

HOW TO TRY A FAMILY LAW CASE

Presented By:

The Honorable Natasha DePrimo, General Magistrate Annette
Szorosy and Rae E. Chorowski, Esq.

Opening Statement

- 1. What is your theme?
- 2. Tell the story of your case. Provide the court with the roadmap of your case. What evidence will be presented to support it.
- 3. Be persuasive by weaving your facts into your theme.
- 4. Decide whether to address your bad facts in your opening.
- 5. Tell the judge what is the relief you are seeking. What do you want!
- 6. Do not go on forever or you will lose the judge.

Preparing for an Effective Direct Examination

- Legal Research
- What is the Purpose of the Witness
- Refrain from Offering Cumulative Evidence
- Consider the Order of Your Witnesses
- Consider the Order of the Testimony Your Eliciting from the Witness
- Preparing Your Witness
- Zoom Practice!!!! Practice, practice with technology
 - A. No one else in the room
 - B. No cellphones and texting while on the stand
 - C. Backgrounds
 - D. Attire

Preparing for an Effective Direct Examination

EXHIBITS

- Meet With Opposing Counsel Before Trial to Go Over Exhibits That You Agree May Be Admitted into Evidence Without Objection
- Utilize *Fla. Stat.* §90.902(11) and §90.803(6)(c) to Admit Business Records into Evidence Through a Certification or Declaration from the Records Custodian. Washburn v. Washburn, 211 So. 3d 87 (Fla. 4th DCA 2017) (bank records produced in mandatory disclosure are not automatically admissible into evidence; proponent of evidence must still demonstrate a proper exception to hearsay)

Preparing for an Effective Direct Examination

Admitting Business Records Into Evidence Via Certification

§90.803(6)(c) - A party intending to offer evidence under paragraph (a) by means of a certification or declaration shall serve reasonable written notice of that intention upon every other party and shall make the evidence available for inspection sufficiently in advance of its offer in evidence to provide to any other party a fair opportunity to challenge the admissibility of the evidence. If the evidence is maintained in a foreign country, the party intending to offer the evidence must provide written notice of that intention at the arraignment or as soon after the arraignment as is practicable or, in a civil case, 60 days before the trial. A motion opposing the admissibility of such evidence must be made by the opposing party and determined by the court before trial. A party's failure to file such a motion before trial constitutes a waiver of objection to the evidence, but the court for good cause shown may grant relief from the waiver.

§90.902(11) - An original or a duplicate of evidence that would be admissible under s. 90.803(6), which is maintained in a foreign country or domestic location and is accompanied by a certification or declaration from the custodian of the records or another qualified person certifying or declaring that the record: (a) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person having knowledge of those matters; (b) Was kept in the course of the regularly conducted activity; and (c) Was made as a regular practice in the course of the regularly conducted activity, provided that falsely making such a certification or declaration would subject the maker to criminal penalty under the laws of the foreign

BUSINESS RECORDS AFFIDAVIT

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____
[Affiant's name], who, being by me duly sworn, deposed as follows:

My name is _____ [Affiant's name]. I am the custodian of records for
_____ [Company's Name]. I am of sound mind, capable of making this
affidavit, and personally acquainted with the facts herein stated.

Attached hereto are records from _____ [Company's Name]. These records are
kept by _____ [Company's Name] in the regular course of business, and it was
the regular course of business of _____ [Company's Name] for an employee
or representative of _____ [Company's Name], with knowledge of the act, event,
condition, opinion, or diagnosis recorded to make the report or record, or to transmit information
thereof to be included in such report or record; and the records were made at or near the time or
reasonably soon thereafter. The records attached here are exact duplicates of the originals.

AFFIANT

STATE OF _____

COUNTY OF _____

SWORN TO and subscribed before me by the Affiant [] personally known to me or []
who showed _____, to corroborate the Affiant's identity this ___ day of
_____.

My commission expires:

NOTARY PUBLIC, State of _____

Preparing for an
Effective Direct
Examination

EXHIBITS

- Pre-Marking Your Exhibits
- Preparing Your Exhibit Log

Marked for Identification #	Document Offered Into Evidence	Offered by Mother	Offered by Father	Admissibility of Exhibit Jointly Agreed Upon	Exhibit Not Agreed to & Legal Objection	Trial Exhibit #
A	Final Decree of Divorce	X			Father Objects - Relevancy	FW-1
B	Father's Petition to Modify Parent-Child Relationship and Emergency Request for Temporary Restraining Order (Texas 1/25/13)	X			Father Objects - Relevancy	FW-2
C	Father's First Amended Motion to Modify the Parent-Child Relationship and Motion for Enforcement of Possession or Access and Order to Appear dated 1/30/13	X			Father Objects - Relevancy	FW-3
D	Respondent's Original Answer dated 2/22/13	X			Father Objects - Relevancy	
E	Mediated Settlement Agreement dated 8/23/13	X	X	X		FW-4
F	Agreed Order in Suit to Modify Parent-Child Relationship dated 3/18/14	X	X	X		FW-5
G	11/16/15 texts between Mother and Father				Father Objects - Authentication	FW-10
H	Texas Police Department CFS Report		X		Mother Objects - Relevancy & Hearsay	
I	Order on Motion for New Trial dated 5/23/14	X	X	X		FH-8
J	Text message between Mother and Father 7/28/17		X		Mother Objects - Inadmissible Settlement Negotiations/Offer to Compromise	FH-19

Preparing for an Effective Direct Examination

LEGAL OBJECTIONS

- Object & State Your Legal Objection
- No Speaking Objections!
- Standing Objections
- Failure to Object to Evidence Constitutes a Waiver of the Objection.
Rhodes v. State, 638 So. 2d. 920 (Fla. 1994).
- But Remember, Not Every Objectionable Question Warrants an Objection!

Preparing for an Effective Direct Examination

LEGAL OBJECTIONS

1. Objections to *Questions*

- Calls for Irrelevant Answer
- Violates the Best Evidence Rule
- Calls for a Privileged Communication
- Calls for a Conclusion
- Calls for an Opinion (by an Incompetent Witness)
- Calls for a Narrative Answer
- Calls for a Hearsay Answer
- Leading
- Asked and Answered / Repetitive
- Lack of Foundation
- Beyond the Scope (Direct, Cross, or Redirect)
- Assumes Facts Not in Evidence
- Confusing / Misleading / Ambiguous / Vague
- Speculative
- Compound Question
- Argumentative
- Improper Characterization
- Misstates Evidence / Misquotes the Witness
- Cumulative
- Improper Impeachment
- Counsel Testifying

Preparing for an Effective Direct Examination

LEGAL OBJECTIONS

2. Objections to *Exhibits*

- Irrelevant
- No Foundation
- No Authentication
- Hearsay
- Prejudice

3. Objections to *Answers*

- Irrelevant
- Privileged
- Conclusion
- Opinion
- Hearsay
- Narrative
- Improper Characterization
- Parole Evidence
- Unresponsive

Preparing for an Effective Direct Examination

Offering Documents Into Evidence

- Hand the document to opposing counsel, then ask to approach the witness, and then hand the document to the witness and identify what is being provided:
 - “I am handing to the witness records which were previously marked for identification purposes only as Petitioner’s Exhibit “B.”
- Ask the witness to identify the document and establish the relevancy of this document:
 - “Do you recognize this? What is it? How do you recognize it?”
- Offer the document into evidence:
 - “Your honor, the records that were previously marked as Petitioner’s Exhibit “B” are being offered into evidence as Petitioner’s Exhibit 2.”

*****Have any legal research you need on hand in the event of an anticipated objection to the document*****

Common Mistakes Attorneys Make During Direct Examination *or* Helpful Suggestions

- Leading Questions & How to Re-Ask the Question
- Long-Winded / Not Concise
- Listen to the Witness's Testimony
- Know Your Objections
- Exhibits Ready & Pre-Marked
- Manage Your Hearing Time Wisely
- Know Your Judge
- Direct the Judge Where Your Going With Line of Questioning
- Making a Proffer / Offer of Proof

Preparing for an Effective Cross Examination

- Review Everything Available to You
- Take the Witness's Deposition
- Make an Outline of Topics Areas You Must Cover & Then Arrange Questions by Topic Area
- Be Brief
- Ask Leading Questions
- Ask Short Questions Using Simple Words
- Don't Ask a Question if You Don't Already Know the Answer
- Have Your Deposition Page & Line # Ready to Impeach Witness if Necessary Next to Question in Your Notes

Preparing for an Effective Cross Examination

How to Address an Uncooperative Witness

- Object and move to strike the witness's answer as non-responsive.
- Ask again, but be professional and not argumentative:
 - “I’m sorry, maybe you didn’t hear me but the question was...”
 - “I realize you want to tell the Court about, but my questions is very specific, my questions is....”
 - “I wish I could answer your question, but I am not the one testifying. You have been called to testify and so please answer my question, my question is....”
- Try to rephrase your question to elicit an “either ____ or ____” answer.
- As a last resort, ask the Judge to instruct the witness to answer the question.

Preparing for an Effective Cross Examination

Prior Inconsistent Statements Under Oath

Fla. Stat. §90.801(2)(a)

- A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is: (a) inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding or in a deposition.
- Therefore, if a prior statement meets the requirements of 90.801(2)(a), it may be admissible as substantive evidence and in the traditional use for impeaching the credibility of the declarant.
- Section 90.801(2)(a) recognizes the realistic problem that occurs when the fact finder believes the prior statement was made and was true, because it is difficult for the fact finder to limit the use of the statement only to assess the credibility of the declarant. Therefore, §90.801(2) allows the prior inconsistent statement to be admissible as substantive evidence to prove the truth of the matter asserted.

Common Mistakes Attorneys Make During Cross Examination *or* Helpful Suggestions

- Arguing with the Witness
- Avoid The One Extra Question
- Listen, Listen, Listen!
- No Cumulative Testimony
- Do Not Ask Why
- Consider Not Crossing the Witness

Closing Argument

- 1. Oral vs. written.
- 2. A summary of the evidence. What did you prove. Did you meet your burden. You want to show the court that your facts supported your evidence and the law supports the relief you are seeking.
- 3. An attack on any holes or weaknesses in the other side's case.
- 4. Provide the court with a legal research binder.
- 5. A summary of the law.
- 6. Apply the law to the facts and evidence in your case.
- 7. Stick to your theme.
- 8. Don't go on forever or you will lose the judge!!

THANK YOU

The Honorable Natasha DePrimo, General Magistrate Annette Szorosy and Rae E. Chorowski, Esq.