

# Evidence Overview



*KAELYN J. ROMEY, JD, LLMTax*

Law Professor & Director of Litigation

Former IRS SBSE Senior Counsel

## **EVIDENCE Rules**

- KNOW What the rule says
- KNOW the Operative words
- KNOW the “*dance*” from the rule

**PROponent**: Offers the Evidence  
**OPponent**: "OBJECTION"

*What happens to the . . .*

- 1. OBJECTION**
- 2. EVIDENCE**

**OVERRULED**  
**SUSTAINED**  
**"PUNTED"**

**ADMITTED**  
**EXCLUDED**

No Right Answers....

. . . Only Right **Arguments**

- 1. Understand Both Sides**
- 2. Understand "the dance" (*of argument*)**
- 3. Use the Federal Rules (*apply to facts*)**
- 4. Argue, Argue, Advocate!**
- 5. Make a Record**
- 6. Understand the Ruling**

## *How to approach EVIDENCE & FRE*

Imagine FRE is a series of nets down a river, attorneys must navigate or find holes in the nets to enter evidence at trial.

### WHY DO WE HAVE THESE RULES?

#### TRY TO BALANCE COMPETING POLICIES & MAKE PROCESS FAIR

1. Protect jury from misleading information
2. Eliminate unnecessary delay and promote efficiency
3. Protect social interest, such as confidential relationships
4. Ensure that evidence is reliable

## TEN QUESTIONS

1. *Where are we?*
2. *What is the proponent trying to do?*
3. *What is the evidence?*
4. How is the evidence **RELEVANT?** (FRE 401)
5. If relevant, are there **POLICY** challenges? (FRE 400)
6. Is it **HEARSAY?** Or non-HS? (FRE 800)  
*And, if HEARSAY, does an EXCEPTION apply?*
7. Is it about someone's **CHARACTER?** (FRE 404-5, 608-9)
8. Is the evidence an **OPINION?** (FRE 700)
9. Is the evidence **PRIVILEGED?** (FRE 500)
10. Does the evidence raise **PREJUDICIAL** concerns? FRE 403)

(unfair prejudice, waste of time, confusion)

- > Documents?
- > Real?
- > Questions?
- > Answers?
- > Statements?
- > Stipulations?
- > Judicial Notice?

