

# MOTIONS IN LIMINE

# WHAT ARE THEY

- Asking the court to rule prior to trial on the admissibility of evidence

# PURPOSE

- 1) With some evidence the jury will be tainted if they hear the question even if the judge sustains an objection before the question is answered “That was the women with whom you were having an affair?” asked of a married man.
- 2) Helps you plan better for trial

# TIMING

- In Texas, has to be raised before voir dire

# PROCEDURE

- Has to be in writing. Usually no response is necessary.

# EFFECT

- In Texas, it is not a ruling on the evidence, but only a tentative ruling. Usually requires that a party approach the bench before asking a question on the topic or mentioning the topic in the opening or closing.
- In federal court, it can be the same as in Texas or a definitive ruling on the evidence.

# DENIAL

- In both federal and Texas, means that a party can ask the question or mention the topic without first approaching the bench.
- In Texas, the denial does not preserve error for appeal. Therefore, the party moving for the order in limine must object at trial to preserve error.
- In federal court, the denial will preserve error if definitive. FRE 103(a)(2) (“Once the court makes a definitive ruling 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.”)
- In federal court, must also call the witness if the denied motion in limine was directed to matters to be raised on cross examination.

# GRANTED

- In Texas, when a party who is subject to the order in limine wants to present the evidence, 1) they must approach the bench and ask for a ruling; 2) formally offer the evidence; 3) obtain a ruling on the evidence; and 4) if the objection is sustained, make an offer of proof.
- Done outside hearing of the jury.

# GRANTED

- In federal court, the party being limited may renew the offer at trial and ask the judge to reconsider. If the ruling on the motion in limine was definitive, this is not necessary to preserve error for appeal.
- Court may also reserve ruling. Has the same effect as granting does in Texas.
- Done outside hearing of the jury.

# ARGUMENT

1. The judge exactly what evidence you anticipate the other side offering and that you want excluded.
2. Fit the evidence into the context of the issues in the case. Most judges will not be able to judge the relevancy of evidence, for example, without knowing the context in which the evidence is likely to be offered.
3. Explain the law governing its exclusion.