

OBJECTIONS TIPS & CHEAT SHEET

I. OBJECTIONS: AS TO THE “FORM” OF THE QUESTION.

Generally, form objections can be corrected by simply re-phrasing the question. Most judges don't like form objections, since they are viewed as “technical.” Limit the use of these objections, and use them tactically. If they are used blatantly or repeatedly, they will disrupt the flow of an examination.

- Leading – suggests the answer for the witness.
- Compound – multiple questions all in one, as opposed to one question at a time.
- Narrative – too general, asks the witness to tell a story.
- Argumentative – challenging, arguing, badgering the witness.
- Asked and Answered – the question has already been asked and answered.
- Vague and Ambiguous – the question is not clear or understandable.
- Non-responsive – witness doesn't answer the question.



II. OBJECTIONS: AS TO THE SUBSTANCE OF THE QUESTION.

Objections to substance, on the other hand, are more geared toward the content of the answer. They are much more significant as they can have a more direct effect on the outcome of the hearing/trial. They are as follows:

- Relevance – not related to the disputed issue in the case.
- Foundation – questioning party or attorney must establish necessary information before the witness can testify.
- Personal Knowledge (calls for speculation) – witness must have personal knowledge of what he or she is testifying about.

Character evidence – witness cannot testify about someone's character unless it is at issue in the case. Honesty and credibility are always at issue with any witness.

- Opinion Testimony of Lay Witness – generally, lay witnesses cannot give opinion testimony unless it is rationally based on the witnesses’ perception, or helpful to understanding his or her testimony.
 - Inferences and subjective statements.
 - Exceptions: speed, mental and emotional states, sobriety, sanity, the identity of voice or handwriting.
- Expert Witness or Opinion Testimony – experts can give opinions, unlike lay witnesses, but they must have the requisite qualifications and their opinions must be based on the evidence experts in that field generally rely on.
- Hearsay – out-of-court statement admitted for the truth of the matter asserted.
 - First question: is the statement being offered for the truth of what it’s being used to prove?
 - If the statement is being offered to show the statement was made or heard, or to show subsequent actions of the listener, it is not being offered for the truth, and not hearsay.
 - Numerous exceptions to the hearsay rule that applies in Family Court; excited utterance, state of mind of declarant, business or official records, past recollection recorded (e.g. written witness statement), and reputation of person’s character in the community.
- Creating a material fact– witness creates a material (or important, significant) fact not included in the official record.

III. MAKING THE OBJECTION: STEP-BY-STEP PROCESS & KEY THINGS TO KEEP IN MIND

- Be timely with making your objections. They need to be done as they happen.
- If you’re unsure err on the side of caution, you’ll only get one bite at the apple.
- You need to “preserve your record” for appeal so be clear & concise.
- Prepare in advance for the potential objectionable evidence &/or testimony the other party or their attorney will present. (Review your Discovery.)
- Know your judge and their stance, habits, practices, etc. Judges rule differently. Some are sticklers about certain types of evidence; others let everything in. Pay attention to gauge how the judge is responding to objections. If certain objections aren’t working, don’t keep making them. Alternatively, if the judge is granting, keep objecting.

- **First: Stand** and say, for example,
“Objection your honor that question lacks foundation. May I be heard?”
 If the court allows, explain your issue. Always ask to be heard before explaining or rebutting. Always address the judge, not the other lawyer.
- If you’ve already made the point or are at a loss for words, say “Submitted, your honor.”
- If the judge says “**Sustained**” means an objection is granted; if the judge says “**Over-ruled**” means the objection is not granted.
- Don’t thank the judge for ruling in your favor. Just move on.
- **Next:** If your objection is **sustained** (granted), and the witness has already answered or partly answered, *“Move to strike”* that portion of testimony that is objectionable.
- If your objection is **over-ruled**, then say *“Note my exception”*. This lets the court know that you don’t agree with its decision on the objection ruling.
- There can be more than one objection. If so, make both at same time:
 - *“Objection your Honor, hearsay and relevance. May I be heard?”*
 - *“Objection your honor that question lacks foundation and is leading. May I be heard?”*
- **Remember:** Evidence must always be relevant. So just because the question gets around the hearsay rule (for example), the evidence still be relevant (e.g. question calls for the state of mind of a witness; therefore it meets the ‘state of mind’ hearsay exception. However, in a criminal trial normally only the defendant’s state of mind is relevant. Even though the evidence satisfies the hearsay rule, it is still irrelevant and inadmissible.

IV. Here is a list of common objections made in Family Court:

1. **Objection, hearsay (MOST COMMON):** This objection is raised when a witness is testifying about something they heard someone else say, rather than something they personally saw or experienced.
2. **Objection, leading:** This objection is raised when a lawyer asks a witness a question that suggests a specific answer, rather than allowing the witness to testify freely.
3. **Objection, foundation:** This objection is raised when a witness is asked to testify about something they don't have enough personal knowledge or experience to speak to.
4. **Objection, lacks authentication (VERY COMMON):** This objection is raised when a party tries to admit specific items into evidence that can't
5. **Objection, irrelevance:** This objection is raised when a question or testimony is not relevant to the issues in the case.
6. **Objection, speculation:** This objection is raised when a witness is asked to speculate about something, rather than testify about what they know for sure.
7. **Objection, compound question:** This objection is raised when the questioning party or lawyer asks a witness multiple questions in a single sentence.
8. **Objection, compound statement:** This objection is raised when a witness makes multiple statements in a single answer.
9. **Objection, best evidence:** This objection is raised when a witness is asked to testify about the contents of a document, rather than introducing the document itself as evidence.
10. **Objection, foundation for expert testimony:** This objection is raised when a witness who is qualified as an expert has not been properly qualified to give testimony in a particular area of expertise.