

Objections to Inappropriate Questions for Children

Developed by

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I. Objections:

1. Not developmentally appropriate for this child.
2. Refer to F.R.E. 611, which places the responsibility on the judge.
 “Court **shall** exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:
 - a. Make the interrogation and presentation effective for the ascertainment of the truth” (*which cannot be done if the witness does not understand, and cannot be SHOWN to understand, the question*),
 - b. “avoid needless consumption of time,”
 - c. “protect witnesses from harassment or undue embarrassment” (*both of which result from being asked accusatory, repetitive, and incomprehensible questions by large, powerful adults in a formal, forbidding setting*)
3. Form of the question [inherent in F.R.E. 611(a)]
 - a. Two questions in one
 - b. Too long to be comprehended/Too many ideas in one question, requiring a heavy load on short term memory
 - c. Too complex in structure: embedding (ex: sentences within sentences), passives, some hypotheticals, etc.
 - d. A restricted/ “forced” choice question (giving 2 or more options, connected by “or.” That kind of Q can be heard by young children as a Yes/No question. Research shows a slight danger that the child might pick one, whether either option is correct, or no option is correct.)
4. F.R.E. 403
Evidence may be excluded if [there is] danger of ...confusion of the issues, or misleading the jury.
 - a. See a-e above: Answers are evidence; but answers must follow questions. *If a question cannot be understood, then the child will be confused and the jury may well be misled by the child’s response.*
 - b. Question is beyond child's cognitive capabilities in that it (incomplete list):
 - requires full understanding of concepts such as time, age, size, kinship, number, distance, repetition, etc.
 - uses court (e.g., ‘oath’) and or latinate words, (e.g., ‘indicate’ instead of ‘point to’)
 - requires comparison and contrast, including, for young child, “-er/est” endings
 - requires understanding cause and effect
 - requires reasoning beyond the developmental capacity of the child
 - requires sorting out Q’s & A’s asked in the past from Q’s being asked now: (ex: counsel reading from a deposition and asking child if he/she remembers question and/or his or her response)
 - asks children under 10 to define or explain truth and lies

II. Tactics

1. Speaking objections:
 - “Your honor, I’m not sure the child understands the question.”
 - “May I ask counsel to rephrase the question/ask that the child repeat the question?”
 - “May I voir dire the child on his/her understanding of the question?// Ask the child what he/she heard Mr/Ms X say/ask just now.
2. Take notes; rehabilitate on redirect.