

HEARSAY

What It is And How It Works

I hear it from clients all the time "I know you can't use that - it's all hearsay." It's something everybody says they know about, but few people, even attorneys and judges, truly understand.

The court defines hearsay as an "out of court statement offered for the truth of the matter asserted." What does that mean in plain language? It means that if you testify as to what someone else said, that other person must be available to testify as to what they said.

An example that is used all the time in divorce cases: if you testify about what your child told you about getting hit by your ex, your child will have to tell the judge about being hit. Why? Because you're not wanting the judge to believe you, you're wanting the judge to believe the child was hit. You're offering up a statement, made out of court, for the truth of that statement, i.e., the child was, in fact, hit. So, unless that child is available to testify to being hit, and to be asked questions by the other side, you won't be able to testify that your child was hit by your ex.

This is why lawyers HATE hearsay! This is one of the easiest, yet most difficult things we learn as trial attorneys. And so many lawyers and judges just don't understand the concept. Plus, there is no guarantee that we can convince a judge to understand and allow that testimony.

So, just understand the difficulties. See my earlier post about children testifying in court.