
VIDEOTAPES AND MOTION PICTURES § 90.401(3)

Foundation

- The videotape is relevant
- The witness is familiar with the object or scene
- The witness explains the basis for his or her familiarity with the scene
- The witness recognizes the object or scene in the videotape or motion picture
- The witness recognizes the voices on the tape, locations and persons seen on the tape.
- The videotape or motion picture is a “fair and accurate representation” of a material fact or issue

Steps

1. Have the exhibit marked
2. Show exhibit to opposing counsel
3. Ask permission to approach witness
4. Show exhibit to witness
5. Establish foundation
 - a. Do you recognize guardian ad litem exhibit #1?
 - b. What do you recognize it to be?
 - c. Your Honor, at this time we offer guardian ad litem Exhibit #1 into evidence
 - d. (establish that the operator replayed the video after recording it and the tape had accurately recorded the sounds and images)
 - e. May I unseal guardian ad litem exhibit #1 and play it for the court? (establish chain of custody)
 - f. (play a few moments of the tape)
 - g. Can you identify who said “Hello”
 - h. Can you identify who said “Its me”

If there is an audio portion of the videotape, its admissibility will be determined separately from that of the video portion. If it contains statements by a person it is hearsay if it is for the truth of the matter asserted. However, the audio portion of the videotape may be admissible under an exception to the hearsay rule.

Be sure that the court reporter makes a stenographic record of what is said in the videotape.