Family Legal Care

Trial Resource Guide

Objections

An **objection** is when a party in a court case speaks out during a hearing or trial to tell the jurist that they think something should not be allowed or used to decide the case. You might object to something that the other party or a witness says. You might also object to evidence that the other party wants the jurist to consider.

Objections help to make sure that the trial is fair by only allowing evidence that is reliable and helpful. They also help **preserve issues for appeal** if your case goes to a higher court. This means that when you object to something and explain why, that issue will be saved on the record for a higher court to review. If you do not object during the trial, you usually cannot raise that issue in an appeal.

Here are some key things to know about objections:

- **Timing:** You must object as soon as you hear a question asked or testimony given that you think should not be allowed. This might be right after the question, during the testimony, or as soon as the testimony is over. If you wait too long, you may lose your chance to object–even if it is a valid objection.
- **Try to be specific:** Although you can try to make a general objection by saying "I object," you usually must explain why you are objecting. For example, you could say, "Objection, hearsay" or "Objection, relevance." See below for explanations of these terms.
- **Be ready to respond:** If the other party objects to something you want to say or show to the jurist, you can explain why it should be allowed. For example, if the objection is about relevance and you are testifying about your employment, you could say, "This is relevant because it's about my job."

The jurist will decide whether to agree (**sustain**) or disagree with (**overrule**) the objection. If the jurist sustains the objection, it means the question, testimony, or evidence is not allowed. If the jurist overrules the objection, it means the question or evidence can be used.

> **Tip:** If your objection is sustained, ask the court to strike the testimony or evidence from the record. This means the jurist will not consider it when deciding the case.

What should you do when there is an objection?

If you or your witness are testifying and the other party says, "Objection," stop talking. Wait until the jurist asks you to respond to the objection or decides whether to sustain or overrule the objection. You can respond to the objection by explaining why you are asking the question. This is called an **offer of proof**.

Common Objections

Relevance

An objection based on relevance means the testimony or evidence is not related to the main issue of the case.

- **Example:** In a child support case, if someone asks about an affair, it might not be relevant because it does not affect child support.

Hearsay

Hearsay is a statement that someone else made outside of court that you want the jurist to believe is true. Statements can be verbal (spoken), written (like documents), or nonverbal (like a head nod or gesture). Hearsay is a problem because the court does not know if the statement is trustworthy. Plus, the person who made the statement is not in court, so they cannot be questioned about it.

- **Example 1:** A witness says, "Her boss *told me* she makes $15 an hour." That is hearsay if used to prove her hourly rate. Either the boss must testify, or you need proof of the hourly rate, such as a paystub.
- **Example 2:** You say, "The bank teller *told me* there was no money in our joint account." That is also hearsay if used to prove the account was empty.

Exceptions to Hearsay: Sometimes hearsay is allowed.

- **Does Not Go to the Truth of the Matter:** This means that a statement or document is not being used to show that what it says is true.
  Example: A police report can show that you went to the police, but what the officer said in the report will still be considered hearsay.
- **Admission:** An admission is a statement made by the other party that can be used against them. Even if they said it outside of court, the jurist might allow it.
  Example: You say, "The other party told me he wouldn't pay for our son's college." This may be considered an admission.
- **Excited Utterance:** This is when someone says something during a stressful or startling event.
  Example: A 911 caller says, "Please hurry! He's trying to break in." This is an excited utterance.

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No Foundation

Laying a foundation means proving that evidence is real and trustworthy. There are rules about how to lay a foundation for different types of evidence. See our "Evidence" guide to learn more.

- **Example:** If a witness does not say that a photo "fairly and accurately" shows what is in the photo, you can object that there is no foundation. You can also object if a business record is not properly certified.

Leading

You can object if the other party or their lawyer is trying to tell their witness how to answer a question. This is called a **leading question**. This objection only applies on direct examination when someone is asking their own witness a question. You are allowed to ask leading questions if you are cross-examining the other party's witness. See our "Direct Examination" and "Cross Examination" guides to learn more.

- **Example:** The other party asks their witness, "Last week, she told you that she did not need childcare, right?" This is a leading question and may not be allowed. Instead they may ask, "What did she say to you last week?"

Beyond the Scope of Earlier Testimony

During cross examination, you generally cannot ask the other party or their witness about something that was not covered in their earlier testimony.

- **Example:** If a witness talks about something that happened on May 4th, you might not be able to ask them about a separate incident that occurred on May 3rd *unless it is related*. Otherwise, this may be beyond the scope of their earlier testimony.

Beyond the Scope of the Witness's Personal Knowledge

A witness can only talk about things they know or have experienced. They cannot guess or make up things.

- **Example:** A witness cannot say, "She has bipolar disorder" unless they are a psychiatrist and know for sure.

Speculation

Speculation is when a witness is guessing about what might happen in the future. The court may allow it if the witness explains why they think it is true. This is why it is important for the witness testifying to be specific and include details. This makes a witness more **credible**, or believable, to the court.

- **Example:** Saying "I know he won't pay for college" might be speculation. But if you say, "I know he won't pay for college because he didn't pay for his other children," that could be allowed because you have a reason for thinking it is true.

Asked and Answered

You can object if the same question is asked more than once or if the other party or their witness already answered a question. This objection only applies if someone is testifying on direct examination. On cross-examination, you may ask the same question in different ways.

Non-Responsive

If a witness does not answer the question but talks about something else, you can object. You can ask the jurist to order the witness to answer the question that was asked.

Confusing, Misleading, or Vague

You can object if the question does not make sense or is hard to understand.

Need more help? Family Legal Care offers free legal information and advice on New York family law and court procedure. Call our Helpline at **212-343-1122** or visit **familylegalcare.org**.