

OBJECTIONS

If someone offers testimony or exhibits that you do not want the judge to consider, you should **object**. However, you cannot object just because you do not like what the person is presenting. You must have a reason, based upon the rules of evidence. There may be exceptions to some rules (i.e. hearsay), so make sure to research this topic ahead of time if you plan to raise specific objections.

If you are presenting your case and someone else raises an objection, you may respond. Then wait for the judge to **sustain** or **overrule** the objection before proceeding.

Hearsay. The most common rule of evidence used to object to both witness statements and exhibits is “hearsay”.

Hearsay is an out of court statement made for the truth of the matter asserted.

For example, imagine that someone tries to use a letter stating the opinion of a person who is not in court. That person cannot be questioned, so the opposing party cannot test whether the person making the statement is reliable, or whether the letter is authentic. This is an example of hearsay.

Hearsay Exceptions

Sometimes there are exceptions to the prohibition on hearsay. If a hearsay exception applies, the evidence may still be considered.

Common Objections and Exceptions

During the hearing there are specific objections that can be made. This is **NOT** a comprehensive list, but common objections include:

- Hearsay
- Relevance
- Lack of foundation
- More prejudicial than probative
- Assumes facts not in evidence (speculative)
- Ambiguous
- Asked and answered (repetitive, cumulative)
- Badgering/argumentative
- Compound question (asks 2 or more questions within a question)
- Leading question (for direct examination)

Hearsay exceptions include:

- Statement by opposing party
- Excited utterance
- Present sense impression
- Statement made for medical diagnosis
- Business Record

Presenting Evidence in Court



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WHAT IS EVIDENCE?

Evidence is any information presented in support of an assertion. In court, evidence must be:

- relevant;
- authentic; and
- admissible.

Evidence includes witness testimony, exhibits, and more. To learn more about the rules of evidence, you should consult with an attorney and familiarize yourself with the Rules of Evidence. Because evidence is a complex subject, many details are excluded from this pamphlet.

HOW DO I ADMIT EXHIBITS INTO EVIDENCE?

Exhibits must be “admitted into evidence” for the court to consider that information in making its decision.

To admit an exhibit into evidence:

Bring at least 4 copies (for yourself, any opposing party, and the witness, along with the original for the Court). You may present your exhibits in an **exhibit book** (a binder with exhibits tabbed by number for Petitioner/Plaintiff or by letter for Respondent/Defendant). Some cases require pre-disclosure of exhibits. If you decide to use an exhibit book, you only need to do Steps 1-4 once. Repeat 5-8 for each exhibit.

Step 1. Mark exhibit. Exhibits can be pre-marked or you can write on the Exhibit during the hearing and say “I am now marking this Exhibit 1.”

Step 2. Show the exhibit to the other party/opposing counsel. Say: “I am now showing the opposing party Exhibit 1.” Hand a copy to the other party, unless he/she was given an exhibit book before the hearing.

Step 3. Give a copy to the judge. Ask the judge for permission to approach the bench. Say: “Your Honor, may I approach the bench?” If the judge says “You may” then give the judge a copy of the exhibit.

Step 4. Give a copy to the witness. Ask the judge for permission to approach the witness. Say: “Your Honor, may I approach the witness?” If the judge says “You may” then give the witness a copy of the exhibit.

Step 5. Show the exhibit to the witness. Say: “Witness, please look at the document marked Exhibit 1. Do you recognize this document?”

Step 6. Lay the foundation for the exhibit. (See Foundation for Exhibits)

Step 7. Offer the exhibit into evidence. Say: “Your Honor, I offer Exhibit 1 into evidence.”

Step 8. Wait. The opposing party may object (See “objections”). You can respond. The judge will **admit or deny** the exhibit.

FOUNDATION

Witnesses. For testimony to be admitted in evidence, the witness must be “competent”. You may want to read about differences between “lay witnesses” and “expert witnesses”. Have a series of questions prepared to demonstrate:

- who the witness is
- what the witness knows and
- how the testimony relates to the case.

Exhibits. Exhibits must be presented in a format that can be left with the Court (i.e. messages on cell phones could only be presented along with a transcript or photograph of the message that can be entered as an exhibit). For exhibits to be admitted in evidence, the exhibit must be relevant and authentic. “Relevant” means it pertains to the question before the Court. Authentic means the exhibit is what it purports to be and is reliable (i.e. not a forgery). An exhibit can be authenticated by a witness who testifies that (s)he:

- recognizes the exhibit,
- knows what the exhibit looked like previously, and
- knows this exhibit is basically the same as the last time the witness saw it.

WHERE CAN I LEARN MORE ABOUT THE RULES OF EVIDENCE?

- The Rules of Evidence (CRE) are on the court’s website: <http://www.courts.state.co.us/resources.cfm> (Colorado Revised Statutes → Colorado Court Rules → Colorado Rules of Evidence)
- Colorado Legal Services website: www.coloradolegalservices.org → Videos
- You can talk with an attorney.