

Pro Se Guide to Evidence in DC Family Court



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What is evidence?

*Evidence is information or objects that may be admitted into the court record for the judges to consider when deciding your case. You want to enter evidence so that the judge can consider the information or objects in deciding your case. *Remember—testimony is evidence too!*

*You will need to decide what information and documents you want to present at trial as well as what witnesses you want to ask to testify. If the evidence is not entered and admitted, it cannot be considered in the judge's ruling.

There are different types of evidence that may be considered:

- ❖ **Testimony**— this can be from the parties to the case, a minor child, or witnesses you and/or the other party call to testify
- ❖ **Expert witnesses** – this is testimony from a witness who has expertise in a specific area and is certified as an expert
- ❖ **Physical evidence** – things that are physical, tangible, or touchable AND relate to the case
- ❖ **Documentary** – This can be things such as texts, letters, emails, photographs, etc. It must relate to the case
- ❖ **Demonstrative** – this can be something like a chart, drawing, or illustration that you create to explain something to the judge

How do I enter a letter, picture, email, diagram, physical object, or text message into evidence?

1) **Mark the exhibit:** you can do this before you come to court, or you can ask the clerk for a sticker to mark the exhibit.

-The markings are usually marked as Exhibit # (1, 2, 3...) or Exhibit letter (A, B, C...).

-YOU SAY: “Your Honor, may I have the clerk mark this exhibit?” If you need to do so, ask the clerk for stickers before the hearing starts.

2) **Show your exhibit to the opposing party/lawyer:**

-YOU SAY: “I am showing what has been marked as Plaintiff’s/Defendant’s Exhibit #/letter for identification purposes only to opposing party/counsel.”

-You then show the opposing party/counsel the exhibit.

3) **Request permission from the judge to approach the witness and show them the exhibit:**

-YOU SAY: “May I approach the witness, Your Honor?”

*NOTE - Once the judge has granted you permission to approach the witness, then you can approach and hand the exhibit to the witness to look at.

4) **Approach the witness:**

5) **Lay a foundation for the exhibit:** this means you need to prove that the exhibit is what it is and that it is authentic and original.

-YOU SAY: “(Witness name), I am handing you what has been previously marked as Plaintiff’s/Defendant’s Exhibit #/letter for identification. Would you please tell me what it is?” You may need to ask other questions to prove what the document is.

6) **Enter the exhibit into evidence:** after you establish the foundation of your exhibit, you need to get it in the court record so it can be used in the ruling of your case.

-YOU SAY: “I move to enter Plaintiff’s/Defendant’s Exhibit #/letter into evidence.”

NOTE – *the judge will ask if there are any objections. The opposing party/counsel may object. The opposing party/counsel can say why they object, and you must respond why the judge should not agree with their objection. Ultimately, the judge will decide.*

Flowchart of Evidence Process

Mark the Exhibit you wish to enter (either by number or letter).

Show your exhibit to the opposing party/lawyer:
YOU SAY: "I am showing what has been marked as Plaintiff's Exhibit #/letter for identification purposes only to opposing party/counsel."

Request permission from the judge to approach the witness and show him/her the exhibit:
YOU SAY: "May I approach the witness, Your Honor?"

Lay a foundation for the exhibit: this means you need to prove that the exhibit is what it is and that it is authentic and original.
YOU SAY: "(Witness name), I am handing you what has been previously marked as Plaintiff's Exhibit #/letter for identification. Would you please tell me what it is?"

Enter the exhibit into evidence: after you establish the foundation of your exhibit, you need to get it in the court record so it can be used in the ruling of your case.
YOU SAY: "Your Honor, I move to enter Plaintiff's Exhibit #/letter into evidence."

Be ready for the opposing party/counsel to possibly object. The opposing party/counsel can say why they object, and you must respond why the judge should not agree with their objection. The judge will then decide.

Questions to Ask When Introducing Different Types of Evidence

<u>Letter</u>	<u>Picture</u>	<u>Email</u>
<p>“Do you recognize the person’s name on the letter?”</p> <p>“What is the name on the letter?”</p> <p>“How did you receive this letter?”</p> <p>Who is it from?</p> <p>“What is the date on this letter?”</p>	<p>NOTE – the person does not have to be the one who took the picture. They just have to state that <i>it fairly and accurately reflects the scene.</i></p> <p>“I am showing you what has been marked as Exhibit #/letter for identification. Do you recognize what is shown in this photograph?”</p> <p>“What is this a picture of?”</p> <p>“Are you familiar with this scene?”</p> <p>“How are you familiar with what is in this photograph?”</p> <p>“Does this fairly and accurately depict what the park looked like on DATE/how you remember the scene?”</p>	<p>“Do you recognize the email address?”</p> <p>“Who was it sent to?”</p> <p>“Who’s email address is that?”</p> <p>“How do you know?”</p> <p>“What is the date/time the email was sent?”</p>

Questions to Ask When Introducing Different Types of Evidence

<u>Diagrams</u>	<u>Physical Objects</u>	<u>Texts</u>
<p>“I am showing you what has been marked as Exhibit #/letter for identification. Are you familiar with the area located at ADDRESS of the diagram?”</p> <p>“How are you familiar with this area?”</p> <p>“Based on your familiarity with the area, can you tell us whether the scene depicted in this diagram <i>fairly and accurately represents</i> the area as you recall it on the date in question?”</p>	<p>“I am showing you what has been marked as Exhibit #/letter for identification. Do you recognize what I’m showing you?”</p> <p>“Do you know what the exhibit looked like on the DATE?”</p> <p>“Does the exhibit appear in the same or substantially same condition as when you saw it on DATE?”</p>	<p>“I am showing you what has been marked as Exhibit #/letter for identification.</p> <p>What is this?”</p> <p>“Who is it from?”</p> <p>Whose number is that?</p> <p>“How do you know?”</p> <p>“Who is it to?”</p> <p>“How do you know?”</p>

Questions to Ask When Introducing Different Types of Evidence

<u>School Records</u>	<u>Criminal Records</u>	<u>Medical Records</u>
<p>“Do you recognize this document?”</p> <p>“What is the name on the records?”</p> <p>“How did you obtain these records?”</p> <p>“What are the dates for these records?”</p>	<p>“I am showing you what has been marked as Exhibit #/letter for identification. Do you know who’s records these are?”</p> <p>“What do these records state?”</p> <p>“Are these accurate records for X?”</p>	<p>“Do you recognize these records?”</p> <p>“Whose records are these?”</p> <p>“Do you recall what these records pertain to?”</p> <p>“What are the dates for these records?”</p> <p>“Are these accurate medical records for X?”</p>

Helpful Tips

- **The judge will most likely set deadlines for you to submit exhibits and/or witness lists. If you do not disclose your list of witnesses and documents by the deadline, you may not be allowed to use them at trial. Always review all court orders closely.**
- Always have at least 3 copies of exhibits for the in-person hearing – 1 for you, 1 for the judge, and 1 for the opposing party/counsel.
- If you have a lot of paper exhibits, you can make binders for the judge, the witness, and opposing party/counsel to make it easier to turn to a tab for each exhibit.
- Enter each exhibit as you introduce it.
- If you are going to use an exhibit to impeach a witness, have at least 3 copies of the impeachment exhibit as well.
- Always ask permission from the judge to approach the witness and walk around the parties' tables to get to the witness (do not walk through the center open space of the court).
- Speak to the opposing party/counsel before to stipulate to authentication of exhibits. This will save you time and avoid you calling in extra witnesses to authenticate a document.
 - *What does it mean to stipulate to evidence? You and the other party can agree before the hearing to enter evidence and not object to it.*
- Until an exhibit is admitted into evidence, you cannot ask the witness substantive questions about it. Prior to an exhibit being admitted, you only ask the preliminary questions above (for example) to establish the foundation.

Objections

What is an objection? When you object you are telling the judge that the other party's evidence, testimony, or question should not be allowed.

Why Object? You object when a fact may hurt your case or should not be allowed under the rules.

Who decides? After you object, the judge decides whether the objection should be **sustained**, which means the evidence should not be considered OR **overruled**, which means the evidence can be considered.

COMMON OBJECTIONS:

- Irrelevant
- Hearsay
- Asked and answered
- More prejudicial than probative
- Type of question
- Compound question
- Argumentative
- Authenticity
- Lack of foundation
- Speculation

Please see Children Law Center's helpful resource – Practice Kit 03, Common Objections and Hearsay at <https://childrenslawcenter.org/resources/practice-kit-03-common-objections-and-hearsay/> for more helpful tips.

How to Impeach using Evidence

Impeachment is the process of introducing evidence that suggests to the judge that a witness is not telling the truth, is not credible, or does not know enough information about the issue.

When you hear a witness/opposing party testify on direct examination and they state something you have evidence of being false, wait until cross examination. Then follow these steps:

- Direct your line of questioning about the topic you wish to introduce evidence for
- Make sure their answer is clear
- Follow the steps to submit evidence
- Question them about the piece of evidence and show they are lying or misinformed.

Example

-You have the children during the weekdays, correct?

-You testified that you take the children to school every day, correct?

-You testified you are always on time for school?

Enter school records using the evidence tools in the prior pages

-Please read aloud how many tardies the children have had this year.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
 FAMILY COURT
 DOMESTIC RELATIONS BRANCH**

)	
PLAINTIFF)	Case No. _____
v.)	Judge: _____
)	Next Event: _____
DEFENDANT,)	

PLAINTIFF/DEFENDANT’S WITNESS LIST

PLAINTIFF/DEFENDANT intends to call the following witnesses at trial:

Name of Witness	Fact/Expert	Summary of Testimony

