

Objections as to Form

Argumentative: Argumentative questions seek to force the witness to accept a particular interpretation of the questioning attorney. Remember: An attorney may question the credibility of a witness through cross-examination. Generally, such questioning is not objectionable as argumentative.

Asked and Answered: While an attorney may seek clarification of a witness's answer or ask for additional information, it is objectionable if the attorney repeatedly asks the same question, generally pressing the witness for a different response.

Assuming Facts Not in Evidence: An attorney may object if a question uses a fact not otherwise proven or put forth in evidence as the condition for the question. For example, "Caseworker Jones, you were so overwhelmed with your caseload that you failed to make the necessary referrals for this case, correct?" This question is objectionable if there is no evidence yet in the record to suggest that the caseworker was overwhelmed.

Compound: These questions combine multiple questions into one, requiring a witness to provide multiple answers.

Leading: Leading questions are those that suggest an answer. For example, "Caseworker Smith, Mother left the children unattended while she went to work, correct?" This form of questioning is not permissible on direct examination except for the limited purpose of laying foundation.

Narrative: An attorney may object on the grounds of narrative if a question permits (or a witness offers) a long-winded response with a substantial amount of information. A narrative prevents opposing counsel from anticipating and assessing the admissibility of evidence.

Nonresponsive: Often, on cross-examination, witnesses may seek to sidestep the attorney's leading questions and provide additional explanation. If the answer does not respond to the question asked, the attorney can object on the basis that the answer was nonresponsive.

Vague: An attorney may object on the ground of vagueness when the question is confusing or requiring an ambiguous response.

Objections as to Substance

Confidentiality and Privilege: Certain privileges (attorney-client, therapist-patient, marital, or physician-patient) are established by statute or case law. These prevent testimonial disclosure of information unless the privilege is waived by the holder of the privilege. Confidentiality refers to the ethical rules protecting disclosure of certain types of information.

Foundation: Foundation is the background information necessary to demonstrate the indicia of reliability sufficient to allow for the admissibility of evidence. Questioning is objectionable on the basis of lack of foundation if it elicits an answer without first providing predicate information as to how the witness knows the information or what action was previously taken to ensure its reliability.

Hearsay: An attorney should object to hearsay, "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

Improper Character Evidence: Character evidence is objectionable if it is being offered to prove that a person "acted in conformity" with that character on a particular occasion. Such evidence may only be used: (1) to show motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake; (2) to demonstrate truthfulness or to attack the witness's reputation for truthfulness; or (3) to show felony criminal convictions or convictions for crimes of dishonesty that occurred within ten years.

Improper Judicial Notice: Judicial officers are able to take notice of facts that are generally known or capable of "accurate and ready determination." If information is open to dispute, an attorney should object.

Improper Lay Opinion: Only expert witnesses can testify to their opinions. Lay witnesses are called to testify to facts or observations. They can only offer opinions that are rationally based on their own perceptions and helpful to the fact finder. For example, a lay witness might testify that a mother appeared to be "tired" during a visit. Generally, opinion testimony from a lay witness is objectionable. A lay witness, for instance, could not testify that visitation with mother is harmful to the child's emotional well-being.

Lack of Personal Knowledge: Non-expert or lay witnesses offer testimony based on personal observations or facts that they have perceived. An attorney may object on the grounds of lack of personal knowledge if there has not been any information in the record to indicate that the witness personally knows the information being asked.

Relevance: An attorney should object on the grounds of relevance if the information sought through questioning does not make a fact at issue more or less probable.

Settlement Offers: An attorney should object to testimony regarding statements made during settlement negotiations and settlement offers.

Speculation: An attorney may object if a witness, particularly a lay witness, speculates about another person's state of mind, feelings, or motivation.

Unfair Prejudice: Information is objectionable if the probative value of the information (its usefulness to the trier of fact) is outweighed by concern that it will unfairly prejudice the outcome.