

C COLORADO EVIDENTIARY OBJECTIONS

Your objection to evidence must be timely and specific. If not, your objection may be waived unless a definitive ruling on the record has been made (Rule 103). Make your objection succinctly and in a clear, firm voice. **EXAMPLES:** "Objection, Your Honor, the question calls for hearsay." "Objection, leading." While you generally voice your objection in front of the jury, do not argue your objection in front of the jury. If argument is required, request permission to approach the bench, then present your argument. Use the Colorado Rules of Evidence to bolster your argument. Below is a list of most of the common objections, a brief explanation, and authority for the objection based on the Colorado Rules of Evidence.

1. **AMBIGUOUS** - Confusing question in that it is capable of being understood in more than one sense. Rule 611(a).
2. **ARGUMENTATIVE** - (1) Question is really argument to the jury in guise of a question (Example: Counsel summarizes facts, states conclusion, and demands witness agree with conclusion); or (2) excessive quibbling with witness. Rule 611(a).
3. **ASKED AND ANSWERED** - Unfair to allow counsel to emphasize evidence through repetition. Greater leeway, however, is given on cross-exam, but be especially ready to make this objection during re-direct examination. Rule 611(a).
4. **ASSUMES A FACT NOT IN EVIDENCE** - Fact not testified to is contained in the question. Rule 611(a).
5. **AUTHENTICATION LACKING** - Authenticating proof that the exhibit is in fact what it is claimed to be has not been shown. Rule 901(a).
6. **BEST EVIDENCE RULE** - If rule applies, original document must be offered or its absence accounted for. If contents of document are to be proved, rule usually applies. Rule 1002.
7. **BEYOND SCOPE (OF DIRECT, CROSS, ETC.)** - Question is unrelated to preceding examination by opposing counsel, or to credibility of the witness (remember, when responding to this objection, "credibility" is always "within the scope"). Rule 611(b).
8. **BOLSTERING** - Improper to bolster the credibility of a witness before credibility is attacked. Rule 608(a).
9. **COMPOUND** - More than one question contained in counsel's question; the answer could be misunderstood. Rule 611(a).
10. **CONCLUSION** - Except for an expert, witness must testify to facts within personal knowledge; conclusions are for the jury - and counsel during closing argument. Rule 602; 701.
11. **CONFUSING** - Unfamiliar words, disjointed phrases, or question confuses facts or evidence. Rule 611(a).
12. **COUNSEL TESTIFYING** - Opposing counsel is making a statement instead of asking a question. Rule 603.
13. **CUMULATIVE** - Judge has discretion to control repetitive evidence. Repeated presentation of the same evidence by exhibits or by more witnesses is unfair and wastes time. Rules 403; 611(a).
14. **FOUNDATION** - Failure to lay proper predicate for testimony or exhibit (example: offer of "recorded recollection" without showing failure of memory). This objection may be deemed "too general" to preserve the objection for appeal, so if overruled, be more specific as to what the foundation lacks. Many Rules address necessary foundation, but see especially Rules 602; 703; 803; 804; and 901(a).
15. **HEARSAY (question)** - The answer would elicit hearsay, and no exception has been shown. Rule 802.
HEARSAY (answer) - Question did not call for hearsay, but witness gave it anyway. Consider making motion to strike and requesting judge to instruct jury to disregard the response. A mistrial motion may also be appropriate. Rule 802.
NOTE: In a criminal case, if hearsay is "testimonial" it is barred, under the Confrontation Clause, unless the witness is unavailable and defendant had prior opportunity to cross-examine witness. *Crawford v. Washington*, 124 S.Ct. 1354 (2004).
16. **IMPROPER CHARACTER EVIDENCE** - Evidence of character and methods of proof are limited. Rules 404, 405, 608-610.
17. **"IMPROPER QUESTION" or "IMPROPER FORM"** - Use this objection only when you *know* the question is improper, but cannot think of the specific basis for the objection. The judge may know the question is improper and sustain, and if the judge asks for your specific basis, maybe by then you will recall it. To be used very infrequently. Rules 103(c); 611.
18. **IMPROPER CHARACTERIZATION** - Counsel's question or witness's response has characterized a person or conduct with unwarranted suggestive, argumentative, or impertinent language. (Example: "He looked like a crook.") Rules 404-405.
19. **IMPROPER IMPEACHMENT** - Methods of impeachment are limited and specific. Rules 607-610.
20. **IRRELEVANT** - Would not tend to make any fact that is of consequence more probable or less probable. Motion to strike may be appropriate. Rule 402.
21. **LEADING** - Form of question tends to suggest answer. (Permitted, of course, on cross-examination.) Rule 611(c).
22. **MISQUOTING WITNESS (or MISSTATING EVIDENCE)** - Counsel's question misstates prior testimony of witness. Similar to objection based on assuming a fact not in evidence. Rules 103(c); 611(a).
23. **NARRATIVE** - Question is so broad or covers such a large time period it would allow witness to ramble and possibly present hearsay or other inadmissible evidence. Judge has broad discretion in this matter, however. Rule 611(a).
24. **OPINION** - Lay witness has been asked for an opinion or inference which is beyond the scope permitted by Rule 701; personal knowledge lacking; or expert witness has not been qualified as such. Rules 701; 702.
25. **PREJUDICE OUTWEIGHS PROBATIVE VALUE** - Object, ask to approach bench, and then argue that "the probative value of the evidence is substantially outweighed by the danger of unfair prejudice." May apply to exhibits as well as testimony. (Don't let the jury hear you say that the evidence is prejudicial--they may be impressed.) Rule 403.
26. **PRIVILEGED** - Answer would violate valid privilege (lawyer-client, husband-wife, clergy, etc.) Rule 501.
27. **SPECULATION** - Question calls for conjecture; allows a witness who lacks personal knowledge to guess. Rule 602.
28. **UNRESPONSIVE** - Answer includes testimony not called for by the question. Especially applicable to voluntary response by hostile witness. Rule 611(a). **Note:** An objection based solely on this ground is generally deemed appropriate only if made by the examining attorney; therefore, opposing counsel should try to find some additional basis for the objection.