

Testifying in Court

ÿ This may be your first time to testify in court or you may be an experienced veteran. In either case, take a minute and go over this list of reminders. Hopefully the list will orient you to giving testimony such that your time on the stand will be successful (and not too stressful!).

1. Most important, remember you are obligated to tell the truth. Tell it. Do not stop to figure out whether your answers will help or hurt either side. Just answer the questions to the best of your memory. Begin by answering the question directly—don't be evasive.

2. A neat appearance and proper dress in court are important. The trouble with an appearance that seems very casual or very dressy is that it will distract the jury during the time you're on the stand and they won't concentrate on your testimony. Look nice, but be comfortable. In most instances this means to wear what you normally wear to work.

3. Before you testify, try to picture the events, the scene(s), the objects there, the distances and exactly what happened so that you can recall the facts more accurately when you are asked. If the question is about distances or time, and if your answer is only an estimate, be sure you say it is only an estimate. Beware of suggestions by attorneys as to distances or times when you do not recall the actual time or distance. Do not agree with their estimate unless you independently arrive at the same estimate.

4. When you are called to testify, you will first be sworn in. When you take the oath, stand up straight, pay attention to the clerk, and say "I do" clearly. If you prefer to affirm, please tell your lawyer so he/she can alert the clerk. This may avoid an unnecessary scene in front of the jury.

5. When a witness gives testimony, he is first asked some questions by the lawyer calling him or her to the stand. This is called the "direct examination." Then the witness is questioned by the opposing lawyer in "cross examination." (Sometimes the process is repeated two or three times to help clear up issues.) The basic purpose of cross-examination is to raise doubts about the accuracy of your testimony. Don't get mad or frustrated if you feel you are being doubted in cross-examination; that is the other lawyer's job. Stand your ground and tell the truth.

6. Remember that you are always being watched when in the courtroom. You should pay attention and be interested in the case. Don't read the newspaper. Jurors (or the judge if you do not have a jury trial) who are or will be sitting on the case in which you are a witness may be present in the same public areas where you will be. For that reason, you should not discuss the case with anyone except privately with your lawyer. Remember, too, that jurors may have an opportunity to observe how you act outside the courtroom. For that reason, even on breaks it is usually advisable to avoid emotional extremes of loud laughter or sobbing.

7. When you are called into court, it is generally a good idea to be serious. Take notes and remain focused on the process.

8. Avoid distracting mannerisms such as chewing gum while testifying. Smoking is not allowed. Present your testimony clearly, slowly, and loud enough so that the juror farthest away can easily understand everything you say. Make sure cell phones/ pagers are OFF.

9. Do not nod your head for a "yes" or "no" answer. Speak so that the court reporter (or recording device) can hear the answer. Remember that any hand motions or gestures you make will not be recorded so you may need to describe what you are doing as you do it. However, use of hand gestures can be instructive to the jury.

10. Although you are responding to the questions of a lawyer, remember that the questions and answers are really for the jury's benefit. Always speak clearly and loudly so that every juror can easily hear you. Face the jury when you answer a lawyer's question.

11. Answer only the question asked you. Do not volunteer information not actually requested. This generally applies even when you think adding something will help your case. This is particularly true when you are examined by the opposing lawyer.

12. Listen carefully to the questions you are asked. Have it repeated or clarified if necessary. When you understand the question, give a thoughtful, considered answer. Do not give an answer without thinking. While answers should not be rushed, neither should there be an unnaturally long delay to a simple question if you know the answer. Don't season an answer with irrelevant emotional pleas or self-serving statements. Stick to the facts.

13. Explain your answer if necessary. Give the answer in your own words. If the opposing lawyer demands a "yes" or "no" answer and you feel an explanation is necessary, try to answer directly and then give the explanation. Not all questions can be answered "yes" or "no." If this is the case, simply state the reason the question cannot be answered in that way.

14. When being questioned by the other lawyer, don't look at your lawyer or at the judge for help in answering a question. For the moment, you are on your own. If the question is improper, your attorney will object. If a question is asked and there is no objection, it's your job to answer it truthfully.

15. When the judge interrupts you or when an attorney objects to a question, stop and wait for the judge to tell you to continue. If an objection is "sustained" that means you cannot answer. Sit quietly and wait for the next question. If the objection is "overruled" then proceed with your answer.

16. Speak in your own words. Don't try to memorize what you are going to say. Doing so will make your testimony sound "rehearsed" and unconvincing. Instead, prior to trial simply go over in your mind those matters which you will be questioned. You cannot bring notes to the stand to help your memory. Likewise, if the other lawyer makes a statement and wants you to testify whether the statement is true or false, remember that it is true only if it is 100% true. Usually the best way to deal with these "questions" is to say no and put the statement in your own words.

17. A witness who is angry may exaggerate or appear to be less than objective, or emotionally unstable. Keep your temper. Always be courteous, even if the lawyer questioning you appears discourteous. Don't appear to be a "wise-guy" or you will lose the respect of the judge and the jury.

18. The judge and jury are interested in the facts that you have observed or personally know about. Therefore, don't give your opinions and don't state what someone else told you (called hearsay), unless you are specifically asked.

19. Sometimes, witnesses give inconsistent testimony. Something they said before doesn't agree with something they said later. If this happens to you, don't get flustered. Just explain which statement is accurate and why you were mistaken or why the other statement appears to contradict something. The jury, like the rest of us, understands that people make honest mistakes. If you try to be evasive, the jury will pick up on this. Deal directly with inconsistencies.

20. Don't argue or talk back to the opposing lawyer. If a question is improper, your lawyer should object. It is fine to say you do not understand a question, but don't respond by saying "I think that is irrelevant and I don't want to answer." While sometimes it is an effective tool when asked one question, to respond by saying a truthful statement that reflects your position, this tactic can be overdone. If used too much, you appear evasive and uncooperative. If the judge seems like he/she is getting impatient and instructs you to answer the question asked, abandon this tactic and answer remaining questions directly.

21. If your answer was not correctly stated, correct it immediately. If you feel your answer was not clear, clarify it immediately. It is better to correct a mistake yourself than to have the attorney discover an error in your testimony. If you realize you have answered incorrectly, say, "May I correct something I said earlier?"

22. Give positive, definite answers when at all possible. Avoid saying, "I think," "I believe," or "In my opinion." If you can, be positive. If you don't know, say so. Don't guess or make up an answer. You can be positive about important things which you naturally would remember. If you're asked about little details which a person naturally would not remember, it is best just to say so if you don't remember.

23. Unless certain, don't make broad statements. For instance, don't say "That's all of the conversation," or "Nothing else happened." Instead say, "That's all I recall," or "That's all I remember happening." It may be that after more thought or another question, you will remember something else.

24. Sometimes an attorney may ask this question, "Have you talked to anybody about this case?" It is perfectly proper for you to have talked with counsel or family members before you testify. You should, therefore, respond truthfully to this question. Say very frankly that you have talked with whomever you have talked with. All we want you to do is to tell the truth as clearly as possible.

25. You may be asked about claims or defenses in the lawsuit or the damages you are seeking. Be sure you understand these before testifying. Now is the time to get clarification from your lawyer.

This article is meant as general knowledge and not meant to substitute for legal advice on specific issues. If you have a question, please call Doug McClanahan at 861-0693.