Common Objections

When and How to Effectively Object to Evidence and a Discussion of Appropriate Responses

Witness Volunteering an Answer

When a witness has answered the question asked of him/her, and begins to volunteer answers to questions that have not been asked of him/her.

Non-Responsive

- When a witness starts responding to a question with information that is completely unrelated to the question, you can object to it as being “non-responsive.” This can be especially important in cross-examination when you are looking for very specific “yes” or “no” answers.
- The *non-responsive* objection is a common objection used in court when a witness is not responding properly to questions asked under oath. Using this evidentiary objection is crucial when you have a witness who skirts around your question, rambles on and on, or gives testimony that goes beyond the scope of what you asked them.
- It's critical to make these kinds of courtroom objections quickly because the witness may inadvertently (or intentionally) say something that is harmful to your case. You should ask for harmful testimony stricken from the record.
- Even though non-responsive objections can be a source of frustration for attorneys, if the witness is adding information that was not asked that is either harmful to your case or does not actually answer the question that you need/want to hear, then you should continue to make the objection until the witness answers properly.

Relevance

O.C.G.A. § 24-4-401 – "Relevant evidence"
Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

No matter what the evidence is—witness testimony or tendered documents, or even hearsay—it must be relevant.

- The evidence the judge is relying upon has to relate to the matter at hand for which s/he is making determinations of the issues at hand.
- Think of it like a puzzle—all of the pieces of evidence begin offered have to fit in order for it to be considered relevant.

Common Objections

Assumes Facts Not in Evidence

- This objection is closely related to the "foundation" objection.
- If a question or answer references a fact or information that has not yet been established or presented and accepted as evidence, it should be objected to on this basis.

Leading Question

This is usually occurs with questions that have "Yes" or "No" answers

- The judge might allow some leading questions during direct examination for simple background information to move the testimony along faster. For example, the judge might allow the question "You are the case manager for the Smith Children, correct?" instead of "How are you involved with this case?"
- Leading questions are allowed on cross examination, however, on direct examination (SAAG and Case Manager) opposing counsel cannot pose a question that leads the witness to a certain answer.

Leading Question or Counsel is Testifying

- When a CAA is attempting what seems to be leading on cross examination, then try the "argumentative" objection, and state that counsel is testifying.
- Typically when the CAAs are taking advantage of the cross examination stage, they will phrase many of their "questions" more like statements/testimony in an effort to get their own information on the record versus eliciting actual testimony from the witness.

Unfairly Prejudicial

- Object to evidence, even if it's relevant, if the evidence would unfairly prejudice the judge against your client.
- You may have to do some quick calculations about how to frame the objection, but it's worth trying.

Asked and Answered

- Sometimes during cross-examination, the attorney may ask the same question over and over again, perhaps in slightly different ways, or re-ask a question s/he had asked earlier in the testimony.
- Sometimes when attorneys do not like the witness' answer, they tend to ask the same question again and hope for a better response. You should definitely object on the basis of asked and answered.
- Also, it doesn't matter if the attorney really liked the witness' answer, and they want to ask it again to emphasize the point, this is still a basis for an objection.

Compound Question

A compound question is when two or more questions are combined into one question.

- Compound questions are not allowed because they can confuse the witness and the judge.
- Also, it may not be clear for the court record which of the questions the witness is answering and which answer/question you may want to object to on other grounds.
- If you find yourself asking a compound question, don't get flustered with the other party's objection and then skip the issue entirely. Just advise the judge that you will rephrase the question, then separate out the questions, and ask them one at a time.

Argumentative

Argumentative is a legal term which means

"drawing conclusions."

- Argumentative questions attempt to influence the witness' testimony.
- Attorney questions are supposed to be just that—questions. Attorneys should not argue their case during their examinations of witnesses (e.g. CAAs).
- Think of it as opposing counsel trying to offer a *conclusion* of what the evidence means rather than simply asking the witness for the facts of what actually happened.
- Generally, a party is only allowed to "argue" (i.e. draw conclusions) in closing arguments (facts not in evidence are still not allowed in closing).

Vague or Ambiguous

- A question is “vague” or “ambiguous” is when it is difficult or impossible to tell what the actual question is about.
- You should object to a vague question that is asked of your client or another witness because of the risk that your client or the witness will misunderstand the question and say something inaccurate that may hurt your case.
- If your objection is sustained, then the person asking the question should either withdraw the question or to ask the question in a different way that makes more sense or is more specific.

Speculation

- If an attorney asks a witness a question that would call for him/her to guess at the answer, or if the witness seems to be "guessing" because they do not know a fact to be true or not true, then you should object to the question or the answer as speculation.
- A witness must have personal knowledge of a fact to testify about that fact, otherwise the evidence should not be considered reliable or factual.
- "Estimating" is allowed, but most opinions are not (unless it is an expert who has been tendered and accepted as such).

Beyond Scope of Cross Examination

This is an objection only made during redirect examination.

- On redirect, questions and responses should be limited only to issues that were raised during the cross examination of the witness.
- A redirect examination question and response is objectionable when it is not related to an issue raised during the cross examination.
- The SAAGs and other attorneys tend to take this opportunity to ask questions that they forgot to ask on direct.

Don’t let them!

Neal v. Augusta-Richmond County Personnel Board, 304 Ga. App. 115 (2010)

- Holding that the testimony of the drug test results did not fall into any exceptions to hearsay, and thus were inadmissible.
- The COA stated that the testimony of the medical review officer who merely received the results of a lab test and included them in his report because the witness “could not testify about the accuracy of the test result, and acted as a mere conduit for the non-testifying technician's findings”.

Hearsay Exception for Admitting Drug Screens During a Hearing When Hearsay is Not Allowed

Business Records Exception

- The only real viable exception for a SAAG to overcome your hearsay objection as it relates to drug screens during a hearing which hearsay **is not** allowed would be:
  - Business records exception (OCGA § 24-9-803) and/or a sworn Affidavit; AND
  - There must be a showing of "sufficient indicia of trustworthiness or **reliability**" to bring the drug screen under a hearsay exception [FRE or GA Rules of Evidence]
- If the judge entertains this exception in favor of the SAAG, then further bolster your objection by stating that the SAAG is still required to lay the proper foundation for proper admissibility.

Objections to Drug Screens When Hearsay **is** Allowed
Make Objections Stemming from "Reliability"

- Attack the lack of foundation for the admissibility of the drug screen. The Case Manager must explain the background circumstances of how s/he knows the information s/he is testifying about.
- Personal Knowledge: Lay witnesses (Case Managers) may testify as to their personal knowledge in a case. But they are not permitted to testify as to matters outside their first-hand knowledge.
- If the SAAG does not have the person who administered the test or the sworn affidavit from that person, then object based on failure to establish chain of custody.
- Confrontation grounds: A defendant has the right to cross examine the evidence (testimony evidence or documentary evidence) that is being presented against him/her.
- Attack the competence of the lab's technicians, and its compliance with proper collection process, and any recalls of the test kit from certain manufacturers.
- Lastly, case law states that a trial court cannot solely rely on hearsay evidence to make its determinations, so address this in your objections as well as in your closing argument.

Responding to the Judge's Ruling on Objections

After an objection is made and after the attorneys have had a chance to argue (if the judge allows it), the judge will rule on the objection. The judge will either sustain or overrule the objection.

- If the Judge sustains your objection to testimony provided by a witness, the move to strike the statement.
  - If you objected to testimony that a witness gave in-part or in-full, and the judge sustained your objection, you need to move to strike the witness's improper testimony.
  - This means that you ask the judge to exclude the improper testimony from evidence. When the judge strikes improper testimony from the record, they cannot consider it when making it final rulings.
  - The stricken testimony also can't be used by the other parties. It will be as if the witness never said the portion that was stricken. Do not to use it in your closing argument either.
- What to move to strike:
  - When a witness gives an unresponsive answer to one of your questions.
  - When a witness volunteers inadmissible evidence in response to a proper question asked by your opponent.
  - If the question itself clearly called for inadmissible evidence, you must have objected to the question or answer previously.
  - You cannot resort to a motion to strike answer that has already been given unless the improper testimony could not have been anticipated from the question.

"…[A]lthough each individual is the pilot of their own destiny, when we come together, we change the world. We are stronger as a woven rope than as unbound threads."

~Alexander Vindman