


Essential Evidence Issues

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Conducting Hearings: Essentials for Clerks
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What rules apply?

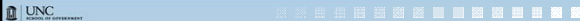
- **The North Carolina Rules of Evidence apply in hearings before the clerk:**

Rule 1101. Applicability of rules.
(a) Proceedings generally. – Except as otherwise provided...by statute, these rules apply to all actions and proceedings in the courts of this State.



What do the Rules do?

Govern what kind of evidence is admissible to prove the issues in the case.



Why?

- **Fairness, efficiency, finding the truth.**

Rule 102. Purpose and construction.

(a) In general. – These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.



• Key Evidence Rules

- Relevance
- Personal Knowledge
- Hearsay



Rule of Objections

- **Parties (or their attorneys) have to object to exclusion or admission of evidence in order to raise the issue on appeal:**

Rule 103.

(a) ...Error may not be predicated upon a ruling which admits or excludes evidence unless a...timely objection or motion to strike appears of record. ...



Question

- Hearing before the clerk to contest the fitness of Jones to be executor of an estate.
- Smith presents a document into evidence, and the clerk admits it. Jones' attorney does not object.
- The clerk ultimately finds that Jones should be removed as executor.
- Jones appeals the clerk's judgment. His attorney argues the document was inadmissible.



On appeal, will the Superior Court review the admissibility of the document?

1. No
2. Yes
3. Only if the court decides to review the issue on its own.



Estates and Trusts Matters

- In estates and trusts matters before the clerk, parties **do not** have to object to evidence issues to preserve them for appeal:

N.C.G.S. § 1-301.3(d)(3)

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion.



Incompetency Determinations and Special Proceedings

- Review by the Superior Court is *de novo*.
- Parties get to “start over”, so the Superior Court does not review clerk’s admission or exclusion of evidence.



But...

- Rules of Evidence still apply
 - Fairness important, even if *de novo* review available or parties get to object later.
- Findings of Fact must still be based on good evidence.

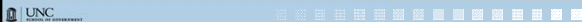


Essential Questions

- Is this information relevant to the outcome?
- Does the witness have personal knowledge of this?
- Is this hearsay? Can I consider it anyway?



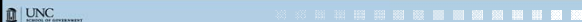
- Key Evidence Rules
 - Relevance
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RELEVANCE

- **Relevant evidence is evidence that aids the finder of fact in making a determination about the matters in issue.**


Rule 401.
"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.



RELEVANCE

- **If the evidence is not relevant, it is not admissible.**

Rule 402.
All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of North Carolina, by Act of Congress, by Act of the General Assembly or by these rules. Evidence which is not relevant is not admissible.



- Key Evidence Rules
 - Relevance
 - Personal Knowledge
 - Hearsay

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PERSONAL KNOWLEDGE

- A witness’s testimony must be based on that witness’s personal knowledge.

Rule 602. Lack of personal knowledge.
 A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself.

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PERSONAL KNOWLEDGE

Example:

Testimony in guardianship hearing:
 “Grandma has not paid her insurance premiums for the last four months.”

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PERSONAL KNOWLEDGE

If you're not sure, what can you do?

- **Rule 614.**

...

(b) Interrogation by court. – The court may interrogate witnesses, whether called by itself or by a party.



- **Key Evidence Rules**

- Relevance

- Personal Knowledge

- Hearsay



HEARSAY

- **Rule 802.**

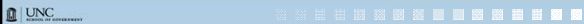
Hearsay is not admissible except as provided by statute or by these Rules.”



Why?

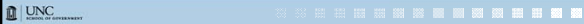
RELIABILITY

ABILITY TO CROSS-EXAMINE



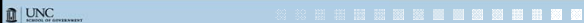
2 Questions:

- Is it hearsay?
- Is there an exception to the hearsay rule?



What is hearsay?

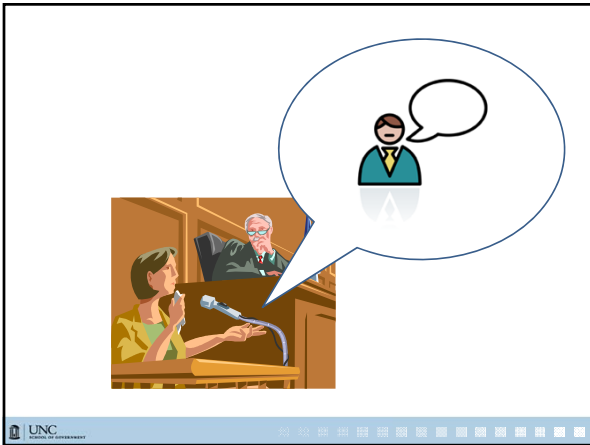
- **Rule 801(c).**
Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.



What is hearsay?

- An assertive statement
 - Oral or written
- Made outside of the present hearing
- Offered into evidence to prove that the statement is true.
 - If offered for another reason, it is *not* hearsay in the first place.





Example 1



- At issue is Lee’s fitness to administer his brother’s estate.
- Lee’s nephew alleges that Lee is untrustworthy when it comes to money.
- The nephew testifies, “Lee’s ex-wife told me he wasted all of their savings on gambling.”



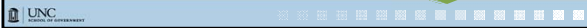
Example 2

- At issue is whether a nursing home attendant, Lisa, stole a ring from a resident.
- The daughter testifies that she asked her Mom who took her ring. She says, "Mom pointed right at Lisa."
- Is Mom's pointing hearsay?



Example 3

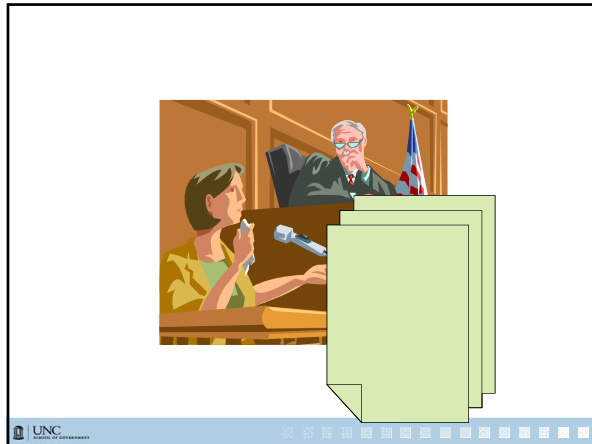
- Laura assaulted her boyfriend. At issue in the hearing is Laura's state of mind at the time of the assault.
- Alice overheard their fight, and testifies that she heard Laura say, "You're sleeping with that tramp!"
- Hearsay?



Example 4

- P has sued D, owner of the only red Maserati in town, for damage to her car that happened while she was parked in a parking lot.
- P attempts to introduce a piece of paper into evidence.
- The paper is a note that was left on her windshield. The note states, "I saw a red sports car hit your car and drive away. Thought you'd like to know."
- Hearsay?





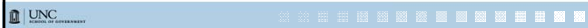
Almost 30 exceptions to hearsay rule.

But don't panic!

- ### 3 categories
- Statements by "party-opponent"
 - Statements that are more reliable by their nature
 - Statements that need to come in because they are important and the declarant can't testify
(Declarant deceased, mentally ill or infirm, refuses to testify, exempt from testifying because of a privilege)

Statements by Party-Opponent

- A statement by the other party (opponent) is admissible if it is offered into evidence against him or her.



Reliable Statements

- Present Sense Impression
 - "That car *just* ran a red light."
- Excited Utterance
 - "You hit him!"
- Mental, Emotional, or Physical Condition of the Speaker
- Statements for Purpose of Medical Diagnosis or Treatment



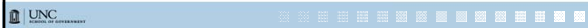
Reliable Statements

- Certain type of documents:
 - Business Records
 - Public Records and Reports, Vital Statistics
 - Records of Religious Organizations
 - Marriage, Baptismal Certificates, Family Records
 - Property Records
 - Treatises
- Certain statements of reputation
- Other exceptions (a "catch-all")



Declarant Unavailable

- Former testimony the opponent had an opportunity to cross-examine
- Statement under belief of impending death
- Statement against the speaker's interest
- Statement of personal or family history
- Other exceptions (another catch-all)



Video Examples:

- (1) Guardianship Hearing
- (2) Trust Dispute



Example 5

- Jane's capacity is an issue in a hearing.
- Alice testifies that Jane said, "I believe I am the Queen of England."
- *Exception to hearsay rule?*



Back to Example 4

- At issue is whether a nursing home attendant, Lisa, stole a ring from a resident.
- The daughter testifies that she asked her Mom who took her ring. She says, "Mom pointed right at Lisa."
- Mom died minutes later.
- *Exception to hearsay rule?*