
DIRECT EXAMINATION

SCBA TRIAL ADVOCACY CONFERENCE 2026

HON. JULIE WENG-GUTIERREZ

SACRAMENTO SUPERIOR COURT

DIRECT EXAMINATION - OBJECTIVES

- Basic Mechanics of an effective and efficient Direct Examination
- Foundation
- Authentication
- Refreshing Recollection v. Impeachment
- Techniques & Style
- Practice conducting and objecting to Direct Examination
- CEB Objection Handouts

THEME OF CASE

- WHAT IS YOUR CASE ABOUT (STORYTELLING)
- ESSENTIAL FACTS – BAJI/CACI; READ THE STATUTE
- TYPES OF EVIDENCE

TESTIMONY

PICTURES, VIDEOS, OBJECTS (CHAIN OF CUSTODY)

REPORTS or BUSINESS RECORDS



CASTING CALL

- SELECT WITNESSES
 - ORDER OF WITNESSES
 - WITNESS PREPARATION
-

WITNESS PREPARATION

- KEY TO SUCCESSFUL DIRECT EXAMINATION
 - INTERVIEW YOUR WITNESS; TALK ABOUT THE CASE
 - TELL YOUR WITNESS WHAT TO EXPECT...NOT WHAT TO SAY
 - Strong facts v. Weak facts
 - Cross-examination
 - Possible answers
-

ORDER OF FACTS

- OBJECTIVE PERSUASIVE STORYTELLING
 - CONSIDERATIONS
 - Practical
 - Strategic
-

QUESTION FORMAT

- WHO
- WHAT
- WHERE
- WHEN
- WHY

- HOW
- DESCRIBE
- EXPLAIN

QUESTION FORMAT

- DID YOU?
- CAN YOU?

USE OF EXHIBITS

- MARK FOR IDENTIFICATION ... WAIT FOR THE COURT
- SHOW TO WITNESS/PUBLISH TO THE JURY – WAIT!
- RECOGNIZE?
- WHAT IS IT? HOW DO YOU KNOW? WHEN DID YOU...?
- IS THIS A TRUE AND ACCURATE COPY OF ...?

OBJECTS

- Establish circumstances that give witness personal knowledge
- (How does this witness know what the evidence is?)

FOUNDATION BUSINESS RECORDS

- Familiar with business practice of maintaining records (custodian);
- Recognize document as record from business
- Document made at/near event
- Document created and kept as part of business's regular activities

COMMON OBJECTIONS

- Lack personal knowledge
- Not business record
- Hearsay within hearsay

PHOTOS

- Establish knowledge of who took photo
- Establish when photo was taken
- Establish photo is an accurate depiction

DIAGRAM

- Establish personal knowledge of what diagram represents

CORRESPONDENCE

- Establish it was written by the person
- Date written
- Date received

REFRESHING RECOLLECTION V. IMPEACHMENT

REFRESHING RECOLLECTION

WITNESS CANNOT REMEMBER

LET'S HELP THE WITNESS REMEMBER.



IMPEACHMENT

WITNESS IS WRONG!

I AM GOING TO SHOW YOU THAT YOU ARE WRONG!



REFRESHING RECOLLECTION ELEMENTS

- CANNOT RECALL
 - WRITING CAN HELP REFRESH MEMORY
 - PROVIDE WRITING & LET WITNESS READ SILENTLY
 - REMOVE WRITING & REFLECT REMOVAL ON RECORD
 - ASK QUESTION
 - WITNESS TESTIFIED FROM REFRESHED MEMORY
- 

IMPEACHMENT

3 C'S

1. COMMIT
 2. CREDIT
 3. CONFRONT
- 

IMPEACHMENT - COMMIT

REPEAT STATEMENT

ON DIRECT, YOU TESTIFIED “X”?

IMPEACHMENT - CREDIT

LAY FOUNDATION FOR PRIOR STATEMENT

- ONE FACT AT A TIME – SLOW IT DOWN
 - DO NOT JUMP THE GUN
- 

IMPEACHMENT - CONFRONT

- CONFRONT WITNESS WITH PRIOR INCONSISTENT STATEMENT
 - YOU'RE DONE. PAUSE FOR DRAMATIC EFFECT
 - THEN WALK AWAY & SAVE IT FOR CLOSING
- 

STYLE TIPS

- Conversation
- LISTEN to the answer
- Looping
- Follow up
- Pivot & Be flexible

STYLE TIPS

- Headlines
- Transitions
- ECHO Effect

STYLE TIPS

- AVOID reading questions
- Use a checklist

DEMEANOR

- OBSERVE WITNESS DEMEANOR
- YOUR DEMEANOR
- BE COURTEOUS & PROFESSIONAL

QUESTIONS?

- Thank you for your attention!

CEB® Checklist of Objections

Keep up with CEB news, tips, and releases on our blog, Facebook, LinkedIn, Twitter, and YouTube!



Chapter cross-references are to California Trial Objections

Objections to Competence to Testify

Cannot be understood	Evid C §701(a)(1); chap 18.
Does not understand duty to tell truth	Evid C §701(a)(2); chap 18.
No personal knowledge	Evid C §§702, 800; chap 18.
Juror cannot give subjective evidence impeaching verdict	Evid C §1150; chap 18.
Juror at this trial	Evid C §740(b); chap 18.
Judge at this trial	Evid C §703; chap 18.

Objections to Form of Questions

Ambiguous or unintelligible	Evid C §765(a); chap 7.
Argumentative	Evid C §765(a); chap 14.
Assumes fact not in evidence	Evid C §§210, 765(a); chap 15.
Calls for narrative answer	Evid C §765(a); chap 10.
Calls for speculation	Evid C §§702, 800 (matter not in witness's personal knowledge), 801 (question calls for improper opinion); chap 16.
Compound	Evid C §765(a); chap 8.
Has been asked and answered	Evid C §765(a); chap 11.
Leading	Evid C §767; chap 13.
Misquotes a witness	Evid C §765(a); chap 12.
Too general	Evid C §765(a); chap 9.
Improper hypothetical question	<i>People v Vang</i> (2011) 52 C4th 1038; chap 20.

Objections Concerning Experts

Information will not help trier of fact	Evid C §801(a); chap 20.	Use of new scientific technique that does not satisfy <i>Kelly</i> test	<i>People v Leahy</i> (1994) 8 C4th 587; chap 20.
Insufficient foundation to qualify as expert	Evid C §§720, 801; chap 20.	Witness is basing opinion on material that may not reasonably be relied on	Evid C §801(b); chap 20.
Should give basis of opinion before stating opinion	Evid C §802; chap 20.	Improper legal opinion	Evid C §801(a); <i>Summers v A. L. Gilbert</i> (1999) 69 CA4th 1155; chap 20
Subject matter not beyond experience of ordinary witness	Evid C §801(a); chap 20.	Improper hearsay	Evid C §801(b); <i>People v Sanchez</i> (2016) 63 C4th 665; chap 20.

Objections to Offered Evidence

Communications made "for the purpose of, in the course of, or pursuant to" a mediation	Evid C §1119; chap 32.	Improper evidence of prior sexual conduct in rape case	Evid C §782; chap 22.
Cross-examination exceeds scope of direct examination	Evid C §§761, 773; chap 26.	Improper impeachment	Evid C §§352, 780, 785, 789, 1101–1103; chap 22.
Cumulative evidence	Evid C §352; chap 31.	Improper rehabilitation	Evid C §§780, 785, 789–791; chap 23.
Evidence of subsequent repairs or subsequent remedial conduct	Evid C §1151; chap 32.	Inadmissible opinion of lay witness	Evid C §§800, 802–803; chap 20.
Evidence that party has liability insurance	Evid C §1155; chap 32.	Inadmissible parole evidence	CCP §1856; chap 25.
Hearsay	Evid C §1200; chap 19.	Insufficient foundation	Evid C §403 or §405; chap 21.
Illegally obtained evidence	US Const amends IV, XIV; Cal Const art I, §13 (objection normally must be made before trial); chap 28.	Irrelevant evidence	Evid C §§210, 350–351; chap 17.
		Party's offer to compromise, or admissions made during compromise negotiations	Evid C §1152; chap 32.
		Writing not (properly) authenticated	Evid C §1401; chap 21.

Objections to Misconduct

Misconduct of counsel:	
Object to specific acts as misconduct and ask for curative admonition	Cite specific grounds and authority, e.g., failure to provide required discovery (Pen C §1054.5(b) (criminal); CCP §2023.010(d) (civil)); chap 29.
Move for mistrial on ground that effect of misconduct is so prejudicial that fair trial is now impossible	<i>People v McLain</i> (1988) 46 C3d 97, 112; chap 29.
Misconduct of judge:	
Object to judge's misconduct, describe it, object as error, and	ABA Model Code of Judicial Cond Canon 3(A); <i>People v Perkins</i> (2003) 109 CA4th 1562, 1566; chap 29.
Move for mistrial on ground that effect of misconduct is so prejudicial that fair trial is now impossible	<i>People v Woods</i> (1950) 35 C2d 504, 512; chap 29.
Misconduct of juror (before verdict rendered):	
Object to specific acts as misconduct	<i>People v Pierce</i> (1979) 24 C3d 199; chap 29.
Move for mistrial on ground that effect of misconduct is so prejudicial that fair trial is now impossible	<i>People v Daniels</i> (1991) 52 C3d 815, 864; chap 29.
Request that jury be instructed to disregard misconduct	<i>People v Harper</i> (1986) 186 CA3d 1420; chap 29.

Motions to Strike

Answer contains inadmissible portions (specify portions)	<i>People v Glass</i> (1954) 127 CA2d 751; chap 52.
Answer was nonresponsive to question	Evid C §766; chap 52.
Evidence has been shown to be inadmissible	<i>People ex rel Dep't of Pub. Works v Dunn</i> (1956) 46 C2d 639; chap 52.
Insufficient opportunity to object to question before witness answered, and question is objectionable on ground (specify)	<i>Wysock v Borchers Bros.</i> (1951) 104 CA2d 571, 581; chap 52.
No foundation has been proved	Evid C §§403, 405; chap 52.
Witness unavailable for cross-examination	<i>People v Reynolds</i> (1984) 152 CA3d 42; chap 52.

Objections Because of Privilege

Against self-incrimination	US Const amends V, XIV; Cal Const art I, §15; Evid C §§404, 940; chap 46.
Attorney-client	Evid C §§916, 950–962; chap 34.
Lawyer referral service-client	Evid C §§965–968; chap 34.
Cleric-penitent	Evid C §§1030–1034; chaps 50–51.
Confidential marital communications	Evid C §§916, 980–987; chap 40.
Domestic violence counselor-victim	Evid C §§1037–1037.8; chap 39.
Sexual assault counselor-victim	Evid C §§916, 1035–1036.2; chap 38.
Defendant in criminal case not to be called as witness and not to testify	US Const amends V, XIV; Cal Const art I, §15; Evid C §930; chap 47.
Human trafficking caseworker-victim	Evid C §§1038–1038.3. See chap 39A.
Identity of informer	Evid C §§1041–1042 (usually pretrial motion); chap 44.
Journalist's immunity from contempt	Evid C §1070; Cal Const art I, §2(a)–(b); chap 48.
Not to be called as witness against spouse	Evid C §§970–973; chap 42.
Not to testify against spouse	Evid C §§970–973; chap 41.
Official information	Evid C §§1040, 1047; chap 43.
Physician-patient	Evid C §§916, 990–1007; chap 36.
Psychotherapist-patient	Evid C §§916, 1010–1027; chap 37.
Trade secrets	Evid C §§916, 1060; CCP §2019.210; chap 45.
Voter	Evid C §1050; chap 49.
Work product	CCP §2018.030; Pen C §1054.6; chap 35.



CONTINUING EDUCATION OF THE BAR • CALIFORNIA
Oakland, California

For update information call 1-800-232-3444
Website: ceb.com