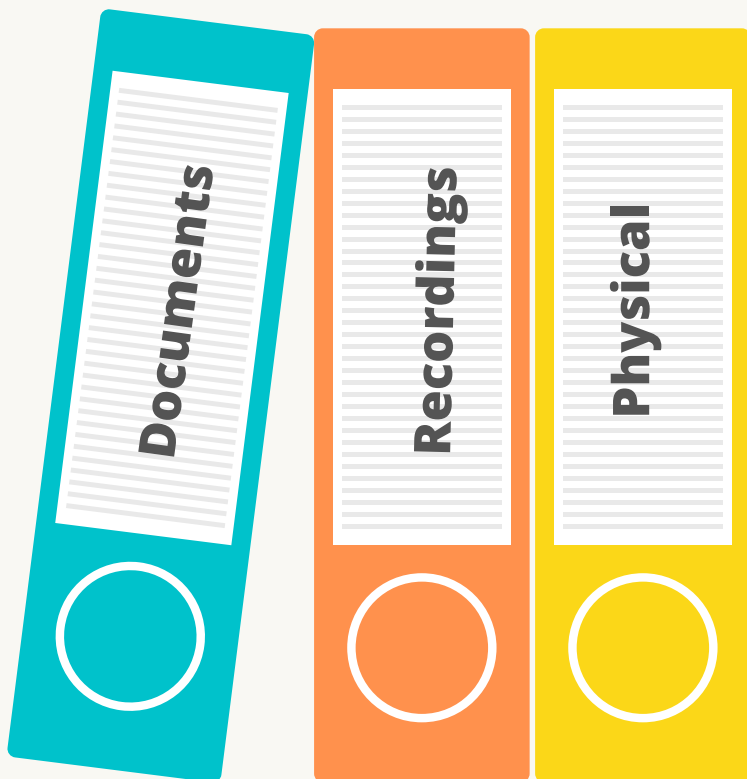


Workshop Series

Washington

EVIDENCE IN FAMILY COURT

*A Helpful Practical Guide for Custody
Trials or Hearings*



USE OF THIS GUIDE:

This guide is intended for the sole purpose of providing information on evidence in Family Court in the specific state mentioned. Its goal is not to replace the expertise of an attorney and should not be relied as the only resource for trial. In addition, it is meant to supplement the material presented in the related Workshop presented by the creator/author.

This is protected material and should not be distributed under any circumstances. It is not to be copied, emailed, uploaded, screenshotted, etc. to anyone.

The information in this guide is a compilation of original material and reproduced material found in public access platforms.

This guide is best used in conjunction with the material presented in the actual workshop, as well as the Worksheet that accompanies it. Understanding the material might require further exploration than what's included.

A more in-depth analysis of evidence gathered against specific state rules is available at The Divorce Solutionist under Unbundled Services or inside the Pro Se Family Court Membership Program.

TOPICS INCLUDE:

- 1 **What is Evidence?**
- 2 **Why is Evidence Critical?**
- 3 **How do I gather Evidence?**
- 4 **What are the Rules of Evidence for my State?**
- 5 **How do I apply these Rules in my case at trial?**
- 6 **How do I use Evidence Strategically?**

Important Notes

1. WHAT IS EVIDENCE?

Whatever you plan to present to the judge to prove your case or defend against the other party's case is Evidence. It falls under the following major categories:



Documents

The most common form of evidence. Includes letters, reports, records, emails, invoices, tax returns. Almost anything written or typed.



Recordings

The trickiest to get before the court but the next most gathered. Includes audio, video, or any other digital format of the communication.



Physical

Some are not often considered by the court but certainly important. Includes photos, journals, screenshots, etc.

NOTE: Witnesses as Evidence & Evidence Rule-Hearsay are under separate cover.

2. WHY IS EVIDENCE CRITICAL IN FAMILY COURT?

Family Court is a place of lots of "he said, she said" in most instances. However, if either party can persuade the judge to look at their proof they have a better chance of getting their desired result. Evidence has weight based on it's form and what it's intended to prove.

- **It creates a clear record:**

Some evidence speaks for itself with how convincing it is in proving what it's being submitted to prove. It makes it harder for the other party to dispute the claim you're making or defend theirs.

- **It helps build credibility:**

Parties can make all types of claims & allegations they want (and they usually do). But if either of you have evidence to back you up, depending on it's perceived, it can make you look more believable.

- **Helps to narrow down the issues:**

Family Court litigants are known for bringing up everything they can possibly think of. Most cases start with tons of claims made. Having evidence helps to eliminate some of them.

- **Can save you from future frivolous claims:**

Custody matters, specifically, can be neverending in most instances. At any random time either party can be brought back to court. Having solid evidence helps to minimize future cases from being dragged on.

3. HOW DO I GATHER EVIDENCE?



Start from the moment you start considering taking the other party to court or they start to threaten you with taking you to court. Gather, collect, inspect, record, get witnesses, etc. You only get one chance.



Be diligent but discreet. You don't need to let the other party know that you're gathering "intel" on them. (Of course there are laws that might apply in some instances.) Always be prepared.



Use whatever you can. Witnesses, cell phones, tablets, navigation devices, software, apps, journals/diaries, etc. It might not be admissible but you need to have it anyway.

4. WHAT ARE THE RULES OF EVIDENCE?

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WA Rules of Evidence are governed by the State Court Rules: Rules of Evidence. The parts applicable to most Family Court matters are Objections; Judicial Notice; Relevancy/Admissibility; Hearsay & Exceptions; Witnesses, Authentication & Recordings, etc. The rules are:

- **Title 1 General Provisions, 101-106**

These chapters cover how the court shall apply the laws or procedures pertaining to evidence; how it will allow or not allow evidence and the weight it will give the evidence. It also explains how errors must impose on party's substantial rights for appeal.

- **Title 2 - Judicial Notice, 201**

Addresses specific instances when the court can take judicial notice (which involves matters assumed to be indisputably true so that evidence to prove them is not required); instances where it's mandatory vs. discretionary and that it can occur at any time during the proceeding.

- **Title 3 - Presumptions, 301-302**

THESE WERE DELETED IN 2006.

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- **Title 4 - Relevancy, 401-405**

Explains what is considered relevant evidence, which is evidence that has the tendency to make a fact more probable or less probable than it would be without the evidence; discusses when its admissible and when it's not; explains difference between irrelevant evidence and inadmissible relevant evidence (prejudice, confusion or waste of time.)

- **Title 5 - Privileges, 501-502**

Discusses which specific relationships are protected by privilege (protected information/communication) and goes in depth about attorney-client privilege.

- **Title 6 - Witnesses, 601-615**

Explains how every witness is considered competent to testify with exceptions. The main exception, a witness with no personal knowledge of the matter. States how any party can attack (impeach) the witness; what can be used to impeach them (character or conviction of a crime); how the questioning/interrogation will go and how the court will conduct the courtroom with respect to witness participation.

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- **Title 7 - Opinions and Expert Testimony, 701-706**

This section explains how a witness who is not an expert has limits with testifying in the form of opinion; what qualifies an expert to testify; when the expert can give an opinion when testifying; when or if they have to disclose the data used to form their opinion and the process for court appointed experts to testify.

- **Title 8 - Hearsay, 801-807**

Defines hearsay (a statement made other than by the witness testifying that is being offered to prove the matter they are claiming), when it is admissible or inadmissible in court and lists the exceptions to hearsay.

- **Title 9 - Authentication, Identification & Admission of Exhibits, 901-904**

Explains when authentication of various evidence is required; lists specific scenarios and examples of how the evidence would be authenticated; explains self-authentication and states specific documents that are deemed admissible (i.e. bills, weather or traffic report, photos/x-rays/drawings). Also states when an objections to the admissibility of any of the named documents can be made.

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- **Title 10 - Contents of Writings, Recordings and Photographs, 1001-1008**

Defines what each of these are; explains how the original form of each is required (with exceptions); explains when a duplicate is allowed (when original is lost/destroyed, not obtainable, or in the other party's possession); how copies of public records can be admitted into evidence; the court's role in deciding if conditions have been met for these items.



5. HOW DO I APPLY THESE RULES?

A. JUDICIAL NOTICE

You would ask the judge to take judicial notice of things like historic or known events in the area or country (like 911); weather patterns (like it's 90 degrees in July); and so on. You can ask the judge to take judicial notice at any time you are presenting your case and/or evidence or before your trial starts.

B. RELEVANT EVIDENCE/TESTIMONY

When you are presenting your evidence to prove a "material" (issue that really matters) issue you might be asked to show how it is relevant to the case. Issues of relevance come up when you try to present evidence on things that have nothing to do with any of the Best Interests factors (or other laws/issues) that are in dispute in the case. For example, evidence that the other party had an affair is usually not relevant to proving if they are a "fit" or "unfit" parent. And same for you if the other party tries to introduce similar evidence, you can object to it the basis of being not relevant.



C. PRIVELEGES

On Direct (questioning your own witnesses the first time around) or Cross Examination (questioning the other side's witnesses on any round) if the other side calls a witness that you believe holds privileged (or protected information) then you would object to their testimony or offer of evidence. For example, a psychologist (not court appointed) who testifies to what her client told her in sessions.

D. WITNESSES

'When you are doing your Cross Examination you can ask questions that shows that the witness lacks personal knowledge of what they're testifying to; on Direct or Cross Examination you can attack (Impeach) the witness on their character, conduct or previous convictions; you can object to what they're testifying to (on basis of lack of knowledge, bias, personal interest, etc.). You can use any prior statements they made (i.e. depositions, affidavits, etc.) to impeach them too.

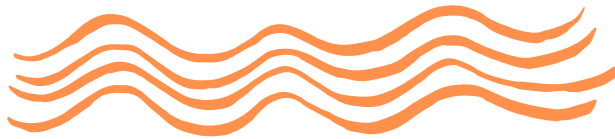


E. OPINIONS & EXPERT TESTIMONY

You would object to certain opinions given by a non-expert (lay) witness. Opinions not allowed are usually ones where the witness gives testimony on whether someone has mental illness (the overuse of the term "narcissist" is a great example) when they are not a psychologist. Opinions on things that the witness cannot reasonably perceive on their own, or that doesn't help to explain their testimony or when their opinion is not based on specialized knowledge or scientific/technical knowledge are reasons to object.

F. HEARSAY

Understanding the hearsay rules can be extremely difficult. Don't overwhelm yourself trying to get it because it's nearly impossible. The key to using these rules are to object on the basis of hearsay if you see that a witness is testifying to something someone else told them or that they overheard or when a document is being presented that has statements in it made by other people not present for trial. When you object, you must know the specific basis for your objection.

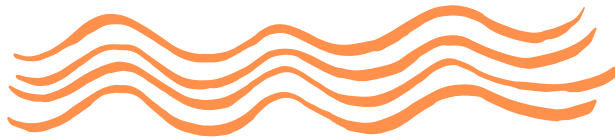


HEARSAY - CONTINUED

Understanding the difference between non-hearsay and hearsay exceptions is also extremely important. Non-hearsay are prior statements made by the witness testifying or admissions by the other party (there are conditions to qualify for both.) Exceptions are specifically listed in the Rules.

The ones that typically come up in Family Court are:

1. ***Present Sense Impression***
2. ***Excited Utterance***
3. ***Then Existing Mental, Emotional or Physical Condition***
4. ***Recorded Recollection***
5. ***Records of Documents Affecting an Interest in Property***
6. ***Reputation Concerning Personal or Family History***
7. ***Reputation as to Character***
8. ***Judgment as to Personal, Family or General History***



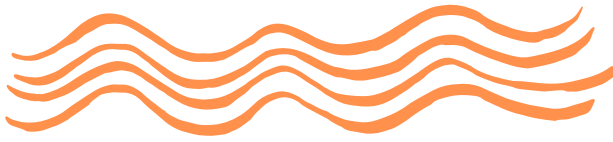
HEARSAY - CONTINUED

So if you're on your Direct Examination part of the case, you would probably be defending against the other party's objection. They would object to your witness's testimony or evidence being introduced on the basis of it being hearsay. Your job would be to prove that it is NOT in fact hearsay (as explained above) or that it meets one of the exceptions to the hearsay rule (see list above.)

If you're doing your Cross Examination, then you would try to argue that testimony or evidence IS hearsay and that it does NOT meet one of the exceptions.

TIP: Practice the your Objections so that you sound more confident even when you're unsure if your argument is legitimate.

NOTE: For further explanation of hearsay for your state please ask about the upcoming workshop on this topic.



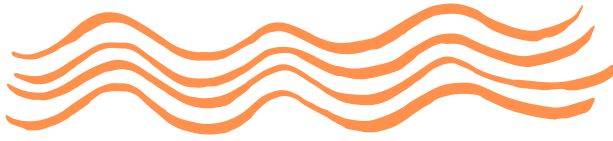
G. AUTHENTICATION & IDENTIFICATION

The court would most likely be the one bringing up whether evidence has been properly authenticated or identified. But the other party could also raise objections on either of these basis when they are opposed to certain testimony or documents being introduced into evidence. Things listed in the Code that need authenticating or identifying pursuant to the Rules are:

1. ***Distinctive Characteristics and the Like***
2. ***Voice Identification***
3. ***Telephone Conversations***
4. ***Public Records or Reports***
5. ***Emails***

However, other things like text messages, videos recordings, photos and physical items need authenticating too.

You would authenticate any of these by party or witness testimony, which means asking your witness or their other party's witness to identify their own voice, their email address, their phone number in text messages, etc.



H. WRITINGS & RECORDINGS

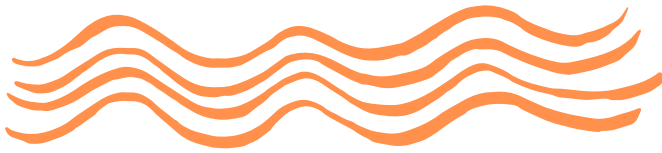
Writings consists of letters, words, sounds or similar that are in handwriting, typewriting, printing, photographing, mechanical/electronic recording or other data compilation. Photographs consists of all photos, x-rays films, videotapes and motion pictures. All of these must be in original form/format unless it's lost or destroyed or in the possession of the other party and there's no way for you to get them. One example of when you would object to a duplicate being used over a writing or recording is when the other party or their witness tries to admit a photocopy page out of your child's school log or record book. If you don't have access to these but want it presented ni court to prove a claim or defend against a claim then you would want the ENTIRE book offered into evidence because a photocopy page can be misconstrued out of context. You would object if the other party tries to admit them into evidence and they aren't in original form and don't meet the exception.

OBJECTIONS

It is important to understand how to make the court aware of the fact that you believe one of the rules of evidence prevents admission of certain evidence or testimony. The method and timing of objecting to these is important.

1. Direct Examination

- a. When it is your turn to present your case, whether you're the one who filed first or not. This is your direct examination.
- b. Your direct examination is your chance to offer evidence to support your case, to call witnesses to testify and to testify yourself.
- c. Your objections at this stage are usually limited. You won't object to your own evidence or your own witnesses. But in rare circumstances, you might want to object to something the court does or questions the court asks of you or your witnesses.



2. Cross-Examination

a.. After either party has started their Direct Examination and they have a witness on the witness stand, the other party can question that witness. This is your Cross- Examination.

b. Your cross-examination is your chance to question the witness on the accuracy, sufficiency, etc. on whatever they testified to. It's also the chance to impeach them if they are biased, have character issues or have certain things in their past that makes them unbelievable.

c. You're more likely to have way more objections at this stage. All of the rules discussed above will apply here, especially when you want to avoid certain testimony or specific evidence being admitted. It is your job to determine when an objection is necessary because you can't do it later if you have specific issues with a specific witness or specific evidence.

6. HOW TO USE EVIDENCE STRATEGICALLY?

Knowing how to use your evidence is something that should be plotted out at every stage.

1

Focus in on the most important issues

Every claim isn't worth fighting over. Narrow down the ones that you have the strongest chance of "winning".

2

Stay alert to the other party's position.

This is why it's extremely important to always pay attention to the other party's every move. To plot yours effectively.

3

Know the law & procedures.

There is absolutely no way you can position your case for without anticipating the Objections of the OP. Know the exceptions.

4

Have other uses for your intel.

Evidence that's not admissible inside court might still have a purpose. Use evidence for you Opening, Closing & negotiations.

5

Apply it all.

Almost anything goes or is a toss up in Family Court. So don't be afraid to "try your luck" just know the consequences.

IT'S IMPORTANT TO NOTE:

Family Court typically applies rules of procedure, including rules with respect to evidence, as it sees fit. So although there are rules in place for how evidence should be used in custody and divorce matters, judges have a great deal of discretion. No two cases are ever going to get the same exact treatment.

- **Know your court.**

It is extremely important to visit the court to observe how it rules in similar cases. You are usually allowed to sit in on other trials in court. It's best to identify ones with similar issues.

- **Get acquainted with your court personnel.**

The court staff & personnel can be very useful when it comes to learning the way the court procedure works with submission of evidence, marking evidence, etc. Take the time to know them.

- **Always be prepared.**

As stated, Family Court is a wild card. It helps to anticipate any and every outcome you can imagine. You do this not by just learning the rules or laws, but by understanding the exceptions too.

- **Work on yourself as well as your case.**

What happens in Family Court is 20%, 80% strategy. In order to have a solid strategy, you must have a clear objective in mind and a well thought out tactical plan to get there. You can't leave anything to chance when it comes to doing your part.

ABOUT THE CREATOR



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