

VIII. GOING TO TRIAL IN A CIVIL CASE

A. What is evidence?

Evidence is testimony, documents, physical objects, or other items offered to and accepted by a court to prove facts relevant to a case. Some examples might be an expert's opinion, a witness's testimony, medical records or photographs. The admissibility of evidence is a very significant and complex area of the law. There are many laws and rules that the judge must consider in determining what can be admitted into evidence. The court may not accept everything that you think would help your case.

LEARNING THE LANGUAGE

Hearsay It is common to object to written or spoken statements made outside the courtroom on the grounds that they are "hearsay." Statements that follow "he told me" or "she said" might be hearsay.

Hearsay evidence is not admissible in court unless it falls under one of many exceptions to the rules about hearsay evidence. Figuring out if certain hearsay evidence might be admissible is difficult and requires a sophisticated knowledge of the law and rules that apply.

Ultimately, it is the judge who will determine what is admissible.

B. What is testimony and how do I present it?

Testimony is the statement of a witness under oath about things the witness has seen, heard, or otherwise observed. In most instances, witness testimony is presented in a question and answer format.

Your Witness: Questioning your own witness is called direct examination. The purpose of direct examination is to use your witness to speak about facts that support your case. This is done by asking questions that draw out information about what the witness saw, heard or observed.

Expert Witness: You may want to present a witness who is an expert in a particular subject that is important to your case. The rules and laws on who qualifies as an expert and how that person's testimony might get admitted into

evidence are complex. It is up to the judge to determine if your witness is an expert and whether his or her testimony is admissible.

The Other Party's Witness: When one party questions the other party's witness, it is called cross-examination. During cross-examination, the opposing party can ask questions that require a "yes" or "no" answer. These are called "leading questions" and do not allow the witness the opportunity to explain the answer.

Yourself as Witness: As a party to the case, you may testify at the trial in support of your own case. If you are representing yourself, you will need to decide how you will present your own testimony. You should ask the judge for his or her preference on how to present your testimony under these circumstances.

LEARNING THE LANGUAGE

Objection An objection is a way to call the court's attention to the objecting party's challenge to the admissibility of evidence offered by another party. Either side can object to the admission of items or statements into evidence. The judge might ask and you should be prepared to explain the basis for your objection.

After an objection is made and the reasons for it are given, the judge will typically "overrule" or "sustain" the objection. If the objection is overruled, it means the evidence is admitted. If the objection is sustained, it means the judge agrees that the proposed evidence is improper.

If you are questioning a witness and the other side objects, stop and wait for the judge to rule on the objection.

If you are representing yourself in court, you will be required to know the laws and rules that apply to the introduction and admissibility of evidence. It is important to learn when to make an objection. If you don't object at the right time, you could lose your right to challenge the admissibility of the evidence at a later point in the proceedings or on appeal.

ALERT!

- Write down your questions for each witness before going to court to be sure you cover everything.
- Don't argue with a witness. Be respectful, don't interrupt and don't yell.
- When the witness gets on the stand, ask your questions and listen carefully to the answers. This is not the time for you to give a speech.

C. How can I get documents into evidence?

You may have documents supporting your side of the story that you want to admit into evidence. As with other forms of evidence, there are rules and laws that you must follow to have documents admitted as evidence. Be aware that if you want to offer a document in court, typically you will not be able to do so unless you have provided the other side with a copy ahead of time. Likewise, you should expect that the other side will provide you with copies.

Court rules are strict about what kinds of documents will be admitted into evidence as part of your case. Ultimately, the judge decides what becomes evidence. If you disagree with the judge's decision, you may object. Always remain respectful. Know the applicable rules and law before trying to admit documents into evidence.

D. What kinds of decisions might the court make in my case?

What type of decision or decisions the court will make in your civil case depends upon the particulars of your individual case. In the course of a typical civil case, there may be a number of different decisions made.

These might include:

Ex Parte Orders: An *ex parte* order is a temporary order entered by a judge without notice to the other side, usually on an emergency basis. An *ex parte* order is usually valid until the other side has an opportunity to present his or her version of the story to the court. Some examples of this are a request for protection from abuse, typically referred to as a "209A order," a request to prevent the sale of property which is the subject of a dispute, or a guardianship for an incompetent person.

Temporary Orders and Preliminary Injunctions: Temporary orders and preliminary injunctions are decisions which tell the parties what to do or what not to do until a final decision ends the case. For example, one parent may be granted temporary custody of a child until a final hearing is held. Once there is a final judgment, temporary orders are no longer in effect.

Rulings on Motions: A motion is a request to the court for an order or decision in favor of the person filing the motion. Motions can address a wide variety of issues. Courts make decisions on motions throughout the course of a case. Sometimes a decision is made after the parties argue before the judge and sometimes the decision is made based on a written motion and opposition.

Judgments: A judgment is the final decision of the court, and is almost always issued in writing. A written judgment is sometimes accompanied by a written discussion of the facts and law explaining the court's decision.

E. How long will my case take?

Many of us watch crime and legal dramas on television. On these programs, the crime is almost always solved or the legal issue settled in the course of an hour or two. Watching television can lead some people to have unrealistic ideas about how long a typical case will take. In fact, a typical case may take a year or more to be completed. You should not expect to walk into the courthouse and get your issue resolved that day.

F. What if my case is an emergency?

In certain emergency cases, you may be able to go before a judge the same day you go to the courthouse. For example, you might need a restraining order seeking protection from abuse, an emergency guardianship for a child or an incompetent adult, an order to stop someone from selling property, or an order related to some other kind of emergency.

Typically in emergency cases, you will receive only a temporary order. A temporary order is put in place to protect you or another person until the other party can be notified and a more complete hearing can be held.

ALERT!**SOME THINGS THE COURT MIGHT REQUIRE YOU TO DO**

The judge may ask you to do a number of things for your trial, such as:

- provide a list of witnesses
- pre-mark exhibits
- write a memorandum of law
- draft proposed findings of fact
- draft proposed rulings of law
- draft a proposed order or judgment

LEARNING THE LANGUAGE

Ruling from the Bench The judge may make a ruling or decision while both parties are still present in the courtroom. This is called “ruling from the bench.”

Under Advisement The judge may want to delay announcement of the decision for a variety of reasons or may want more time to consider the evidence and the law before issuing a written decision. This is called “taking the matter under advisement.”