

**Fla. Stat. § 90.956**

Current through all 2020 general legislation.

**LexisNexis® Florida Annotated Statutes > Title VII. Evidence. (Chs. 90 — 92) > Chapter 90. Evidence Code. (§§ 90.101 — 90.958)****§ 90.956. Summaries.**

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When it is not convenient to examine in court the contents of voluminous writings, recordings, or photographs, a party may present them in the form of a chart, summary, or calculation by calling a qualified witness. The party intending to use such a summary must give timely written notice of his or her intention to use the summary, proof of which shall be filed with the court, and shall make the summary and the originals or duplicates of the data from which the summary is compiled available for examination or copying, or both, by other parties at a reasonable time and place. A judge may order that they be produced in court.

**History**

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S. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 503, [ch. 95-147](#).

Annotations

**LexisNexis® Notes**

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**Case Notes**

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**Civil Procedure: Remedies: Costs & Attorney Fees: General Overview****Criminal Law & Procedure: Sentencing: Restitution****Evidence: Documentary Evidence: Writings: Summaries****Evidence: Hearsay: Exceptions: Business Records****Evidence: Hearsay: Exceptions: Business Records: General Overview****Evidence: Testimony: Experts: General Overview****Family Law: Paternity & Surrogacy: General Overview****Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: Judicial Foreclosures****Civil Procedure: Remedies: Costs & Attorney Fees: General Overview**

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Expert witness testimony regarding attorney's fees, pursuant to Fla. Stat. § 90.956, should always anticipate and ferret out duplicity of effort spent by attorneys, or parties similarly aligned; clients that are represented by separate counsel should apportion their area of endeavor including research, briefing and preparation of pleadings as well as in seeking discovery. Brake v. Murphy, 736 So. 2d 745, 1999 Fla. App. LEXIS 8323 (Fla. 3rd DCA 1999).

#### **Criminal Law & Procedure: Sentencing: Restitution**

Restitution evidence was insufficient to support an award where the trial court erroneously relied upon a compilation listing checks written on the victim's accounts and payable to the defendant as the defendant objected based upon hearsay and where no evidence was adduced identifying who had made the compilation, nor was it admissible as a summary. Johnson v. State, 856 So. 2d 1085, 2003 Fla. App. LEXIS 15641 (Fla. 5th DCA 2003).

#### **Evidence: Documentary Evidence: Writings: Summaries**

Restitution evidence was insufficient to support an award where the trial court erroneously relied upon a compilation listing checks written on the victim's accounts and payable to the defendant; as the defendant objected based upon hearsay where no evidence was adduced identifying who had made the compilation, nor was it admissible as a summary. Johnson v. State, 856 So. 2d 1085, 2003 Fla. App. LEXIS 15641 (Fla. 5th DCA 2003).

Where law firm did not keep contemporaneous records regarding the time attorneys spent working for client, law firm could offer as evidence a detailed reconstruction of the time records giving the date, activity performed, and time expended for each of the firm's activities during the five years law firm represented client as a summary under Fla. Stat. § 90.956. Cohen & Cohen, P.A. v. Angrand, 710 So. 2d 166, 1998 Fla. App. LEXIS 4334 (Fla. 3rd DCA 1998).

Where a party used a summary in testimony, a technical violation of Fla. Stat. § 90.956 occurred by the party's failure to give written notice of intent to use the summary, but the violation was harmless where the underlying data was made available to the other party sufficiently in advance of presentation of the testimony. Bowmar Instrument Corp. v. Fidelity Elecs., 466 So. 2d 344, 1985 Fla. App. LEXIS 12747 (Fla. 3rd DCA 1985).

Where plaintiff received a copy of defendant's summary several weeks before the trial on damages and 12 days before trial plaintiff took a 13-hour deposition of the employee that prepared the summary, the technical violation of Fla. Stat. § 90.956 was not harmful. S. Kornreich & Sons, Inc. v. Titan Agencies, Inc., 423 So. 2d 940, 1982 Fla. App. LEXIS 21708 (Fla. 3rd DCA 1982).

Trial court did not err in admitting testimony and summaries under Fla. Stat. § 90.956, formerly Fla. Stat. § 92.36, that were based on a retailer's records, although the retailer's records had not been produced or introduced into evidence; the testimony and summaries established that the retailer had suffered damages in the sum of \$ 1,827 as a result of the manufacturer's provision of 820 defective twist collars. Safe-T-Lawn, Inc. v. Agricultural Engineering Asso., 235 So. 2d 25, 1970 Fla. App. LEXIS 6347 (Fla. 3rd DCA 1970).

#### **Evidence: Hearsay: Exceptions: Business Records**

In a foreclosure case, the trial court erred in excluding the lender's collection notes, which qualified as business records under Fla. Stat. § 90.803(6)(a), and were not summaries under Fla. Stat. § 90.956, and in dismissing the case; the notes showed that a \$9203 check was not received from the borrower to cure her default, but from an insurer to compensate the borrower for water damage to the home. Green Tree Servicing, Inc. v. Simms, 2019 Fla. App. LEXIS 9302 (Fla. 5th DCA June 14, 2019).

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#### **Evidence: Hearsay: Exceptions: Business Records: General Overview**

Court properly admitted the borrowers' payment history into evidence under the business record exception because the records custodian's testimony demonstrated his familiarity with the lender's record-keeping system and the process for uploading payment information and the records were not a summary under this section and, therefore, the notice provisions did not apply. Cayea v. Citimortgage, Inc., 138 So. 3d 1214, 2014 Fla. App. LEXIS 8093 (Fla. 4th DCA 2014).

#### **Evidence: Testimony: Experts: General Overview**

In an appeal following the trial court's termination of the wife's permanent periodic alimony award, the fact that the husband did not offer a summary pursuant to Fla. Stat. § 90.956 was not a basis for excluding the testimony of an expert regarding the estimated business income of one of the wife's restaurants; the requirements pertaining to expert testimony were those found in Fla. Stat. §§ 90.702 to 90.705, and the proponent of expert testimony was not obliged to comply with Fla. Stat. § 90.956 when presenting the data relied on by the expert. Marks v. Marks, 576 So. 2d 859, 1991 Fla. App. LEXIS 2413 (Fla. 3rd DCA 1991).

#### **Family Law: Paternity & Surrogacy: General Overview**

Temporary child support order, entered in paternity action, was supported by clear and convincing evidence when the Human Leucocyte Antigen test summary indicated a 99.94 percent probability that party was the father and parties had an ongoing sexual relationship. Mason v. Reiter, 531 So. 2d 348, 1988 Fla. App. LEXIS 3628 (Fla. 3rd DCA 1988).

#### **Real Property Law: Financing: Mortgages & Other Security Instruments: Foreclosures: Judicial Foreclosures**

In a foreclosure case, the trial court erred in excluding the lender's collection notes, which qualified as business records under Fla. Stat. § 90.803(6)(a), and were not summaries under Fla. Stat. § 90.956, and in dismissing the case; the notes showed that a \$9203 check was not received from the borrower to cure her default, but from an insurer to compensate the borrower for water damage to the home. Green Tree Servicing, Inc. v. Simms, 2019 Fla. App. LEXIS 9302 (Fla. 5th DCA June 14, 2019).

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## Research References & Practice Aids

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### RESEARCH REFERENCES & PRACTICE AIDS

#### Law Reviews & Journals

State v. Pierce: Will Florida Courts Ride The Wave of the Future and Allow Computer Animations in Criminal Trials?, Jennifer Robinson Boyle, Fall 1994, 19 Nova L. Rev. 371.

#### Treatises

Attorney's Fees in Florida, Chapter 5 Evidence, § 5.03 Billable Time Records/Other Evidence.

Florida Evidence Manual, Chapter 8 Hearsay, § 90.803.01 Text of the Rule and Analysis.

Florida Evidence Manual, Chapter 10 Contents of Writings, Recordings, and Photographs, § 90.956.01 Text of the Rule and Analysis.

Florida Family Law, Division IV Dissolution of Marriage, Chapter 58 Trial Preparation and Discovery, Part I. Legal Background, B. Discovery, 1. Initial Procedures, § 58.10 Informal Discovery.

Florida Family Law, Division IV Dissolution of Marriage, Chapter 58 Trial Preparation and Discovery, Part I. Legal Background, C. Pretrial Preparation, § 58.36 Exhibits and Tangible Evidence.

### FLORIDA BAR PUBLICATIONS

Evidence in Florida, Chapter 11. Best Evidence Rule, III. Admissibility of Secondary and Other Evidence, C. [§ 11.9] Summaries.

Evidence in Florida, Chapter 13. Florida Trial Objections, Specific Objections.

Florida Construction Law and Practice, 9 Trial Preparation, III. Project Documentation, D. Document Use, 2. [§ 9.21] Trial.

Florida Construction Law and Practice, 12 Expert Witnesses, VII. [§ 12.14] Direct Examination of Experts.

Business Litigation in Florida, 11 Pretrial Preparation and Trial Procedures; Direct Examination, Cross-Examination, Redirect, and Rebuttal, I. Pretrial Preparation, D. [§ 11.12] Use Of Summaries And Indexes.

Business Litigation in Florida, 12 Selected Problems in Evidence, III. Exhibits, G. [§ 12.18] Summaries And Charts.

Florida Civil Trial Practice, 13 Documentary Evidence, I. Introduction, B. [§ 13.2] Use Of Documentary And Electronic Evidence.

Florida Civil Trial Practice, 13 Documentary Evidence, III. Admissibility of Documents and Use At Trial, B. [§ 13.18] Use of Documents At Trial.

Florida Civil Trial Practice, 13 Documentary Evidence, III. Admissibility of Documents and Use At Trial, F. [§ 13.22] Checklist of Objections To Admissibility.

Florida Civil Trial Practice, 13 Documentary Evidence, III. Admissibility of Documents and Use At Trial, I. [§ 13.25] Summary Of Voluminous Documents.

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Florida Civil Trial Practice, 13 Documentary Evidence, IV. Forms, A. [§ 13.29] Suggested Questions To Establish Foundation For Business Records.

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