from your expert, proffering materials in support of your position (e.g., articles, other expert opinions, etc.), or submitting a memorandum of law.

Use language familiar to the judge. Is the proffered expert's method of proof sufficiently reliable, is the witness qualified, and is the testimony relevant? *State v. Goode*, 341 N.C. 221 (1998) (recites the former standard for admission of expert evidence).

Argue the specific language and requirements of the rule. There is no discretion to admit without meeting the rule. Practice pointer: One may argue *Daubert* says Rule 702 is broad and flexible, and the rules of evidence are designed to admit evidence whenever possible. *Daubert*, 509 U.S. at 489-95. Counter that *Joiner*, a post *Daubert* U.S. Supreme Court case, rejected the view the rules of evidence governing expert testimony preferred admissibility. The rule expresses mandatory prerequisites for admission. Tell the court it is a hot topic for appellate review.

Object to the admission of the opponent's expert evidence. Failure to do so defaults to appellate review under the plain error standard.

Constitutionalize all objections: cite due process, confrontation clause, right to obtain witnesses in the defendant's favor, effective assistance of counsel, fundamental fairness, etc. Always raise comparable state and federal constitutional provisions (e.g., 4th, 5th, and 6th Amendments of the U.S. Constitution applicable to the states under the 14th Amendment and Article 1, Sections 19, 20, and 23 of the North Carolina Constitution). Constitutional objections reverse the standard of appellate review such that error must be "harmless beyond a reasonable doubt."

Remember: (1) Be prepared, make your point, and show why you are right. Educate the judge on the law. Empower the gatekeeper to protect the system; (2) ask the judge to hear and rule on the motion pre-trial. This will allow reconsideration of a denial during trial. *State v. Woolridge*, 357 N.C. 544 (2003); (3) the judge must rule on your motion, and the order must be entered during the term absent consent for a later ruling. *State v. Collins*, 761 S.E. 2d 914 (2014); (4) request specific findings and conclusions of law in the order. Absent a request, the record is presumed to support the judge's ruling. *Estrada v. Burnham*, 316 N.C. 318 (1986); (5) object to introduction of the evidence during trial. Failure to do so waives appellate review. *State v. Williams*, 355 N.C. 501 (2002); and (6) renew your objections at the close of the opposing's case, end of all the evidence, and post-trial.

A case example and expert cross-examination is attached hereto as **Exhibit B**.

II. Emails, Text Messages, and Electronic Writings:

Admissibility of electronic writings (e.g., emails, text messages, Facebook, GPS tracking data, and all other forms of digital evidence) depends on traditional rules of evidence. Principal evidentiary issues follow, typically referenced by the mnemonics OPRAH, HARPO, or PRAOH:

- A. Original Writing: A printout of data stored on an electronic device is an “original.” N.C. R. Evid. 1001(3)(1). A text on a cell phone is an “original.” An “original” is required when contents of the writing are at issue (e.g., writing conveys a threat or other relevant statement, etc.). See N.C. R. Evid. 1002 (original is required if in writing and the proponent seeks to prove its contents); compare *State v. Branch*, 288 N.C. 514, 533 (1975) (witness could testify to a conversation he heard although a recording also existed; the conversation, not the content of the recording, was at issue). A duplicate is admissible except when there is a genuine issue about authenticity or when the original is lost or destroyed. A photograph of an electronic writing (e.g., a photo of a text message, etc.) may be admitted as a duplicate.
- B. Privilege: Remember marital, attorney-client, physician-patient, mediation, counselor, therapist, and other related privileges. N.C. R. Evid. 501.
- C. Relevance: Broad. Does it have any tendency to make a fact of consequence more or less probable? N.C. R. Evid. 401.
- D. Authenticity: A necessary precondition for admissibility; however, courts have required a low threshold for admissibility. *State v. Mercer*, 89 N.C. App. 714 (1988) (a *prima facie* showing such that a reasonable fact finder could find authenticity is enough); *Horne v. Vassey*, 157 N.C. App. 681 (2003) (authenticity is a low threshold, and questions about accuracy generally go to weight, not admissibility). First, authentication is a subset of relevancy, requiring the writing to be linked to the draftsman, else having no probative value. *U.S. v. Branch*, 970 F.2d 1368, 1370 (4th Cir. 1992). Second, the proponent must offer admissible evidence sufficient to find the matter is what the proponent claims. N.C. R. Evid. 901(a); N.C. R. Evid. 104(b) (conditional relevance requires the same).

TIP: The proponent must prove authorship of the writing or, with printouts of writings, must establish they are accurate depictions of same. Courts often rely on distinctive characteristics in conjunction with other circumstances. N.C. R. Evid. 901(b)(4); *State v. Taylor*, 178 N.C. App. 395 (2006) (admitting printout of text messages). Distinctive characteristics may include information only the sender would know (e.g., recipient’s nickname, details of a recent interaction between sender and recipient, etc.) or subsequent actions by the sender consistent with the writing (e.g., assault by sender following a message threatening an assault, etc.); *State v.*

Williams, 191 N.C. App. 254 (2008) (unpublished) (sufficient circumstantial evidence supported admission as witness testified the parties often sent emails and instant messages to each other, other person's email address was on one message, and details exchanged were only known by sender and recipient).

TIP: Proponent may also authenticate an electronic writing by proving electronic handling via business records, although not required. See, ROBERT P. MOSTELLER ET AL, NORTH CAROLINA EVIDENTIARY FOUNDATIONS §5-3(D)(1), at 5-28 (2d ed. 2006) (“The proponent can use the business records of all the systems that transmitted the message to trace the message back to the source computer.”).

TIP: Is an email address, telephone number displayed on caller ID, screen name, or like identifier sufficient to satisfy the requirement of authentication? Generally, a person's name written as the author of the electronic communication (e.g., email, Facebook, etc.) is not sufficient alone to authenticate the document. There must be some confirming circumstances sufficient for the fact finder to find by the preponderance of the evidence the named person is the author. The reason? Digital evidence, including a sender's email address, is easy to change. See John Rubin, Admissibility of Electronic Writings: Some Questions and Answers (2013), <http://nccriminallaw.sog.unc.edu/admissibility-of-electronic-writings-emails-text-messages-and-social-networking-posts/> (last visited October 16, 2016).

- E. Hearsay: Electronic writings are subject to hearsay restrictions but, if authored by the opposing party, constitute an admission of a party opponent. N.C. R. Evid. 801(d). Other common exceptions include the declarant's state of mind or a non-hearsay verbal act. N.C. R. Evid. 803(3) (state of mind); See *State v. Weaver*, 160 N.C. App. 61, 64-66 (2003) (statement of a bribe was a verbal act not offered for the truth but to show the statement was made).

TIP: Electronically-generated identifiers (i.e., a telephone number from which a text was sent, etc.) are not hearsay because the information is not a statement of a person. See N.C. R. Evid. 801(a) (defining a statement as from “a person”). Be aware judicial CLE materials note computer printouts are not hearsay for the same reason.

TIP: Are printouts from businesses that keep records of electronic writings (e.g., internet service providers, cell phone carriers, etc.) subject to hearsay? Yes. The proponent must establish the records are authentic and then lay a foundation for admission under the business records exception. N.C. R. Evid. 803(6); See generally *State v. Price*, 326 N.C. 56 (1990) (court erred allowing a phone bill to be admitted showing the record of calls without

business record foundation); *State v. Taylor*, 178 N.C. App. 395 (2006) (approving a telephone representative describing how records of text messages were created and maintained).

III. Videos and Photographs:

Once authenticated and filtered through rules like OPRAH, electronic writings may be admitted for illustrative or substantive purposes, or both. Additional rules may apply when the source of this type of evidence is gleaned from social media rather than a witness.

- A. Photographs: When the witness has first-hand knowledge of the photographs, authentication for illustrative purposes only requires the witness's recitation that (a) he was present when the photographs were taken and (b) the photographs "fairly and accurately depict" what the witness saw. See *State v. Vick*, 341 N.C. 569 (1995). This requirement is the same for digital photographs and film photography.
- B. Video recordings: When the witness observes the conduct in question, a video may be admitted to illustrate the witness's testimony based on evidence (a) the recording fairly and accurately depicts what the witness observed, (b) the recording would help illustrate the witness's testimony. *State v. Vick*, 341 N.C. 569 (1995). A recent case held the proponent is only required to testify the video "fairly and accurately" illustrates the events recorded. *State v. Fleming*, 786 S.E.2d 760 (2016). To admit for substantive purposes, the witness must additionally testify (c) the recording device was in good working operation, (d) the recordings introduced at trial are the same the witness recorded (or were the same as when inspected immediately thereafter). *State v. Sneed*, ___ N.C. ___ (2016). A video may be authenticated as the accurate result of an automated process. N.C. R. Evid. 902(b)(9). Evidence that (a) the recording process is reliable and (b) the video introduced at trial is the same video produced by the recording process is sufficient to authenticate the video. *Sneed, supra*.

TIP: One may authenticate photographs and video recordings without first-hand knowledge. Authentication requires (a) testimony from one familiar with the system, (b) how the camera was functioning at the time of recording, and (c) how the photograph or video was copied from the system and preserved unaltered for trial. See generally *Bowman v. Scion*, 737 S.E. 2d 384 (2012). Courts have admitted recordings in a silent witness situation, or where a camera captures conduct that no human witness saw.

TIP: Chain of custody evidence is unnecessary absent a concern about alteration. *Sneed, supra*.

TIP: With photos and videos within electronic communications (e.g., emails, text messages, Facebook, etc.), although digital images can be altered, one might argue (a) the fact the picture was on a parties' Facebook page and (b) the relationship between the picture and other content on the electronic communication tends to support its authenticity. See Jeff Welty, Authenticating Photographs Taken from Social Media Sites (May 19, 2014), <http://nccriminallaw.sog.unc.edu/authenticating-photographs-taken-from-social-media-sites/> (last visited October 16, 2016).

TIP: For those with means, a witness with proper expertise might review the metadata to see if the picture has been altered.

IV. Wiretapping: Warrantless searches of computers, iPhones, and electronic devices:

A common evidence question is whether looking at another's phone, silent listening to another person's telephone conversation, making a third-party recording, or accessing another's computer is illegal under the U.S. code or N.C. statutes. Title 1 of the federal wiretapping laws deals with the intentional and unauthorized reception of electronic communications (e.g., spyware, etc.), and Title 2 addresses prohibited access to storage of wire or electronic communications, including backup systems. For the domestic litigator's purpose, note under federal law inadvertent discovery is not a violation and there is no prohibition in either federal act prohibiting the use of electronic communications as evidence. See 18 U.S.C. §25-15.

However, be aware of the North Carolina wiretapping law.

- A. It is a class H felony for any individual without consent of at least one party to the communication to willfully intercept, use, or disclose any wire, oral, or electronic communication. Essentially, North Carolina is a "one party" state, meaning so long as one party to the communication is making the recording, it is lawful. N.C. Gen. Stat. §§15A-286, *et seq.* A civil claim has a two year statute of limitations, allowing actual damages, liquidated damages (\$100.00 per day per each violation or \$1,000.00, whichever is higher), punitive damages, litigation costs, and attorney's fees.
- B. It is a class 1 misdemeanor for unauthorized computer access if a person willfully and without authorization, directly or indirectly, accesses or caused to be accessed any computer or computer program or network. N.C. Gen. Stat. §14-454. It is also a class 3 misdemeanor for computer trespass if a person makes an unauthorized copy of computer data without authority. N.C. Gen. Stat. §14-458.

- C. Here are some cautionary cases: *Rickenbaker v. Rickenbaker*, 290 N.C. 373 (1976) (husband had an extension phone at work connected to wife's home phone and discovered evidence of adultery; husband violated Title 1 because he was not using the extension phone in the ordinary course of business as required by the "extension telephone exemption"); *Evans v. Evans*, 169 N.C. App 358 (2005) (wife alleged husband intercepted sexually explicit emails between her and another man in violation of Title 1; appellate court ruled no violation occurred in that, although the emails were stored on and recovered from the family computer hard drive, they were not intercepted "contemporaneously").
- D. Be advised our appellate courts have adopted a "vicarious consent exemption" in North Carolina domestic wiretapping cases. A custodial party may vicariously consent to the recording of a minor child's conversations so long as the parent has a good faith, objectively reasonable belief it is necessary for the best interest of the child. *Kroh v. Kroh*, 152 N.C. App. 347 (2002).
- E. One may access another's telephone, computer, or electronic device if they have expressly, or impliedly, been granted consent, access to, or permission to use said device. However, individuals do have a reasonable expectation of privacy in personal cell phones. *See generally Riley v. California*, 134 S.Ct. 2473 (2014) (law enforcement generally may not, without a warrant, search digital information on a cell phone seized from an arrested individual; modern cell phones are "minicomputers" which have immense storage capacity, potentially collecting pervasive private information for years, implicating heightened privacy issues).

V. **Substance Abuse and Mental Health Records:**

Privacy regulations issued by DHHS pursuant to HIPPA, applied in tandem with state and federal medical records confidentiality law, greatly restricts access to an individual's substance abuse and mental health records. Generally, client consent [a rigorous standard, requiring a description of the information to be disclosed, identity of the person(s) who may disclose the information and to whom it may be disclosed, described purpose of disclosure, expiration date for authorization, and signature of the person authorizing disclosure] is the preferred method to get these records. *See* 45 C.F.R. §164.508(c).

Some substance abuse records are independently governed by the federal substance abuse treatment confidentiality laws. *See* 42 U.S.C. §290dd-2.

The North Carolina mental health statutes are comprehensive and complex, providing over a dozen different contexts in which patient information may be disclosed. *See* N.C. Gen. Stat. §122C-55, *et seq.*

TIP: A subpoena alone will not permit disclosure of mental health or substance abuse records. Generally, a party must consent, an exception must exist, or a court must specifically order disclosure. See Subpart E of 42 C.F.R. Part 2; N.C. Gen. Stat. §122C-54(a). The court order must follow certain procedures and make particular findings. See 42 C.F.R. §§2.63-2.67. The court must determine that “good cause” exists for disclosure. The order must limit disclosure to part of the patient record essential to fulfil the objective of the order and to persons who need the information forming the basis of the order. For a comprehensive outline of this complex topic, See MARK BOTTS, CONFIDENTIALITY LAWS GOVERNING SUBSTANCE ABUSE TREATMENT RECORDS (2015). https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/Confidentiality%20Laws%20Governing%20Substance%20Abuse%20Treatment%20Records.pdf

VI. Subpoenas:

Generally, subpoenas are a tool to produce evidence for trial. If you are gathering discovery, use a request to produce documents. *Kilgo v. Wal-Mart Stores, Inc.*, 138 N.C. App. 644 (2000) (holding subpoenas are not to be used as discovery in lieu of requests to produce documents). A summary of the law on subpoenas follows:

- A. A subpoena is a court order enforceable by contempt. N.C. R. Civ. Pro. 45(e)(1).
- B. You cannot serve a subpoena out-of-state. RPC 236 (an attorney cannot issue a subpoena which misrepresents one’s authority to obtain documents).
- C. You must serve opposing counsel or parties with a copy of all subpoenas. N.C. R. Civ. Pro. 5(b) and 45(b)(2). If you do not, expect procedural due process arguments and a delay in the proceedings.
- D. Serve the opposing party with a subpoena to bring his medical or mental health records for an in camera review by the court (in lieu of the complicated law on court orders hereinabove). For public records or hospital medical records, serve the provider directly, which allows them to submit the records to the court directly with proper affidavit. N.C. R. Civ. Pro. 45(c)(2).
- E. Be prudent about subpoenaing documents to your office. It is lawful. 08 FEO 4. However, it is offensive, appears arrogant, and is burdensome, routinely resulting in a motion to quash. Subpoena documents to court.
- F. You cannot make someone create a record by subpoena (e.g., “Bring a list of...” etc.).

- G. You must notify opposing counsel or parties within five business days after receipt of subpoenaed material and allow them a reasonable opportunity to copy and inspect the material. N.C. R. Civ. Pro. 45(d1).
- H. Failure without adequate cause to obey a subpoena shall subject the party to sanctions in Rule 37(d), including reasonable expenses, attorney's fees, and the panoply of sanctions in 37(b)(2)(i.e., barring claims, defenses, or evidence; striking pleadings; and dismissing actions).
- I. A written objection and/or motion to quash or modify subpoena must be filed within ten days after service or before the time specified and must allege failure to allow a reasonable time for compliance, privilege, undue burden or expense, unreasonable or oppressive, or procedural defect. N.C.R. Civ. Pro. Rule 45(c)(3) and (5).

VII. Contempt:

Contempt arises frequently in family law practice, often accompanying allegations of a denial of access, failure to pay, or failure to abide by the terms of a court order. N.C. Gen. Stat. Chapter 5. Procedurally exacting, the law follows:

- A. Criminal contempt is to punish, civil contempt to force compliance.
- B. Criminal contempt may be direct or indirect. Direct contempt occurs within sight or hearing of the court and may be punished summarily. Indirect contempt requires a plenary proceeding, including notice and hearing, and results in a criminal trial. Generally, criminal contempt is punishable by censure, thirty days in jail, and a fine not to exceed \$500.00, or any combination, and is subject to appeal. N.C. Gen. Stat. §§5A-11 through 17. Increased penalties exist for refusal to testify with immunity (may be imprisoned up to six months) and failure to pay child support (may be imprisoned up to 120 days for each act), among other exceptions. N.C. Gen. Stat. §5A-12.
- C. Civil contempt applies when an order remains in force, noncompliance is willful, the person has the ability to comply, and the purpose of the order may still be served by compliance therewith. Civil contempt no longer applies after compliance, even after the filing of a motion for contempt. Civil contempt proceedings are outlined in N.C. Gen. Stat. §5A-23. Punishment includes imprisonment for ninety days for the same act with periods of recommitment allowed up to a total of twelve months. Judges often order confinement with a purge condition and a review date, and any finding may be appealed. N.C. Gen. Stat. §5A-21-24.
- D. No person may be held in civil and criminal contempt for the same conduct. N.C. Gen. Stat. §5A-12(d) and 21.

- E. There is no criminal contempt if you call the contemnor as a witness. If you issue a show cause order, the burden of proof shifts to the contemnor, requiring him to testify first. If a judge signs the show cause order and the contemnor fails to appear, ask for an immediate order for arrest.

Tip: A motion to compel visitation, rather than a motion for contempt, is the proper method for the noncustodial parent to use where the custodial parent does not prevent visitation but takes no action to force it. *Hancock v. Hancock*, 122 N.C. App. 518 (1996).

Tip: Be mindful of court tardiness or absence, cell phones, client gestures or reactions, or disobedience to any court instruction or local rule.

VIII. Evidence Rules:

Relevant evidence may be admitted for any proper purpose, with or without limitation, including for substantive (proves a fact in issue), illustrative (illustrates the testimony of a witness), impeachment (calls into question the credibility of the witness), or corroborative (tends to support other evidence) purposes. It is axiomatic that admissible evidence only requires one proper purpose, meaning evidence may be admissible for one purpose while at the same time inadmissible for another purpose. Blakey, *et al*, at 49; N.C. R. Evid. 105 (limited admissibility); *State v. Williams*, 330 N.C. 711, 719 (1992) (“*There is no rule of evidence which provides that testimony admissible for one purpose and inadmissible for another purpose is thereby rendered inadmissible; quite the contrary is the case.*”) (emphasis added); (*State v. Early*, 194 N.C. App. 594 (2009) (holding out of court statement may be used both for corroboration of trial testimony and impeachment using inconsistencies therein) (emphasis added); *State v. Ligon*, 206 N.C. App. 458 (2010) (holding otherwise inadmissible hearsay evidence may be admitted to rebut evidence elicited by witness) (emphasis added). In our trial courts, the rules of evidence apply unless excepted by Rule 1101(b). N.C. R. Evid. 101. Below is an outline of useful rules and how to use them:

- A. If you wish to address certain evidence but plan on proffering the substantive proof at a later time, simply cite conditional relevance for the court and put it in. N.C. R. Evid. 104(b).
- B. Limit the evidence when appropriate to circumscribe your opposing’s closing argument. N.C. R. Evid. 105.
- C. If part of a writing or recorded statement is admitted into evidence, the rest of the document or recording may be admitted where justice requires. This rule applies whether the writing is introduced or read in court. The rule of completeness applies when a writing or recording contains a contradictory

component. The opposing party must disclose the entire content of the writing or recording when attempting to introduce a portion of same into evidence in order for counsel to determine if other parts should also be introduced. N.C. R. Evid. 106 (rule of completeness); N.C. R. Evid. 102(a) (rules of evidence insure fairness in administration to the end that truth may be ascertained).

- D. Use judicial notice any time a fact is generally known or capable of accurate and ready determination by unquestioned sources. N.C. R. Evid. 201.
- E. Remember privileges. N.C. R. Evid. 501.
- F. Every witness is presumed competent. You must disqualify them as incapable of being understood or understanding the duty to be truthful. N.C. R. Evid. 601(a)(b).
- G. Any witness must have personal knowledge of the facts about which he testifies. Do not let a witness, including a police officer or therapist, read from his notes. N.C. R. Evid. 602.
- H. Counsel may cross-examine a witness about specific instances probative of veracity for character impeachment, routinely including instances of theft, cheating, embezzlement, fraud, and evidence destruction. N.C. R. Evid. 608(b).
- I. Regarding prior convictions, counsel must, when having a good faith basis, inquire only about convictions in the last ten years punishable by sixty days or more, unless provided sufficient written notice in advance. N.C. R. Evid. 609.
- J. Ask the court to take a witness out of order. N.C. R. Evid. 611(a).
- K. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. N.C. R. Evid. 611(b). Credibility evidence may include prior drug use and mental instability because they may reflect upon mental capacity affecting memory, perception, narration, or capacity for truth telling. N.C. R. Evid. 600 (ability to observe or recall); N.C. R. Evid. 601 (competency); *State v. Williams*, 330 N.C. 711 (1992) (holding, among other things, North Carolina “has long allowed cross-examination regarding the witness’s past mental problems or defects,” finding the same a proper challenge to the credibility of the witness).
- L. A witness may have his memory refreshed while testifying, but the adverse party is entitled to review the writing or object used. N.C. R. Evid. 612(a). If the witness refreshed his memory with same before testifying, the adverse party is entitled to review the same which relate to the testimony. N.C. R.

Evid. 612(b). If the witness's memory is refreshed, the opposing counsel has the right to cross-examine the witness from the document or object or introduce in to evidence any portions which relate to the testimony of the witness. N.C. R. Evid. 612(c). This explains why the document must be available for inspection.

- M. If a prior statement is used for examination, it must be made available to opposing counsel. N.C. R. Evid. 613. This is a common issue for a recanting witness. The best method to address this issue is to ask the witness beforehand if he made any prior statements and, if so, if he read these statements before trial. A prior inconsistent statement can be used to impeach the witness; such statements are not substantive evidence and are admitted for impeachment purposes. See *Michigan v. Harvey*, 494 U.S. 344 (1990). Because the prior inconsistent statement is not substantive evidence, the opposing party may not call a recanting witness solely for the purpose of impeachment with the inconsistent statement.
- N. A lay witness's testimony must be based upon his own perception. Lay opinion is based on routine life experience permitting judgment in areas like speed, age, appearance, intoxication, identification, insanity, and shorthand statements of fact. Screen lay opinion testimony through expert evidence and Rule 403. N.C. R. Evid. 701.
- O. The basis of an expert opinion must be disclosed at or before trial upon request of opposing counsel. N.C. R. Evid. 705. The expert must be subject to cross-examination about the facts upon which the opinion is based, including witness statements, etc. N.C. R. Evid. 703.
- P. Any statement or admission by a party-opponent is admissible. N.C. R. Evid. 801(d).
- Q. A child's statement, even days later, which is startling and appears under stress of excitement, may be admissible as an excited utterance. N.C. R. Evid. 803(2). *State v. Young*, 233 N.C. App. 207 (2015) (statement of two and one-half year old child at daycare six days after mother was killed properly considered excited utterance absent prompting or questioning).
- R. If a child makes a statement for the purpose of medical diagnosis or treatment and not in anticipation of trial, this statement is admissible through a parent, social worker, nurse, physician, or health care provider. *State v. Hinnant*, 351 N.C. 277 (2000) (proponent must show the proper medical motivation of the declarant and statements are reasonably related to medical treatment or diagnosis); *State v. Smith*, 315 N.C. 76 (1985) (parent); *State v. Thornton*, 158 N.C. App. 645 (2003) (social worker).

- S. If a witness gives a statement and initials it, it is likely an adopted statement. If the witness cannot fully and accurately remember the incident, the statement may be read into evidence. N.C. R. Evid. 803(5). Remember the rule of completeness for other relevant portions of the adopted writing.
- T. A statement made by a witness, including a complaining witness or even a defendant, in a police report in a civil setting is admissible. Introduce the report for a proper purpose, redacting when necessary. N.C. R. Evid. 803(8)(C).
- U. Cross-examine an expert witness about statements contained in published or learned treatises which are established as a reliable authority by the witness, other expert testimony, or judicial notice. If admitted, the statements may be read into evidence but not received as an exhibit. N.C. R. Evid. 803(18).

IX. Conclusion:

The work of a domestic lawyer is difficult at best. Sometimes we change lives for the better. Sometimes we just try to help people at their worst. So I give you the following advice and encouragement. Aim high. Read the rules periodically. Manage relationships well. Develop a reputation for integrity and excellence. I depart with words from those far wiser than me.

“The wise store up knowledge....” Proverbs 11:17

“You have great power. Use it judiciously.” My dad.

“The day may come when we are unable to muster the courage to keep fighting...but it is not this day.” Attributed to: The Lord of the Rings: Return of the King (2003).