Common Objections

Relevance

You can object to the relevance of evidence if you think a piece of evidence or something a witness is saying has nothing to do with the case or it is not important in determining who should win in court.
Ex: Asking how many sexual partners someone has had isn't relevant in a protection order case.
How to object: "Your Honor, objection, that is not relevant." Be ready to explain why it's not related to one of the elements necessary to get the PO.

Argumentative

When the person asking questions begins to argue with the witness, then the other party can object. Don't object if you don't like the question. Object if you have answered the question, but they continue to argue about your answer.
How to object: "Your Honor, objection, they are being argumentative."

Asked and Answered

The person asking questions might ask the same question over and over again, maybe in slightly different ways, or re-ask a question they asked earlier. A question can only be asked once.
How to object: "Your Honor, I object. The question has been asked and answered."

Vague

A vague question is when it is difficult or impossible to tell what the question is about.
Ex: "Can you tell the court where you went earlier?" The term "earlier" is not specific enough; it's vague.
How to object: First, ask, "Can you be more specific?" If they don't give you a more specific question then respond, "Your Honor, I object, the question is vague."

Non-responsive

When a witness starts responding to a question with information that is unrelated to the question, you can object. This can be important when you are looking for "yes" or "no" answers. Witnesses may try to explain a past answer instead of answering the new question, which is also non-responsive.
How to object: "Your Honor, I object, the answer was non-responsive. The answer should be stricken and the witness should be admonished to answer yes or no."

Speculation

This objection can be used in two situations. **First**, a witness must have personal knowledge of a fact to testify about that fact and put it into the court record.
Ex: A witness can't testify that they think a person left the house at 8pm unless they actually saw the person leave the house or know for another specific reason.
Second, you can't ask questions that can only be answered by using speculation. *Ex: "What do you think he was thinking when she left?"*
How to object: "Your Honor, I object. The question calls for speculation." or "I object. The answer was based on speculation and should be stricken from the record."

Opinion

If a witness testifies about an opinion they have that is not based on any facts the witness has first-hand knowledge of, then you can object.
Ex: An abuser cannot testify that you are "crazy." They can testify about behaviors they might have witnessed that they find concerning. Similarly, you could not testify definitively that the substance you found in the abuser's glovebox was cocaine unless it was tested by a lab or the abuser admitted it. You could testify that you saw "a white powdery substance in a baggie that appeared to be cocaine," based on your understanding of the drug and what you looked up online.
How to object: "Your Honor, I object. The question calls for opinion." Or "I object. The answer was based on opinion which is not permissible and should be stricken from the record."

Why would I want to object?

Once evidence is given to the judge, the judge can use it when deciding your case. A successful objection will keep the judge from using the evidence.

After you make an objection, the judge then decides whether the objection should be:

- sustained, which means the evidence should not be considered; or
- overruled, which means the evidence can be considered.

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Adapted from Women's Law.org.

Common Objections

Hearsay

What is hearsay?

Hearsay is a complex objection. We will give a brief overview of the objection, but know that it has many exceptions.

Hearsay is "an out-of-court statement admitted for the truth of the matter asserted."

- A statement can be what someone said or be written or typed on a document, like a letter, an email, a text message, a voicemail, etc.
- Out of court means the statement was said outside of court and not during the hearing.
- Admitted means it is evidence or testimony that a party or a witness is giving to the judge to consider when they make a decision.
- For the truth of the matter asserted means that the evidence or testimony is being presented as proof of the fact in the statement. So, in other words, you want the judge to believe that whatever you testify that someone else said to you or what you show the judge that someone else wrote is true and you want the judge to rely on that information.
- Whether or not you are offering a statement to the judge "for the truth of the matter" can depend on the context. The same statement could be offered for two different reasons and one reason may not be hearsay.
    - If a witness says "He said 'The weather sure is great today!'" this might not be hearsay if it is admitted just to show that someone said those words to the witness when they met.
    - However, if the weather on a certain day is a major issue in the case, and the witness says "He said 'The weather sure is great today!'" to prove the weather was great, then it would be hearsay.

Let's look at some examples:

1) In testimony - Usually, if a question asks for what a person said, or when a witness begins by saying "She said…" or "He said…" you will probably be able to object based on hearsay. For example:

- Questions:
    - What did he say to you?
    - Can you tell me what the letter said?
- Testimony about what someone else said:
    - His sister told me he has guns under his bed.
    - My doctor said that I have a concussion.
    - The teacher pulled me aside and said Johnny has been hitting other students.

Remember, sometimes, a witness might be saying what the other person said, just to show that the other person said something. If the content of what was said does not matter for the case, then it is possible that the statement is not "admitted for the matter asserted," and therefore it is not hearsay. For example:

- Testimony that is not trying to prove a fact about the case is not hearsay:
    - "The officer said to stay calm."

2) In documents – Documents can be excluded based on hearsay, unless they qualify for a hearsay exception, which many will. The following might contain hearsay, and *could* be excluded from evidence – however, for many documents, exceptions apply that could allow them to be admitted:

- letters; texts; emails; Facebook posts; utility bills; caseworkers' notes; hospital records; police reports; report cards; therapists' notes; drug test results.

If you plan to admit a document listed here into evidence, you should look through hearsay exceptions on www.womenslaw.org and think about which would apply in your case. The other party might not object to the documents, or the hearsay rules might be more relaxed in the court you are in, but it is good to know which exception will allow your evidence, just in case it becomes an issue.

Protective Order Hearing Notes

Relationship to Other Party _____

My Evidence

My Witnesses

Questions for Witnesses and/or Opposing Party

My Notes During the Hearing
(questions you think of, observations, etc.)

My Testimony
(it's best to write out bullet points or notes to refer to)

Things you may want to include in your testimony:

- Description of most recent abuse and how it has affected you + family/household
- Threats the opposing party has made
- Why you need a protective order to feel safe
- Why you are asking for specific protections

How to Represent Yourself

Can I represent myself without an attorney?
Yes. Many protective order requestors do not have an attorney in Utah. Your CAPP Advocate can help you prepare.

What should I do at the hearing?
You should give your testimony.

- Prepare ahead of time what you are going to tell the judge. Tell them about the threats or violence that you wrote about in your request. Ask your advocate for a notes sheet to help you write down your thoughts. You can bring your notes with you.
- Arrive at least 15 minutes before your hearing. Dress neatly for court; don't wear shorts, tank tops, or hats. Religious apparel is okay.
- When the judge says it is your turn, start with some basic information. What is your relationship to the other party? Why are you asking for a protective order? The judge needs to keep the hearing short, so be prepared to say exactly why you need the order.
- Next, tell them that you outlined the most recent incident in the petition, and you would be happy to clarify anything. Be prepared to explain as best you can when it happened, where it happened, what happened, and who witnessed the incident. You should tell the judge how the incident made you feel and why you are still fearful.
- Then, tell them about earlier incidents or threats. Continue to describe the incidents in as much detail as you can remember.
- If you are asking for protection for your children, you must explain how the abuser has hurt or threatened to hurt the children, or what effect the abuse has had on the kids.
- Tell them if there have been any problems since the *ex parte* order was entered.
- When you are done explaining the violence and threats, tell them you are afraid of what will happen if you are not protected with a protective order.

You should show evidence to the judge/commissioner.

- If you are using a picture, make sure to tell them when the picture was taken, where it was taken, what it's a picture of, and any other important context. This is called "laying the foundation," and it allows the judge to consider it as evidence.
- If you are using a text message, email, or letter, make sure you tell them when the message was sent. If the letter is handwritten, tell them how you know your abuser wrote it.
- After showing the evidence to them, say, "Your Honor, I would like to offer this exhibit into evidence."
- If your hearing is in person, bring three copies of each piece of evidence. One copy for the judge/commissioner, one for the other party, and one for yourself.
- If your hearing is online, make sure to email your evidence to the court and other party before your hearing. You can call and ask the court for a deadline to submit your evidence. Generally, the courts want everything delivered at least seven days prior to a hearing, but there is not a set rule with POs because of the tight timeframe. The other difficulty is that you often don't know who the opposing attorney will be, and if the *ex parte* order was entered, you should not email the other party.

Can I have people testify in support of my case?

Yes! Witnesses can be helpful in your hearing. A witness can back up your version of what happened. **In Districts 1-4** your case will be heard by a Commissioner. The Commissioner will use "proffer," which means you can tell the Commissioner what the witnesses would say if called to testify. If you have a signed affidavit from a witness, you can proffer that information. If you don't, the witness must be in the courtroom or online through WebEx if that is the way the hearing is conducted. They will not actually testify, but you can't proffer their testimony if they aren't there. **In Districts 5-8** your case will be heard by a Judge who might have you put your witnesses on the stand at the hearing, or they may reschedule for another day. You need to be prepared with your witnesses in case the Judge wants to move forward.

When you are done with your testimony, you should ask the Judge/Commissioner to hear from your witnesses. Ask your witnesses questions that explain who the person is and what incident they saw. Good witnesses include people who saw an act of violence, heard a threat of violence, or saw the effects of the violence, such as a bruise or injury.

If a witness cannot come, ask them to prepare an unsworn declaration. This is a statement where they say who they are, what they know about your situation and how they know, and then sign using the following form:
"I declare under criminal penalty of the State of Utah that the foregoing is true and correct. Executed on (date). (Signature)"

What does my abuser get to do at the hearing?

When you are done with your testimony, the abuser or their attorney can ask you questions. You do not have to look at your abuser. You must answer honestly. Only answer the question that was asked. **Stay calm.** Your abuser may try to upset you to make you look angry. Do not let them do this. You are welcome to pause and collect your thoughts before answering.

The abuser can also tell their side of the story. Do not argue or roll your eyes at their testimony. When they are done, you can ask them questions. You do not need to ask any questions if you do not want to. If they have a criminal record that involves violence or being untruthful, you may want to ask about that.

What happens next?

After everyone testifies, the judge/commissioner may ask you to make a closing statement, or say something like, "Is there anything else?" You can give a short summary of why you are asking for the protective order. They may ask questions and then they will then make a decision about your protective order.

The information on this handout was adapted from a handout created by Southeastern Ohio Legal Services.