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EVIDENCE FOR PARALEGALS

FOURTH EDITION

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LEFT

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Evidence for Paralegals

Fourth Edition

Joelyn D. Marlowe

Prosecuting Attorney

Suzanne Cummins

University of Arizona



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Evidence for Paralegals

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About the Authors

Joelyn D. Marlowe has been a career prosecutor for more than twenty years. She began prosecuting misdemeanor crimes at the Tucson City Prosecutor's Office as an intern while still in law school. Thereafter, at the Pima County Attorney's Office in Tucson, she prosecuted felony offenses and specialized in prosecuting child and adult sexual abuse cases. She currently is an Assistant United States Attorney at the United States Attorney's Office for the District of Arizona in Tucson, where she has dedicated the greater part of her legal career to prosecuting federal crimes.

Her first career was teaching research and essay writing to college-bound students in a Nebraska high school. Thus, once she became an attorney, it was no surprise that she endeavored to combine her legal knowledge and experience with her teaching skills. Accordingly, for many years, Joelyn simultaneously maintained a part-time position as an adjunct professor at Pima Community College, where she taught the Federal Rules of Evidence to paralegal students. She employed her unique sense of humor, her love of the substantive law embodied in the rules of evidence, and her experience in the courtroom to enhance her students' appreciation and understanding of evidentiary law.

When she is not working, Joelyn often spends her free time traveling the world. Her special love and seemingly second home is in a small countryside village in Tuscany, Italy.

Suzanne Cummins teaches full time about ethics and law in the Eller College of Management at the University of Arizona. She received her Juris Doctorate from Hastings College of the Law in 1979 and practiced law until 1990. From 1984 to 1989, she served as in-house counsel for Nicolet Instrument Corporation, which was then publicly traded on the New York Stock Exchange. Although no longer practicing law, she was admitted to the state bars of California, Wisconsin, and Arizona during her legal career.

Suzanne has written or collaborated in several textbooks. She has won both Eller College and University awards for her teaching and service, including the prestigious UA Foundation's Leicester and Kathryn Sherrill Creative Teaching Award.

*In memory of loved ones who have been called home, and in
celebration of those who remain*

—and especially for you, Roo—you were such a good friend.

jdm

Foreword

In the present volume, Joelyn Marlowe and Suzanne Cummins have drawn on their rich and diverse legal experience to provide an eminently readable and useful exposition of trial evidence for paralegals and legal assistants. Replete with practical, easily graspable examples, case extracts, end-of-chapter summaries, and chapter review questions, the book can be read cover to cover or kept on the desk as a reference. I would recommend doing both.

This book explores the rules of evidence to just the right degree. It also contains helpful hints on such matters as gathering evidence, interviewing witnesses, and researching and fashioning evidentiary arguments, all tasks likely to be performed by paralegals and legal assistants.

Stressing the crucial role of legal argumentation, the authors accurately impart a feel for the imperfect and chancey process by which judges arrive at evidentiary decisions. The degree of elasticity of the rules emerges clearly. Ethical limits are conveyed well.

Not only those engaged in litigation work will benefit from this knowledge of evidence. The benefit extends also to those working on any legal matter that potentially could wind up in court. Paralegals and legal assistants are involved in planning, organizing, and drafting many documents, arrangements, and transactions. They work on tax planning; wills and estates; formation of corporations, partnerships, and other business entities; corporate mergers; pre-nuptial agreements; real estate deals; commercial contracts; securities issues; financial reorganizations; business loans; and so on.

Whatever your role may be, some knowledge of evidence is desirable. You should always have an eye on the practicalities of proof—on whether and how clients could marshal admissible evidence needed to vindicate their rights if the matter had to go to court. Your rights are hollow if you cannot prove your case. The prospect of what would happen if transactions went to court is the practical measure of a client's rights.

Good planning takes account of what admissible proof the client could produce; may provide for the accumulation and keeping of

such proof; and may even prescribe what shall be sufficient proof in certain circumstances. Proper planning in these respects is probably the best way to keep the matter out of court. Those who would like to take advantage of your firm's client will be considerably discouraged from trying to do so if they know the client's case could be proved.

A knowledge of evidence can also guide you through a myriad of office functions and communications, particularly those involving potential adversaries of the firm's clients. For example, it is useful to know that a contemporaneous note on a calendar may be admissible evidence of the meeting or conversation it records; that a failure to respond to a letter can in certain circumstances be admissible evidence of acquiescence in the facts stated in the letter; and that legal assistants and paralegals might be treated as agents not only of their law firms but of the law firm's clients, for some evidentiary purposes. Their statements may be usable against the client in a number of situations. In some circumstances (but not others), communications to or from a paralegal or legal assistant may be privileged.

Knowing these things, you may be able to avoid mistakes; actively fortify your firm's clients' evidentiary positions; and appreciate better the strengths and weaknesses of a potential adversary's evidentiary position. Forewarned is forearmed!

Marlowe and Cummins are to be congratulated for providing a clear and concise roadmap in an area of the legal landscape where it is easy to go astray.

The book is also quite enjoyable.

Paul F. Rothstein
Professor of Law
Georgetown University
Washington, D.C.

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I am ever grateful to the many people at Wolters Kluwer for their enthusiasm and dedication to *Evidence for Paralegals*. In particular, I had the pleasure to benefit from Melody Davies's profound insight and guidance. As always, I owe special gratitude to Elizabeth "Betsy" Kenny, my west coast developmental editor. Also, my sincere appreciation goes to Troy Froebe, my east coast editor, whose e-mails always seem to have a smile, and to Emily Bender (editor), Barbara Roth (managing editor), and Carol McGeehan (publisher).

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Joelyn D. Marlowe

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