

**BROWARD COUNTY BAR ASSOCIATION
FAMILY LAW SECTION**

NUTS AND BOLTS

**Proper Introduction of Evidence:
Objections and Laying the
Foundation**

NOVEMBER 6, 2025

*The Honorable Christopher Wigand, 17th Judicial Circuit, Broward County, Florida
Juliette E. Lippman, Esq., Birnbaum, Lippman & Gregoire, PLLC.
Henny L. Shomar, Esq., Tripp Scott*

HEARSAY OBJECTIONS AND EXCEPTIONS

Practice Tip: Just because you can make an objection does not mean that you should – use your objections when necessary to preserve the record. The Court is more likely to consider your objections if they are meaningful. For example, if you need bank records for your case, do not object to the other party's failure to properly adhere to the Evidence Code. The Court appreciates a streamlined presentation, and clients are better served by your professionalism.

Section 1 - Hearsay

HEARSAY: § 90.801(1)(c)

What is hearsay?

1. An out of court statement (oral, written or non-verbal assertion);
2. Made by a declarant (the person making the statement), other than the statements the declarant makes while testifying at trial; and is
3. Offered into evidence to prove the truth of the matter asserted. (offered to prove the truth of the facts contained in the statement)
 - A statement that is intended to communicate a thought, idea, or fact is an assertion.
 - Conduct that is intended to be an assertion when it is intended to communicate an idea, feeling, or thought to a third person.

NOT HEARSAY: § 90.802

A statement is not hearsay if:

The Statement is **Not Offered for the Truth of the Matter Asserted**. If the

*The Honorable Christopher Wigand, 17th Judicial Circuit, Broward County, Florida
Juliette E. Lippman, Esq., Birnbaum, Lippman & Gregoire, PLLC.
Henny L. Shomar, Esq., Tripp Scott*

statement is not offered to prove the truth of the facts in the statement, it may be admissible for another purpose but the purpose for which the statement is being offered must be a material issue in the case.

OR

The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:

1. **Inconsistent:** The prior statement which was given under oath subject to the penalty of perjury at a prior proceeding or in a deposition, is consistent with the declarant's trial testimony.
2. **Consistent:** The statement is consistent with the testifying witness's trial testimony, offered to rebut an express or implied charge of recent fabrication, improper influence or motive (that statement must be made prior to the implied charge of recent fabrication, improper influence or motive).

Section 2 – Hearsay Exceptions

What to say:

I have shown through the testimony of (insert the name of the witness) that the statement is a hearsay exception because it is (refer to applicable exception, and if further response is necessary, refer to the statute and read the explanation contained below the exception)

SPONTANEOUS STATEMENT §90.803(1)

The statement describes or explains an event or condition and was made while the declarant was perceiving the event or condition, or immediately thereafter.

EXCITED UTTERANCE §90.803(2)

The statement relates to a startling event or condition and was made while the declarant was under the stress or excitement caused by the event or condition.

The Honorable Christopher Wigand, 17th Judicial Circuit, Broward County, Florida
Juliette E. Lippman, Esq., Birnbaum, Lippman & Gregoire, PLLC.
Henny L. Shomar, Esq., Tripp Scott

THEN-EXISTING MENTAL OR EMOTIONAL CONDITION §90.803(3)

The statement is of the declarant’s then-existing state of mind, emotions, or sensation, and

- is offered to prove the declarant’s state of mind or emotion which is at issue, or
- is offered to prove or explain acts of subsequent conduct of the declarant, and
- does not include a statement of after-the-fact memory or belief offered to prove the fact remembered or believed.

RECORDED RECOLLECTION §90.803(5)

The statement is a memorandum of record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him or her to testify fully and accurately, and was made or adopted by the witness when the matter was fresh in the witness’s memory so as to reflect that knowledge correctly.

RECORDS OF REGULARLY CONDUCTED ACTIVITY (Business Records) § Rule 90.803(6)

This exception requires testimony of certain facts or, alternatively, “a certification or declaration” of those facts. § 90.803(6)(a). “A party intending to offer evidence ... by means of a certification or declaration shall serve reasonable written notice of that intention upon every other party” § 90.803(6)(c). See Attachment One for an example.

a. A business record is a memorandum, report, record or data compilation, made at or near the time the acts or events took place from information transmitted by one with personal knowledge of the event or act, where such record is kept in the course of regularly conducted business activities, and it was the regular practice of the business to make such a record.

*The Honorable Christopher Wigand, 17th Judicial Circuit, Broward County, Florida
Juliette E. Lippman, Esq., Birnbaum, Lippman & Gregoire, PLLC.
Henny L. Shomar, Esq., Tripp Scott*

c. A party intending to offer evidence under paragraph 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 any other party with 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 60 days before the trial, unless the court procedures require disclosure at an earlier date. 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. (The court for good cause shown may grant relief from the waiver.)

Practice Tip:

A witness cannot testify as to the contents of business records that are not admitted into evidence.

It is not necessary for the proponent of evidence to call the person who prepared the business records. The records custodian or any qualified witness who has the necessary knowledge to testify to how the record was made can lay the foundation.

While a party can certainly subpoena the records custodian to come to the hearing, try utilizing Fla. Stat. § 90.803(6)(c) and § 90.902(11) to admit the Business Records into evidence through a Certification or Declaration from the Records Custodian.

RECORDS OF DOCUMENTS AFFECTING AN INTEREST IN PROPERTY

§90.803(14)

This is a record of a document purporting to establish or affect an interest in property, as proof of the contents of the original recorded or filed document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording or filing of the document in the office. Use this exception for deeds, mortgages, liens, etc. generally found in Chapters 689 and 695.

The Honorable Christopher Wigand, 17th Judicial Circuit, Broward County, Florida
Juliette E. Lippman, Esq., Birnbaum, Lippman & Gregoire, PLLC.
Henny L. Shomar, Esq., Tripp Scott

STATEMENT IN DOCUMENTS AFFECTING AN INTEREST IN PROPERTY
§90.803(15)

The statement is contained in a document purporting to establish or affect an interest in property, the matter stated was relevant to the purpose of the document, and

dealings with the property since the document was made have not been inconsistent with the truth of the statement or the purpose of the document.

ADMISSIONS §90.803(18)

- The statement was made by the party opponent, or
- the statement was made by a person and was adopted by the party opponent as the party's own, and thus, is a vicarious admission of the party opponent, or
- the statement was made by an agent authorized to speak on behalf of a party opponent, and thus, is a vicarious admission of the party opponent, or
- the statement was made by an agent or servant of the party opponent concerning a matter within the scope of the declarant's agency or employment, and was made during the existence of the declarant's agency or employment, and thus, is a vicarious admission of a party opponent, or
- the statement was made by a co-conspirator of the party opponent during the course of the conspiracy and in furtherance of the conspiracy, and thus, is a vicarious admission of the party opponent.

REPUTATION AS TO CHARACTER §90.803(21)

This is a statement of reputation of a person's character among the witness's associates or within the witness' community.

FORMER TESTIMONY §90.803(22)

The declarant is unavailable pursuant to §90.804(1), and the statement is testimony given at another hearing of the same or different proceeding, or in a deposition in the course of the same or a different proceeding, and the party against whom it is offered had an opportunity and similar motive to develop the testimony by direct,

The Honorable Christopher Wigand, 17th Judicial Circuit, Broward County, Florida
Juliette E. Lippman, Esq., Birnbaum, Lippman & Gregoire, PLLC.
Henny L. Shomar, Esq., Tripp Scott

cross or redirect examination. Beware, §90.403, exclusion on grounds of prejudice or confusion still applies. If applicable, invoke Rule of Completeness, §90.108(1).

REQUIREMENT OF UNAVAILABILITY FOR RULE 90.804 HEARSAY EXCEPTIONS

- The declarant is unavailable because declarant:
- Is exempted from testifying concerning the subject of the statement by ruling from the court on the ground of privilege, or
- Persists in refusing to testify concerning the subject of the statement despite a court order to do so, or
- Testifies to a lack of memory on the subject of the statement, or
- Is unavailable to testify at the hearing because of death or illness, or
- Is absent from the hearing and you are unable to procure his or her attendance through process or other means.

FORMER TESTIMONY §90.804(2)(a)

The statement is testimony given at another hearing of the same or different proceeding, or in a deposition in the course of the same or a different proceeding, and the party against whom it is offered had an opportunity and similar motive to develop the testimony by direct, cross or redirect examination. Beware, §90.403, exclusion on grounds of prejudice or confusion still applies. If applicable, invoke rule of completeness.

STATEMENT AGAINST INTEREST §90.804(2)(c)

The statement was made by a declarant, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or to render invalid a claim by the declarant against another, so that a person in the declarant's position would not have made the statement unless he or she believed it to be true. A statement tending to expose the declarant to criminal

liability and offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement.

JUDGMENT OF PREVIOUS CONVICTION §90.610

This statement is evidence of a final judgment entered after a trial or upon a guilty plea adjudging a person guilty of a crime punishable by either death or imprisonment for more than one year or a crime involving dishonesty or a false statement regardless of the punishment.

STATEMENT OF CHILD VICTIM §90.803(23)

The exception applies to children who are victims and does not apply to statements by children who are witnesses and not victims.

Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim who is 17 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil proceeding if:

1. The court finds in a hearing, which may include the court interviewing the child in camera outside of the parties and counsels' presence (*if this is done, have a court reporter present*) that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
2. The child either testifies or is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to § 90.804 which defines unavailability.

Request that the court make specific findings of fact, on the record, as to the basis for its ruling under this subsection.

*The Honorable Christopher Wigand, 17th Judicial Circuit, Broward County, Florida
Juliette E. Lippman, Esq., Birnbaum, Lippman & Gregoire, PLLC.
Henny L. Shomar, Esq., Tripp Scott*

At the hearing the Court must make specific findings of fact on the record as to why each statement is reliable.

In determining child witness competency, trial courts must answer three questions:

- 1. Is the child capable of observing and recollecting facts?*
- 2. Is the child capable of narrating those facts to the court?*
- 3. Does the child have a moral sense of obligation to tell the truth?*

Courts consider the following when determining the reliability of any statement:

- time of the incident relative to the time of the statement.
- was the statement spontaneous?
- did the statement consist of an age-appropriate child-like description of the act versus use of terminology unexpected of a child of similar age?
- Is the child still emotionally impacted when reported the event?
- Is there any incentive for the child to fabricate the rendition of the event?
- Has the child made the statement to anyone other than to the parent alleging abuse?
- What is the mental competence and maturity of the child?
- Is the child capable of distinguishing reality from fantasy?
- Are the statements vague and/or partially contradictory?
- Consideration of the possibility of improper influence on the child by others, including the parents.

The Honorable Christopher Wigand, 17th Judicial Circuit, Broward County, Florida
Juliette E. Lippman, Esq., Birnbaum, Lippman & Gregoire, PLLC.
Henny L. Shomar, Esq., Tripp Scott

If the child does not testify there must be other corroborating evidence of abuse. Corroborating evidence is evidence that differs from but strengthens or confirms what other evidence shows.

Sufficient Corroborative Evidence

- Physical evidence of abuse
- Doctor's medical opinions
- Statements by the alleged perpetrator, for example, admission that the child could have accidentally been touched
- Similar fact evidence of other crimes, wrongs or acts

Insufficient Corroborative Evidence

- Other hearsay evidence made by the child concerning the abuse
- Child's pantomime describing the abuse in response to show what happened
- Third party Counselor's testimony

RECORDS CUSTODIAN AFFIDAVIT

**CERTIFICATE OF AUTHENTICITY OF RECORDS/
DECLARATION AS TO RECORDS OF A REGULARLY CONDUCTED
BUSINESS ACTIVITY PURSUANT TO §90.803(6) AND 90.902(11),
FLORIDA STATUTES**

As the Records Custodian or other qualified person for _____ (“Company”), I _____ hereby declare, under penalty of perjury or equivalent criminal law governing false statements in the location where this Declaration is signed, that the record(s) attached to this Declaration is the record(s) of a regularly conducted business activity of the Company in that the record(s):

- 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 regularly conducted activity; and
- c. was made as a regular practice in the course of a regularly conducted activity.

I declare that there are a total of _____ pages attached to this Declaration and acknowledge that the purpose of this Declaration is to comply with §90.803(6) and §90.902(11), Florida Statutes, which will allow the parties to self-authenticate the record(s) attached to this Declaration for use in the above-styled lawsuit.

Under penalties of perjury, I declare that I have read the foregoing document and that the

facts stated in it are true.

AFFIANT

*The Honorable Christopher Wigand, 17th Judicial Circuit, Broward County, Florida
Juliette E. Lippman, Esq., Birnbaum, Lippman & Gregoire, PLLC.
Henny L. Shomar, Esq., Tripp Scott*