

# PRESENTING EVIDENCE IN COURT

## EVIDENCE

Evidence is any information presented in support of an assertion and includes testimony and exhibits. In court, evidence must be 1) relevant, 2) authentic, and 3) admissible.

- Relevant means it pertains to the question before to be decided.
- Authentic means the exhibit is what it purports to be and is reliable. An exhibit can be authenticated by a witness who testifies that they recognize the exhibit, they know what the exhibit looked like previously, and they know the exhibit is basically the same as the last time the witness saw it.

**Admitting Evidence:** Exhibits must be admitted into evidence for the fact finder to consider the information in making their decision. The evidence becomes part of the court record and may not be returned after it is admitted.

### **Step 1.** Mark the exhibit

The prosecution uses numbers and the defense uses letters starting with A. You can write the letter on the back of the exhibit itself or ask the Court Specialist for an exhibit sticker.

**Step 2.** Show the exhibit to the other party/opposing counsel. The other party is entitled to see the exhibit prior to the witness.

**Step 3.** Ask to approach the witness and show the exhibit to the witness.

**Step 4.** Lay the foundation for the exhibit to establish it is relevant, authentic and admissible.

**Step 5.** Offer the exhibit into evidence. The judge will ask opposing counsel if they have an objection. Wait for the Judge's ruling.

**Step 6.** If admitted, you may ask to publish/show the exhibit to the fact finder for their consideration.

## FOUNDATION

**Witnesses:** For testimony to be admitted in evidence, the witness must be "competent". You may want to research the difference between lay and expert witnesses. It is good practice to 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/manner the Court can accept and any editing issues should be resolved ahead of trial.

## OBJECTIONS

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If someone offers testimony or exhibits that you do not want the judge or jury to consider, you may object. However, you cannot object just because you do not like the information that is being presented. You must have a reason, based upon the rules of evidence, for your objection. There may be exceptions to some rules (such as hearsay), so make sure to do some research 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 rule on the objection before you proceed.

If an objection is sustained, the information may not be admitted. If an objection is overruled, the information may be admitted.

## **Common Objections:**

- 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 questions (during direct examination)

**Hearsay:** An out of court statement made for the truth of the matter asserted. For example, imagine that someone tries to introduce a letter that contains the opinion of a person who will not be testifying. 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.

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

## **Examples of Hearsay Exceptions:**

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

Note: Criminal law is a complicated area. You are entitled to represent yourself or have legal representation to present your defense. You may hire an attorney or complete an application for court appointed counsel.

Thank you to Boulder Combined Courts for assistance with this information.