

# District Court Trial and Evidence Practice Pointers

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In September 2019, district courts in Alabama became much more active for a civil lawyer because the district court's jurisdictional limit increased from \$10,000 to \$20,000. Now district court serves to aid in the resolution of many more cases. Because of this, it is important for civil lawyers to understand how to try a case in district court.

District court is not a court of record, which in practical terms means there is not a court reporter creating an official record of the proceedings. In addition, district court judges will generally not take custody of any evidence, either before, during, or after the trial. For the lawyer, who is often under cost constraints in cases brought in district court, this creates certain challenges.

First and foremost, most lawyers perform as a one-person show in district courts. There are rarely senior partners sitting second chair, paralegals handling the evidence, or trial directors managing technology. It is, as they say, "old school." For new lawyers, or lawyers unaccustomed to managing evidence and practicing without support teams, this can be daunting.

This article identifies a few of the most common evidentiary pitfalls and offers practical suggestions to lawyers who find themselves trying a case in district court with only a client sitting in the chair beside them.

## Know Whether the Opposing Party Is Pro Se or Represented

Parties in district court are often pro se because district court is a court that provides fast and cheap resolution of cases. It is important to know whether you are trying a case against a pro se party or a represented party. This may seem like a simple concept, but it is very important because a district court's application of evidentiary rules is often much more lenient than in circuit court, and if a party is pro se, some district court judges often give the party more leniency. Furthermore, it is important to know because you need to prepare your client to be examined or cross examined by the opposing party themselves. Finally, it is imperative to understand whether the opposing party is represented because the limited discovery in district court often requires pre-trial agreements on admissibility. You need to know how educated the other party is on the Alabama Rules of Evidence and tactical trial procedure.

## Agree on Admissibility Where Possible

If a lawyer has a particularly important piece of evidence, and it may be too costly to properly establish admissibility, an agreement between counsel is an excellent way to bolster admissibility. Agreements on admissibility of documents often arise in district court on issues such as medical records, medical bills or subrogation liens, photographs, Google Earth images, or videos of accident scenes. It is important to reach an agreement on medical records, medical bills, and subrogation liens because taking the depositions necessary to establish admissibility on issues such as authenticity and medical causation can quickly exceed the amount of the actual medical bills and/or liens. Agreements on admissibility are often convenient for the parties in commercial disputes the authenticity of a lease, for example, rather than taking the district court's time by subpoenaing witnesses to establish agreed-upon facts. The district court judge will appreciate agreements on admissibility of evidence because it helps to reduce time in court for a judge who already has a very busy docket.

## Discovery Is Limited

The lawyer should check with the district court judge's chambers to determine whether limited discovery is permitted or not. Some courts have a standing order that allows for the parties to exchange 10 to 15 limited discovery questions. If such a standing order does not exist and unless the parties otherwise agree, a motion for limited discovery is required under the Alabama Rules of Civil Procedure prior to issuing discovery.<sup>[1]</sup> Whether a motion for limited discovery is granted is solely within the discretion of the court. If a motion for limited discovery is denied, attempt to reach an agreement with your adversary on limited discovery to narrow the issues for trial.

## Prepare a Trial Notebook

District court trials are rarely specially set. For the practitioner, this means your trial will usually be one of many trials set on the same day, at the same time. All of the lawyers and their respective clients will be sitting together in the courtroom. Typically, a judge will allow you time to confer with the other counsel regarding potential settlement prior to trial. If you are unable to reach a resolution, providing the district court with a trial notebook is an effective way to keep your case on track. This serves two functions including (1) aiding in the speedy resolution of your trial, which in turn helps a busy district court judge; and (2) keeping a trial organized, which serves to aid the court in understanding your arguments.

The trial notebook should contain the complaint and answer, your exhibit list with copies of the exhibits, and the witness list. If you are representing the plaintiff in the case, an itemization of any claimed damages is helpful to clarify your position. If you are representing the defendant in the case, any information to support your defenses needs to be clearly marked. If there are any significant evidentiary considerations that affect the outcome of the case, the lawyer should provide the district court with a brief statement of the applicable law. From the plaintiff's perspective, for example, an injured person with a permanent scar may want to provide the district court with the applicable law warranting an award of damages for future injury. From the defendant's perspective, for example, the lawyer facing breach of contract and fraud allegations with claims for punitive damages should include the applicable law for actually recovering punitive damages.

The lawyer should bring multiple copies of the trial notebook to district court, including one for the district court judge, one for the opposing party, and one for any fact witnesses in the case. Provide any witness who takes the stand with the trial notebook, and use the exhibits referenced in the notebook for the examination. Because the district court judge has the trial notebook, he can follow along with his or her copy of the trial notebook, and the lawyer does not have to worry about keeping track of and finding evidence during the trial. This is particularly important in district court trials as district court judges are often proactive in their examination of witnesses and will often question the witnesses by referencing specific evidence.[2] In this manner, it is not uncommon that the most extensive cross-examinations take place at the hands of the district court judge. The lawyer should prepare her witnesses for cross-examination by the district court judge, as people are often surprised when the judge becomes involved in the case and asks hard questions. Finally, the lawyer should note that the court can call a person to testify regardless of whether a party ultimately decides to call them or not.[3]

### **Authenticating the Evidence**

Alabama Rules of Evidence Rule 901 provides "the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." [4] Rule 901(b) in turn provides a non-exhaustive list of methods to authenticate evidence, some of which commonly arise in district court, including a witness with knowledge that the evidence is what is claimed (Rule 901(b)(1)) and establishing that the evidence is authorized by law and in fact is recorded by a public office (Rule 901(b)(7)). With documents that are not a public record, the most common and efficient means of establishing authenticity for admissibility purposes is obtaining a certification from the document's custodian that the document is a true and correct copy of the evidence described. A custodian's certification can also be utilized to establish that a document is from a public office and is maintained by that public office as required by law.

Certain types of evidence encompassed by Alabama Rules of Evidence Rule 902, are self-authenticating and do not require extrinsic evidence for admissibility purposes. Rule 902(1) addresses "domestic public documents under seal," which provides for admissibility of documents bearing the official seal of "the United States, or of any State..." [5] This provision commonly arises in district court to establish authenticity, for example, of corporate records obtained from the Alabama Secretary of State. "Certified copies of public records" are also deemed self-authenticating provided the documents are "certified as correct by the custodian or other person authorized to make the certification." [6]

It is important to remember the authentication methods under Rules 901 and 902 are not exclusive. Further, properly authenticating a piece of evidence does not necessarily render it admissible. The evidence still must satisfy other evidentiary considerations. Remember, too, as previously discussed, if the parties reach an agreement prior to trial as to admissibility, then the documents can be presented to the district court judge without authentication. It is very important that parties discuss all evidentiary issues prior to trial because it allows the parties to avoid unnecessary disagreements and delays at trial.

### **Overcoming Hearsay**

The most common evidentiary issues in district court involve hearsay. Given cost considerations, it is often simply not feasible for the lawyer to fully establish or challenge admissibility of evidence to the degree adhered to in circuit court. Accordingly, it is important to keep in mind the fundamental hearsay principles. Alabama Rules of Evidence Rule 802 states the general exclusionary rule that hearsay is not admissible. While Alabama Rules of Evidence Rules 803 and 804 both bear out the exceptions to the general exclusionary rule, certain exceptions in Rule 803 commonly arise in district court settings. [7] Prior to attending the trial of a case, the lawyer should review the Alabama Rules of Evidence with potential trial issues in mind. Also, it is always important for the lawyer trying the case to bring the Alabama Rules of Evidence with her to trial to refer to when hearsay issues arise.

### **Medical Records**

The Alabama Rules of Evidence Rule 803 exceptions are particularly relevant to district court proceedings, as these exceptions can render hearsay admissible without regard to the availability of the person who made the statement being present at trial. One of the most common Rule 803 issues arises in the context of medical records and medical causation. Rule 803(4) provides the hearsay exception for "[s]tatements for purposes of medical diagnosis or treatment," and Rule 803(6) provides the hearsay exception for "[r]ecords of regularly conducted activity." In the event medical records are part of the evidence in district court, the lawyer should first discuss admissibility with opposing counsel. If an agreement is not reached, the lawyer should provide an affidavit from the medical provider certifying that the medical records comply with these

provisions. While this does not always fully resolve the hearsay issues associated with medical causation testimony contained within medical records, it can sometimes establish admissibility of the medical records themselves. Securing medical deposition testimony from treating doctors, either to establish or refute medical causation, is often not feasible in district court given the costs of the deposition.

## **Business Records**

Separate from issues involving medical records, consumer cases often involve business records in the form of lease agreements, contracts, emails, etc. Admissibility of these type of documents commonly falls within the business records exception of Rule 803(6). More often than not, an affidavit from the custodian of records comporting with Rule 803(6) satisfies district court evidentiary considerations for these documents, if the custodian of records is unable to testify at trial.

## **Past Recollections Recorded**

Often, parties or witnesses in district court seek to present journals or timelines documenting their injuries, or in the case of consumer matters, their interactions with the opposing party. While these documents are hearsay if offered for the truth, Alabama Rules of Evidence Rule 803(5), “Past Recollection Recorded,” provides an exception when the documents are “concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately...” Pursuant to Rule 803(5), the witness may be permitted to read from the journal or timeline provided the witness 1) personally observed the event or facts; 2) made or saw the writing; 3) while the matter was fresh; and 4) knew then the contents were correct. While Rule 805 provides that the writing itself may not be admitted, as a practical matter, the lawyer should seek agreement as to admissibility for the document in order to expedite the trial process for the district court.

## **Statements Made by Witnesses**

In terms of what many consider as hearsay, i.e. verbal statements made by someone else, Rule 803 also contains several important hearsay exceptions to utilize for admitting testimony of what individuals said who may not be present at trial. Statements made at or around the time of an accident or injury, for example, often meet the “present sense impression” exception under Rule 803(1), the “excited utterance” exception under Rule 803(2), and/or the “then existing mental, emotional, or physical condition” under Rule 803(3). As the descriptions imply, these hearsay exceptions typically require the statement to be made while perceiving or experiencing an event or in very close proximity to it.

## **Witnesses**

The lawyer should subpoena any key witnesses to trial regardless of whether the witness is expected to appear voluntarily or not. Make sure your witnesses are present and on time. Some district courts in Alabama do not allow parties to wear shorts or shirts with inappropriate writing. Prepare your witness prior to the hearing of this potential issue in order to avoid delay. If your case is not ready when called, it will usually either be dismissed or placed at the end of the docket. It is also a good idea to have cell phone numbers for all of your witnesses with you at trial in the event a witness is delayed.

## **Character Evidence**

Efforts to use character evidence often find their way into district court, as in many instances the discovery necessary to determine the facts pertaining to character evidence admissibility has not been conducted. Accordingly, it is important to keep in mind that under Alabama Rules of Evidence Rule 404(a), “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.”<sup>[8]</sup> This general exclusionary rule follows from the principle that a prior act cannot be used to establish that a person acted in the same manner as the occasion at issue in the trial. Character evidence can be, however, admissible under Alabama Rule of Evidence 404(b) for other purposes, such as showing “opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” If a lawyer intends to use character evidence, it is wise to have the response to the objection at hand, as the district court may well raise the issue of admissibility if your adversary does not.

## **Conclusion**

Lawyers should not make the mistake of approaching a district court trial with disregard for the Alabama Rules of Evidence. Agreeing on admissibility where possible, providing the court with a readily accessible copy of the exhibits and any substantive legal arguments, and preparing for common authenticity, hearsay, and character evidence issues will go a long way toward enabling the lawyer to effectively advocate for her client in a district court trial.

### **Endnotes**

[1] Rule 26(dc), Ala. R. Civ. P.

[2] Ala. R. Evid. 614(b) (“The court may interrogate witnesses, whether they were called by the court or by a party.”).

[3] *Id.*

[4] *Id.* at 901(a).

[5] *Id.* at 902(1).

[6] *Id.* at 902(4).

[7] *See* Ala. R. Evid. 802, 803.

[8] *Id.* at 404(a).