

## **Alabama Rules of Evidence**

### Article IV. Relevancy and Its Limits

#### **Rule 403.**

##### **Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.**

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

#### **Advisory Committee's Notes**

This rule is identical to its counterpart under the Federal Rules of Evidence. It generally expresses the preexisting common law of Alabama that material and relevant evidence may be excluded when the trial judge determines that the probative value of the evidence is outweighed substantially by other factors, such as the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. *Valley Mining Corp. v. Metro Bank*, 383 So.2d 158 (Ala.1980). See C. Gamble, *McElroy's Alabama Evidence* § 21.01 (4th ed. 1991).

The judge is to place the probative value or relevancy of evidence on one side of imaginary scales and its prejudicial impact on the other. When the prejudicial impact substantially outweighs the probative value, then the evidence may be excluded. See, e.g., *Otwell v. Bryant*, 497 So.2d 111 (Ala.1986) (affirming trial court's precluding plaintiff from asking defendant physician's expert if the physician and the expert were insured by the same mutual liability insurance company; prejudice held to outweigh probative value to show bias); *Hargress v. City of Montgomery*, 479 So.2d 1137 (Ala.1985) (evidence of collateral misconduct excluded because its prejudicial effect substantially outweighed its probative value); *Ott v. Smith*, 413 So.2d 1129 (Ala.1982) (declaring that evidence "of highly prejudicial nature" may be excluded); *Sanders v. State*, 512 So.2d 809 (Ala.Crim.App. 1987); *Jones v. State*, 473 So.2d 1197 (Ala.Crim.App.1985) (highly prejudicial).

Exclusion based upon the court's conclusion that the probative value is outweighed by confusion of the issues and misleading the jury finds ample support in preexisting common law. See, e.g., *Cherry v. Hill*, 283 Ala. 74, 214 So.2d 427 (1968) (describing this confusion-of-the-issues ground of exclusion as precluding the introduction of "foreign matters" into the trial); *Lee v. State*, 246 Ala. 69, 18 So.2d 706 (1944) (confusion-of-the-issues concept identical to "multiplication of the issues"); *Murray v. Alabama Power Co.*, 413 So.2d 1109 (Ala.1982) (proper to exclude evidence when it will work more to divert attention of the jury than to provide probative worth); *Fincher v. State*, 58 Ala. 215 (1877) (exclusion based upon the tendency of the evidence to mislead the jurors by distracting their attention from the main fact in issue).

Undue delay, waste of time, and needless presentation of cumulative evidence serve as other grounds upon which the trial court may exclude relevant evidence. The power to exclude

evidence upon these grounds is vested in the court's discretion under preexisting Alabama practice and is dealt with under a concept customarily referred to as "cumulativeness." *Chambers v. Culver*, 289 Ala. 724, 272 So.2d 236 (1973). See C. Gamble, *McElroy's Alabama Evidence* § 10.06 (limiting the number of witnesses to a matter), § 10.07 (cumulative evidence), § 10.08 (limiting argument of counsel) (4th ed. 1991). The discretion to exclude such evidence, however, is not without limits. *Sweatman v. FDIC*, 418 So.2d 893 (Ala.1982) (indicating that the discretion to refuse cumulative evidence is not unlimited). See B.H. Glenn, Annotation, *Propriety and Prejudicial Effect of Trial Court's Limiting Number of Character or Reputation Witnesses*, 17 A.L.R.3d 327 (1968); B.H. Glenn, Annotation, *Limiting Number of Noncharacter Witnesses in Criminal Cases*, 5 A.L.R.3d 238 (1966).

Issues arising under Rule 403 are those about which much discretion continues to be vested in the trial judge. *Ott v. Smith*, 413 So.2d 1129 (Ala.1982) (recognizing that such a decision is largely within the trial court's discretion). See W. Schroeder, J. Hoffman, & R. Thigpen, *Alabama Evidence* § 4-3 (1987). As with issues of relevancy, the exercise of this discretion will not be reversed on appeal, unless the discretion has been abused. *AmSouth Bank, N.A. v. Spigener*, 505 So.2d 1030 (Ala.1986) (holding that questions of materiality, relevancy, and remoteness rest largely with the trial judge and that rulings thereon will not be disturbed unless the judge's discretion has been abused).