

2022 TENNESSEE JUDICIAL ACADEMY

Evidentiary Framework, Evidentiary Foundations Role of the Judge in the Evidentiary Process Making the Record, Managing Exhibits

Penny J. White, pwhite4@utk.edu
University of Tennessee College of Law
865-974-6830

Objectives:

Evidence Framework, Evidentiary Foundations

After this session, you will:

1. Understand the basic evidentiary framework;
2. Recognize the principles and philosophy that underlie common-law and codified evidence rules;
3. Master the evidentiary foundations for verbal and tangible evidence; and
4. Appreciate the organizational structure of the Tennessee Rules of Evidence and other statutory evidence rules.

Role of the Judge in the Evidentiary Process Making the Record, Managing Exhibits

After this session, you will be able to:

1. Understand the judge's role in the evidentiary process;
2. Apply a workable framework for all evidentiary issues;
3. Fairly and efficiently manage the presentation of evidence;
4. Rule completely and correctly on evidentiary objections; and
5. Assume a complete record of the proceedings.

Relevant Rules:

Rules 101-106; 201-202; 401-412; 611; 901-902

EVIDENCE FOUNDATIONS AND THE TENNESSEE RULES OF EVIDENCE

I. EVIDENCE FRAMEWORK

A. Definition

The starting point for developing a workable evidence framework is a general definition of evidence.

**EVIDENCE IS ANY VERBAL OR TANGIBLE MATTER
(OR EVIDENTIARY PRINCIPLE)
THAT CAN BE USED
TO SUPPORT THE EXISTENCE OR NONEXISTENCE
OF A FACTUAL PROPOSITION.**

For the trial judge's purposes, that definition must be expanded to include the concepts of competence and admissibility. Therefore:

**EVIDENCE IS ANY VERBAL OR TANGIBLE MATTER
THAT CAN BE USED
TO SUPPORT THE EXISTENCE OR NONEXISTENCE
OF A FACTUAL PROPOSITION, AND
DEEMED COMPETENT AND ADMISSIBLE BY THE RULES OF EVIDENCE.**

A crucial inquiry on evidentiary matters is almost always the purported use of the evidence. Whether evidence is offered as substantive evidence, i.e., to establish an element of or defense in the case, or as impeachment evidence, i.e., to question credibility or reliability, may determine the standard for admissibility and the judge's obligations thereafter.

1. Verbal or Tangible Matter

The reference to “verbal matter” in the definition of evidence refers to witness statements that generally come from testimony at the trial or hearing, but that can come from depositions and affidavits. The phrase “tangible matter” refers to all types of real evidence (tangible items connected to the case) as well as physical and documentary evidence. Documentary evidence includes not only writings, but images from all types of media (photographs, videos, computer printouts), as well as electronic evidence.

B. Purposes Underlying Evidence Rules: Guiding Principles

Following the obvious recognition that evidentiary principles impact every legal proceeding, the next question should likely be: why? Why did evidentiary principles develop at common law and why have most jurisdictions codified those common-law evidentiary principles into rules of evidence? One answer is that evidence rules control the information that is given to a jury to assure that the jury reaches a fair decision based on appropriate information. But evidence rules are used routinely in non-jury trials, thereby producing an additional “why” question. Why should judges in non-jury trial follow the rules of evidence?

A study of evidentiary principles reveals that most are driven by two overriding concerns: fairness and efficiency. Evidence rules serve to provide a fair balance in an adversary system. In an adversarial, as opposed to an inquisitorial, system, the parties investigate the facts of their

cases and determine which information to present. In addition to determining his or her own presentation of evidence, a party can challenge the opposition's evidence by objecting. Thus, it is crucial that neutral arbiters regulate the admission and exclusion of evidence. By applying evidence principles uniformly, these neutral arbiters – like yourself – help to assure the continued viability of the adversary system.

C. Evidentiary Foundations – Authentication and Admissibility

Evidentiary foundations must be established before any type of evidence can be admitted. All evidence must be both authentic and admissible. These predicates to admission apply regardless of whether the evidence is verbal or tangible, but for some types of evidence, the foundation requirement for authentication is largely subsumed into the presentation of the evidence itself. For example, the authentication requirement for verbal evidence is generally a requirement that the testifying witness have personal knowledge of the matter in question. Rather than asking the witness specifically whether he or she has personal knowledge of the matter about which he or she is testifying, generally the presence of personal knowledge will be implicit in the witness' testimony which discloses that the witness experienced the occurrence. But for all types of evidence, the evidentiary foundation requires authentication before other issues of admissibility are considered.

1. Verbal Evidence

a. Authentication of Verbal Evidence

At common law, a witness must have had the opportunity to observe the fact and must have actually observed the fact before testifying about the fact. This foundational requirement has come to be known as the personal knowledge requirement. It is based on a desire to have “the most reliable sources of information.” Advisory Committee Comments, Fed. R. Evid. 602. The common-law rule has been incorporated into most codified rules of evidence as illustrated by Tennessee Rule of Evidence 602. The rule provides that “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.” Tenn. R. Evid. 602. The reference to Rule 703 distinguishes between lay witnesses, who must testify from personal knowledge, and expert witnesses whose testimony may be based on facts provided by others, so long as the facts are of a type reasonably relied upon by experts in the field. A good case illustrating the personal knowledge requirement for lay witnesses is *State v. Mayrand*, 2003 WL 402271 (Tenn. Crim. App., Feb. 19, 2003).

b. Admissibility of Verbal Evidence

In addition to the basic foundational requirement, for verbal evidence, the court must consider (1) relevance rules, (2) the hearsay rules, (3) the impeachment rules; (4) the opinion rules; and must, when appropriate, balance the probativeness of the verbal evidence against the dangers caused by its admission.

2. Tangible Evidence

a. Authentication of Tangible Evidence

Scholars at common law recognized that authentication and identification of tangible items of evidence represented a “special aspect of relevancy.” MCCORMICK §§179, 185; Morgan, BASIC PROBLEMS OF EVIDENCE 378 (1962). Wigmore describes the need for authentication as “an inherent logical necessity.” 7 WIGMORE §2129. The authenticity requirement falls into the category of conditional relevancy – before the item of evidence becomes relevant and admissible, it must be established that the item is what the proponent claims.

The basic codified standard for the authentication of tangible items of evidence is “evidence sufficient to support a finding that the item is what the proponent claims it is.” Tenn. R. Evid. 901. It is not necessary that the court find that the evidence is what the proponent claims, only that there is sufficient evidence from which the jury might ultimately do so. This is a low threshold standard. The rules set forth the general standard, followed by illustrations and a list of several types of self-authenticated documents.

The proponent of any tangible or documentary evidence has an obligation to authenticate the evidence before requesting to admit or publish it to the fact finder; if the opponent objects to its admissibility, based on any of a collection of rules, then the proponent must address that admissibility objection as well. Thus, all evidence must be both authenticated and admissible. If both authentication and admissibility are established, then the court must determine how the evidence will best be presented to the trier of fact, bearing in mind that the court is obligated to exercise control over the presentation of evidence to accomplish an effective, fair, and efficient proceeding. Under Tennessee Rules 611, the court’s duty is to “exercise appropriate control over the presentation of evidence and conduct of the trial when necessary to avoid abuse by counsel.”

Sometimes tangible evidence consists of fungible items that are not identifiable by sight. For tangible evidence that is not unique or distinctive, counsel must authenticate the item by establishing a chain of custody. A chain of custody is, in essence, a consistent trail showing the path of the item from the time it was acquired until the moment it is presented into evidence. In establishing a chain of custody, each link in the chain should be sufficiently established. However, it is not required that the identity of tangible evidence be proven beyond all possibility of doubt. As our Supreme Court has noted: “when the facts and circumstances that surround tangible evidence reasonably establish the identity and integrity of the evidence, the trial court should admit the item into evidence [but] the evidence should not be admitted . . . unless both identity and integrity can be demonstrated by other appropriate means.” *State v. Cannon*, 254 S.W.3d 287, 296-97 (Tenn. 2008).

b. Admissibility of Tangible Evidence

For tangible evidence, in addition to authentication, the court must consider (1) relevance rules, (2) the hearsay rules, (3) the original writing rules, and (4) when appropriate, must balance the probative value of the tangible evidence against the dangers that its introduction may cause. The court in a jury trial must also consider what method of presenting or publishing the evidence

to a jury is most conducive to a fair and efficient fact-finding process.

3. Electronic Evidence

To admit electronic evidence, the same rules apply, but the content of electronic evidence may implicate other rules such as the opinion rules and the personal knowledge rule. Most scholars and courts agree that the issues related to the authentication and admissibility of electronic evidence simply depend on an application of the existing evidence rules. Although technical challenges may arise, the rules are flexible enough in their approach to address this new kind of evidence.

4. Animations and Simulations

Computer-generated animations and simulations are becoming a more common form of evidence. An animation is computer-generated evidence that is used to illustrate or explain a witness' testimony. By contrast, a simulation is produced when information and data is entered into a computer and analyzed for purposes of allowing a conclusion to be drawn. Because the analytical process must be scientifically or technologically valid, the foundation for a simulation is more rigorous than the foundation for an animation. The Tennessee Supreme Court discusses animations and simulations in *State v. Farner*, 66 S.W.3d 188 (Tenn. 2001).

5. Checklist for Authenticating and Admitting Evidence

Below is a five-point generic checklist for the authentication and admission of tangible, documentary, or electronic evidence:

1. Is the evidence relevant?
Does it make a fact that is of consequence to the action more or less probably than it would be without the evidence?
2. Has the evidence been authenticated?
Has the proponent produced "evidence sufficient to support a finding that the evidence is what the proponent claims?" If verbal, has the proponent established that the witness has personal knowledge of the occurrence about which the witness is testifying?
3. Is the evidence hearsay?
Is the evidence offered to prove the truth of what it asserts?
If so, does it satisfy a hearsay exception? If the exception requires unavailability, has unavailability been established? Are confrontation rights implicated?
4. Is the evidence a writing, recording, or photograph?
Is it offered to prove the content?
If so, is it either the original or a duplicate (counterpart produced by the same impression as the original, or from same matrix, etc.) unless genuine questions of authenticity or fairness exist?

5. Is the probative value of the evidence substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence?

II. ORGANIZATIONAL STRUCTURE OF CODIFIED RULES OF EVIDENCE

Judges can simplify the application of codified rules of evidence by having a familiarity with how most codified rules of evidence incorporate the definition of evidence in their organizational structure. The Tennessee Rules of Evidence, as illustrated below, are a good example:

Evidence is a verbal or tangible matter (or evidentiary principle)

1. Verbal - Witnesses - Tenn. R. Evid. 600s, 700s
2. Tangible items, Documents, Media, Electronic Evidence- Tenn. R. Evid. 900s, 1000s
3. Evidentiary principles - Tenn. R. Evid. 200s, 300s

B. Evidence can be used to support the existence or nonexistence of fact

1. Legal and Logical Relevance - Tenn. R. Evid. 104, 400s

C. Evidence is deemed competent and admissible by the rules

1. Legal Relevance - Tenn. R. Evid. 400s
2. Unprivileged - Tenn. R. Evid. 500s
3. Competent and Authentic - Tenn. R. Evid. 600s, 700s, 900s, 1000s
4. Admissible Hearsay - Tenn. R. Evid. 800s

III. OTHER SOURCES OF RULES GOVERNING ADMISSIBILITY OF EVIDENCE

Some significant evidence rules in Tennessee are statutory, but have not been codified within the Tennessee Rules of Evidence. Some of the most significant are found in Title 24, including: (1) Privileges, including the marital communications privilege; the Dead Man's Statute; the attorney-client privilege; and the news media privilege, all found in Chapter 1 of Title 24;¹ and (2) Presumptions, including those applicable to sworn accounts, health care bills, repair bills, and bailee negligence, all found in Chapter 5 of Title 24. Chapter 7 of Title 24 contains a host of other evidence rules, including those pertaining to debt discharge, paternity tests, medical opinions, telephone company records, DNA analysis, child forensic evidence; child support payment records, and medical records. Statutes pertaining to lost evidence are found in Chapter 8 of Title 24.

¹ A list of all the statutory privileges in effect in Tennessee can be found following Rule 501 of the Tennessee Rules of Evidence.

While many of the statutory evidence rules are found in Title 24, unfortunately, others are strewn throughout the Tennessee Code Annotated. The **Uniform Electronic Transactions Act**, which addresses the use of electronic records and signatures, is found at Tenn. Code Ann. Section 47-10-101 et seq. The **Post-Conviction DNA Analysis Act of 2001** is found in Tenn. Code Ann. Section 40-30-301 et seq. A special hearsay exception, applicable only to banks, is found in Tenn. Code Ann. Section 47-22-302. The **Parol Evidence Rule** is found at Tenn. Code Ann. Section 47-2-202. The **Statute of Frauds** is found at Tenn. Code Ann. Section 29-2-101. The **Dead Man's Statute** is found at Tenn. Code Ann. 24-1-203. Presumptions pertaining to driving and vehicles are found in Title 55, Chapters 10 and 12.

ROLE OF THE JUDGE IN THE EVIDENTIARY PROCESS MAKING THE RECORD, MANAGING EXHIBITS

IV. TOOLS FOR THE TRIAL JUDGE

A. CONTROL

Trial judges are required to exercise control for purposes of ascertaining truth, acting efficiently, and protecting witnesses. This is an inherent judicial function that has been codified in most rules of evidence. Rule 611 of the Tennessee Rules of Evidence is entitled “mode and order of interrogation and presentation,” but it is in effect the trial judge’s control rule. The rule provides that judges should “exercise appropriate control over the presentation of evidence and conduct of the trial when necessary to avoid abuse by counsel.” This places the obligation to assert control for the purpose of assuring fairness squarely on the trial judge. The trial judge should use the rule to establish and maintain order and decorum in the courtroom.

B. PURPOSE AND CONSTRUCTION

Trial judges should rule on evidentiary issues with an eye toward the purpose of the rules and consistent with that purpose.

Tennessee Rules of Evidence 102 provides that the rules shall be construed to secure the “just, speedy, and inexpensive determination of the proceedings.” This differs from the Federal Rule of Evidence counterpart that provides that the rules are to be construed “so as to administer every proceeding fairly . . . to the end that the truth may be ascertained and proceedings justly determined.” Nonetheless, Rule 102 provides a basis for the “close-call” ruling. Whenever an evidentiary matter presents a difficult issue that is not readily capable of resolution under the other rules of evidence, trial judges should rule in accordance with the basic purposes and construction outlined in the rule and in a way in which the proceedings will be justly and efficiently determined.

C. PRELIMINARY QUESTIONS

As gatekeepers, trial judges must determine preliminary questions involving (a)

qualifications of a person to be a witness; (b) existence of privilege; and (c) admissibility of evidence. The preliminary determination rule as codified is found in Rule 104.

Tennessee Rule of Evidence 104 requires the trial judge to make preliminary determinations but does not bind the judge to the rules of evidence (except those regarding privilege) in making the determinations. This is a gift to the trial judge. It literally means that the trial judge can utilize otherwise inadmissible evidence to rule on preliminary questions concerning admissibility. In other words, certain foundational elements for the determination of preliminary questions may be supplied by hearsay. For example, in determining whether evidence should be admitted under an exception to the hearsay rule, the judge may ask questions that call for hearsay. The premise of the rule is that the judge is entitled to have all the necessary information to make the admissibility determination and that the judge will not be unduly swayed by in admissible evidence considered on the issue of a preliminary question.

Rule 104(b) sets out the procedure for admitting evidence that is conditionally relevant. The judge admits the evidence once the minimal amount of authentication is provided. This judicial task does not include weighing the evidence or assessing credibility. Rather the judge simply examines all the evidence and decides whether the jury could reasonably find the conditional fact by a preponderance of the evidence. Once this determination is made, the jury hears the evidence. If the condition for admission is not satisfied, the judge may instruct the jury to disregard the evidence, may strike the evidence, or may grant a mistrial, if the situation is egregious. This is not a weighing of the evidence but a determination by the judge that the additional evidence, upon which the conditionally admitted evidence depended for its relevance, was not admitted.

Evidence rules generally require that the hearing on admissibility be conducted out of the presence of the jury if the hearing concerns the admissibility of a confession, if a defendant in a criminal case is a witness at the hearing and requests, or if justice requires. Tenn. R. Evid. 104(c). If a defendant in a criminal case does testify at a preliminary hearing, the defendant does not become subject to cross-examination on other issues. Tenn. R. Evid. (d).

D. LIMITED ADMISSIBILITY

If admitted evidence has limited admissibility (i.e. to one party or for one purpose), the judge must restrict the evidence to its proper scope and instruct the jury accordingly. Tenn. R. Evid. 105.

E. CHARACTERIZING THE EVIDENCE

Trial judges may supplement counsel's objections, offers of proof, and arguments to explain their rulings on evidentiary objections. This is an important function of the trial judge because it aids the appellate court in performing its review. An example of this function is outlined in Tennessee Rule of Evidence 103(c), which provides that "[t]he court may make any statement about the character or form of the evidence, the objection made, and the ruling."

Depending on the context, it may be important for the trial judge to make observations about the evidence or the courtroom atmosphere that would not otherwise be ascertainable from a written record.

F. OBJECTIONS

From the lawyer's point of view, an objection must be timely for it to be effective. From the judge's point of view, an objection must be specific to enable the judge to rule correctly. Most judges find it beneficial to require lawyers to object in a formal, standardized manner, which necessitates their interrupting the witness with the word "objection" and then succinctly stating the legal reason for the objection to the court, without addressing comments to opposing counsel or the factfinder. By requiring counsel to object in this manner, the trial judge can assure that he or she rules on the objection raised and that the appellate court has a clear picture of the objection, the legal basis for the objection, and the trial judge's ruling.

This objection procedure is the equivalent of the procedure outlined in codified rules of evidence. Rule 103(a) of the Tennessee Rules of Evidence requires counsel, in order to preserve an evidentiary issue for appellate review, to make a timely objection or motion to strike and to state the specific grounds for the objection unless the grounds are apparent from the record. Tenn. R. Evid. 103(a). A motion to strike is used when the objection follows the objectionable evidence, such as when counsel is objecting to an answer rather than a question.

Once an objection is made, the judge should rule on the objection. The judge's ruling should be limited to the grounds actually stated by counsel. The review of the judge's ruling will be based upon the objections and rulings made, not those that could have been made or that are, in hindsight, raised on appeal. The judge's ruling should be clear and concise in order to facilitate appellate review.

G. MOTIONS IN LIMINE

Counsel may seek an evidentiary ruling in advance of trial. These pretrial motions, referred to as motions in limine, help counsel to prepare for trial, but may also facilitate settlements and, in the event of trial, may promote a more efficient presentation of the evidence. When counsel seeks an evidentiary ruling in advance of trial, the judge has the luxury of analyzing the issue in greater detail than he or she can often do during trial. But, on the other hand, considering the motion outside the context of the entire case may complicate the judge's ruling.

While the rules of evidence provide that lawyers may seek rulings in limine in advance of trial, it is generally left to the judge's discretion whether to hear and decide those motions pretrial. Rule 103(b) anticipate that motions in limine may be filed and provides that "[o]nce the court rules definitively on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal." The rule removes the need for counsel to make a simultaneous objection at trial if the judge has ruled

on the evidentiary matter definitively in advance. For example, if counsel has challenged the introduction of a report that the judge has admitted as a record of a regularly conducted activity, counsel does not need to object when opposing counsel moves the report in evidence at trial, so long as the court's prior ruling is definitive. The obligation is on counsel to clarify whether the ruling is definitive.

Even when a judge rules definitively in advance of trial, nothing in Rule 103 (or the common law) prohibits the judge from reconsidering the ruling when the evidence is offered. If the judge reconsiders and changes the ruling, or if opposing counsel violates the ruling, most likely, an objection must be made notwithstanding the prior proceeding. *See* Advisory Committee comments, 2000 Amendment, Fed. R. Evid. 103.

H. OFFERS OF PROOF

The phrase "offer of proof" refers to the obligation of counsel to present or describe evidence that has been excluded because of an evidentiary objection or other ruling of the court. The purpose of the offer of proof is to allow the reviewing tribunal to evaluate the lower court's ruling and assess its harmfulness to the overall fairness of the proceeding. An offer of proof enables an appellate court or reviewing tribunal to make a more informed decision about the character and importance of the excluded evidence.

An offer of proof may be in several forms, but Tennessee law requires the court to allow the making of an offer in question and answer form. Tenn. R. Evid. 103(b). This means that counsel must be permitted to question the witness and receive the witness' answers on the record but outside the presence of the jury. The question and answer offer of proof facilitates appellate review because it gives the appellate court the complete context for the judge's ruling. If counsel does not insist upon a question and answer offer of proof, other methods may be used. In the simplest situation, counsel's question and the objection may be all that is necessary, but even in this simple situation, counsel must be given the opportunity, out of the presence of the jury when necessary, to explain the purpose of the evidence and to respond to the objection. Counsel may do this by summarizing how the witness would answer, if allowed to answer, and why the evidence is not objectionable. This process is often referred to as providing a narrative or making a proffer.

I. JUDICIAL NOTICE

Trial judges may, upon request or sua sponte, take judicial notice of adjudicative facts which are not subject to reasonable dispute because: (a) they concern a fact that is generally known within the jurisdiction or (b) they concern a fact that is capable of accurate and ready determination by a source whose accuracy is not questionable. Rule 201(d) mandates that the judge take judicial notice if requested by a party who supplies the necessary information.

Judges in Tennessee must take judicial notice of (1) the common law, (2) the constitutions and statutes of the United States and of every state, territory, and other jurisdiction of the United States, (3) all rules adopted by the United States Supreme Court or by the

Tennessee Supreme Court, and (4) any rule or regulation which a statute of the United States or Tennessee mandates judicial notice. Tenn. R. Evid. 202(a). Rule 202(b) provides for optional judicial notice of other laws, upon reasonable notice to adverse parties.

J. RULE OF COMPLETENESS

Sometimes a party will offer evidence of only a portion of a conversation, writing or recorded statement. This partial disclosure may be appropriate. Other parts of the writing may be irrelevant and not useful to the trier of fact. But at other times, such a partial disclosure works an unfairness on the opposite party because it fails to put the evidence in the correct context and can therefore lead a factfinder astray. While the opposing party might, in some circumstances, be able to introduce additional portions later in the trial, sometimes the delay in that introduction will perpetuate the confusion or misconception on the part of the factfinder. As a result, some rules of evidence have adopted a “rule of completeness” to allow a party to introduce the other relevant parts of the document simultaneously. An example is Tennessee Rule of Evidence 106, which provides: “[i]f a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time. When necessary in the interest of fairness, the remainder is admissible contemporaneously with that offered.”

K. OPENING THE DOOR vs. CURATIVE ADMISSIBILITY

The Tennessee Supreme Court has cautioned judges about conflating the concepts of curative admissibility and opening the door. Though similar, the two concepts are different. More importantly, while Tennessee cases have long recognized the doctrine of opening the door, the Tennessee Supreme Court has recently held, in *State v. Vance*, 596 S.W.3d 229 (Tenn. 2020), that the doctrine of curative admissibility has not been adopted in Tennessee. *See also State v. Gomez*, 367 S.W.3d 237, 248 (Tenn. 2012) (noting that court has not adopted the doctrine of curative admissibility).

The most common way a party opens the door to the admissibility of otherwise inadmissible evidence is by raising the subject matter of the evidence at trial. When this happens, the party “expand[s] the realm of relevance.” *Id.* at 250 (quoting 21 Charles Alan Wright et al., Federal Practice and Procedure Evidence § 5039.1). In addition to this common means of opening the door, the Rules of Evidence also include particular situations in which otherwise inadmissible evidence becomes admissible through the opposing party’s introduction of evidence or other conduct. *See* Tenn. R. Evid. 404(a)(1), (2); 405(a); 608(a).

In contrast to opening the door, the doctrine of curative admissibility permits the admission of inadmissible evidence by a party in response to the opposing party’s admission of inadmissible evidence. In other words, before the doctrine applies, a party must have elicited inadmissible evidence.

To apply the Tennessee law properly, the trial court should first ascertain that counsel is

relying on the opening the door principle, not the doctrine of curative admissibility. If the opening the door principle does apply, “the admissible evidence offered as the ‘cure’ must be both relevant and proportional.” *State v. Vance*, 596 S.W.3d at 249 (citing 21 Federal Practice and Procedure Evidence § 5039.1).

L. MANAGING EXHIBITS

A judge should establish and follow a uniform protocol for marking and managing exhibits in the courtroom. All exhibits should be identified by a letter or number and should be referred to by that letter or number as “Exhibit __ for identification” until the court admits the exhibit. The “for identification” designation is dropped after the exhibit is admitted.

Several alternatives exist to help trial judges make the admission process more efficient. For example, a judge may schedule a pretrial conference at which counsel is required to exchange and number exhibits. A pretrial conference is particularly helpful when either side intends to introduce depositions, animations, or simulations at trial. Judges may also enter pretrial orders that require that objections as to authenticity be raised prior to trial.

When either side intends to introduce animated or simulated evidence, the judge should address the evidentiary issues in advance of trial. Similarly, if counsel intends to introduce either oral or videotaped depositions, local rules of court or pretrial orders should require counsel to designate portions of the depositions in advance and should set a deadline for objecting to the introduction. Local rules should also require that counsel produced sanitized copies for introduction.

V. IMPORTANCE AND EFFECT OF RULINGS ON EVIDENCE

A judge’s evidentiary rulings will not result in a reversal unless counsel has perfected the objection and the judge’s ruling affects a substantial right of the party. A trial judge’s evidentiary rulings are entitled to deference, because of the trial judge’s focal point. Consequently, the standard of review on appeal for evidentiary rulings is an abuse of discretion. An abuse of discretion occurs “when a court strays beyond the applicable legal standards or when it fails to properly consider the factors customarily used to guide the particular discretionary decision.” *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn.2007). A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence. *State v. Ostein*, 293 S.W.3d 519, 526 (Tenn.2009). Moreover, the judge’s factual findings on the evidentiary issue are entitled to a presumption of correctness. For a detailed discussion of the harmless error standard and its application in Tennessee, see *State v. Rodriguez*, 254 S.W.3d 361 (Tenn. 2008).