

## § 7.3

**Evidence and Procedure***Introducing the Facts at Trial*

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When an attorney discusses procedure in relation to litigation, it is almost certain that the attorney is talking about court rules. Courts rely on procedure. Evidence must be presented in a procedurally correct manner and must not violate court rules. Documents must be created in a specific manner, filed within a specific amount of time, and responded to appropriately. The procedures that litigants are expected to follow are found in the *Rules of Court*. Every court has local rules, as well as general rules, for that court's jurisdiction. Local and general rules are usually similar, varying only in slight, but often highly pertinent, ways. There are many kinds of rules.

**local rules**

All courts, from the highest to the lowest, have procedures that must be followed. The term "local" does not mean "lower" or "lesser." It means rules for that specific court (in addition to any other rules that may apply). For example, if a civil matter is in a state court, that state's *Rules of Civil Procedures* apply. Those rules dictate, among other things, response times for pleadings and motions, general discovery rules, and requirements for every stage of the trial.

Local rules for that specific court may apply as well. Those local rules are much shorter than the state rules of procedure and may deal with items more specific to that court, such as a requirement that filings must be made prior to 4:30 pm, whether that court accepts electronic filings, and so forth.

As a general rule, local courts are allowed to broaden rights of the parties but may not further restrict the rights of parties. For example, if the state *Rules of Civil Procedure* allow a maximum of forty interrogatories to be sent to opposing parties, the local court rules may expand that to more (such as fifty), but they may not lessen the amount. If the state *Rules of Civil Procedure* allow twenty days to respond to a summons, the local rules may expand the amount of time, but may not lessen it.

In addition to the law library, *Westlaw*, and *Lexis*, all court rules can be found online with a simple *Google* search: *state (court rules) your state*. Keep in mind that court rules are the foundation of evidentiary procedure. For evidence to be admitted, the rules must be followed.

**state rules**

Statewide court rules supersede local court rules when there is a conflict. These rules are the basic procedural guidelines for trials. There are separate rules for civil trials and criminal trials. Typically, those rules are called the *Rules of Civil Procedure*, and the *Rules of Criminal Procedure*.

Most states publish both civil and criminal rules in their own publications. However, a few states publish the *civil rules* in their own publications, but the *criminal rules* are statutory, meaning that they are part of state statutes. For a paralegal, the practical result is that, instead of citing a court rule (i.e. Fla. R. Crim. P. 3.850), the citation would be to a statute (N.R.S. §169.015). (As we will see later, a citation is a legal address.)

Finally, some states publish the court rules within the statutes, but still assign Rule numbers instead of statutory section numbers. For instance, Title 29 of the Colorado Revised Statutes contain the *Colorado Rules of Criminal Procedure*. The citation, however, is not to the statutes, but instead has been assigned a rule number: Crim. P. 60.

### **federal rules**

The *Federal Rules of Civil Procedure* (Fed. R. Civ. P. or F.R.C.P.) and the *Federal Rules of Criminal Procedure* (Fed. R. Crim. P.) are the rules for trials in federal trial courts. Also, every federal court has its own local rules.

### **federal appellate rules**

The *Federal Rules of Appellate Procedure* (Fed. R. App. P.) provides the requirements for appeals in the federal court system.

### **subject matter rules**

Certain courts of "limited jurisdiction," such as bankruptcy courts and courts of military justice, have rules specific to the procedures in those courts. Many jurisdictions have subject matter rules, such as *rules of ethics* and *arbitration rules*.

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## **Admissibility**

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To be considered by a jury or a judge at trial, evidence must be admissible. In other words:

- *It must be relevant*
- *It must not be hearsay*
- *It must not be a privileged communication*

Admissibility is determined by the court when it applies relevant Court Rules. These are discussed more in depth later, but for now you should be concerned with whether evidence is:

- *direct or circumstantial?*
  - *oral or physical?*
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