

Tips to Testify Successfully: Guidelines for Witnesses

SUCCESS . . .

Tell a

- STORY that's
- UNEXPECTED,
- CONCRETE,
- CREDIBLE,
- EMOTIONAL, and
- SIMPLE!

10 Basic Rules of Testimony:

Rule 1: LISTEN TO THE QUESTION ASKED

While this may seem like a rather obvious rule, the majority of witnesses have a hard time following the rule's simple instruction. Most of the time, witnesses are nervous and will be more inclined to simply "hear", instead of "listen" to each question.

A helpful technique to be sure you are listening to each question is to repeat the question in your head. If you cannot repeat the question in your head, then you either did not hear the question or you have forgotten the question. In this case, you can certainly request that the attorney repeat the question.

If the question is unclear, or ambiguous, you can request that the

attorney ask the question another way. Simply say “I don’t understand your question, could you ask it a different way?”

Try to ignore the manner in which the question is delivered. Be prepared that lawyers will often try to intimidate witnesses or attempt to manipulate a witness’ testimony by various means. Don’t feel attacked (even if it appears that the lawyer is attacking you). Just calmly listen to the question asked as if it were being presented to you in writing, without the lawyer’s voice inflections or accusing tones. Do not get flustered. Often attorneys are looking more for your reaction than for an answer to a particular question. Do not give them the reaction!

Pay careful attention to any documents or tangible evidence with which you may be presented at trial. Carefully review any document that you are asked to identify, regardless of your familiarity with the document. Listen carefully to any questions that are posed regarding a particular document. Witnesses often identify documents that they have never seen, because they didn’t read through the document in question before stating that they are familiar with the document. Understand that if you have not seen the particular document with which you are presented, you need to say so very clearly. Otherwise, you may get caught in the trap of answering questions regarding a document that you have “identified,” but have never actually seen before.

Rule 2: MAKE SURE YOU UNDERSTAND THE QUESTION ASKED

None of us like to look ignorant, especially when put on the spot in front of a soon-to-be-ex-spouse. Consequently, witnesses often attempt to answer a question without having a full and complete understanding of the question.

Make sure you fully understand each question before you attempt to answer. If you do not understand the question, do not hesitate to ask the attorney to repeat or rephrase the question. Never answer a question that you do not understand. Do not be embarrassed or afraid to ask that a question be repeated or rephrased. It is possible that an attorney may attempt to make an issue out of a witness’ inability to understand a question, for example, asking the court reporter to read back the question rather than simply repeating it. Understand that such tactics are either part of the lawyer’s theatrics or the fact that the attorney who asked the

question cannot remember the last question that s/he asked.

Rule 3: ANSWER THE QUESTION ASKED AND ONLY THE QUESTION ASKED

Once you have listened to the question, answer only that question and do not offer any additional information.

Never answer a question by asking a question.

Do not be evasive with your answers. It is the attorney's job to present the evidence and/or defend against the evidence. It is not your responsibility to take control. Therefore, you should answer only the questions that are asked and do not embellish.

If you are asked "What time is it?", the appropriate answer is to respond with a particular time and nothing more. By answering more than what was asked, you may provide information that the other party's attorney does not know or need to know. You may also come across as argumentative, a difficult witness or a witness with an attitude, which can only hurt your case.

Rule 4: TAKE YOUR TIME

Testifying at trial is not the same as participating in the final round of *Jeopardy!* Witnesses are not under any particular time limit to answer questions that are posed to them. While it is certainly not advisable to take ten minutes to formulate an answer to a question, understand that you can take your time when answering, to really think about your answer and get it right. Do not be afraid to admit that you do not have an answer.

Rule 5: DON'T ARGUE

It is understandable that you are not going to like the other attorney. It is also understandable that some of your animosity towards that other attorney may wear off on your other witnesses. Be sure that no matter how much anger you feel toward the other lawyer, you always remain civil and

respectful. The courtesy that you can show to opposing counsel will be seen by the Court as a sign of strength, not a sign of weakness.

There are great risks involved in trying to argue with opposing counsel. First, it is quite likely that neither the judge nor the jury will appreciate your attitude. Second, your desire to tangle with the other attorney could easily distract your attention from more relevant matters.

Finally, there has never been a recorded circumstance where a party has convinced the opposing counsel during cross-examination that their position is the right one. It just does not happen. The attorney on the other side is never going to agree with your position no matter how eloquently you plead your case. So don't bother trying. Remember the old adage: "Never argue with a pig. You won't win, and you'll end up annoying the pig."

Rule 6: DO NOT GUESS

The purpose of a trial is to reach the truth. A guess, even if it is an educated guess, is not the truth. Therefore, do not guess your answer, unless you are asked to give an opinion. It is perfectly acceptable to answer "I don't know" or "I don't recall."

Rule 7: AVOID BOXING YOURSELF IN

Be very careful in your answers to avoid using absolutes such as "always," "never," "all," and "every", unless you are absolutely sure it is the right answer. Lawyers will jump on those absolutes whenever they can, and they will make you look silly. For example, if the other lawyer asks if you have *ever* called your ex-wife an ugly name and your response is "Never!". If the other lawyer then shows you an old email where you reference her as something less than flattering, you will be forced to backtrack on your testimony and explain that you didn't remember that, or that you didn't consider that particularly "ugly". Such backtracking makes you look less than credible.

Even if when you feel that it is a completely honest answer, it can be hard to remember every last thing that you have said, done and seen in

your life. To respond with such absolutes reduces the credibility of your testimony. Remember that the other attorney is asking the question for a reason. It could be because s/he is waiting for you to lie, because they have proof otherwise. Or it could be to get a reaction out of you (Don't give the reaction!). Or it could be to see if you will give an answer that is not likely to be believed by the Court and will only make you look foolish (like "I would never say something like that!").

It is better to say "I don't believe so" or "I do not recall that" rather than "I never said that" or "that never happened." Additionally, it is almost always better for you to leave yourself open by responding "to the best of my recollection" or "that is all I can remember at this time."

Rule 8: ALWAYS TELL THE TRUTH

As shocking as it may seem, sometimes witnesses do not tell the truth. Despite the fact that every witness who testifies at depositions or at trial is required to swear under oath to tell "the truth, the whole truth and nothing but the truth," the temptation to embellish the facts or outright lie is sometimes difficult to resist. Unfortunately, the effects of getting caught in a lie can be devastating. For that reason, you must always stick to the truth.

Sincerity and straightforwardness should be the touchstone of your testimony. Honesty, simplicity and sincerity go a long way with the Court. Evading questions or telling fantastical stories will only hurt you.

There will be times when you know that a particular set of facts critical to your case are about to be opened up by opposing counsel. If you know that there was a time that you behaved badly, it is better to own up to it openly and honestly, accept responsibility for your actions, acknowledge the consequences, and be remorseful. Lying about it or downplaying the serious nature of the conduct will only cause you more problems. The consequences of being caught in a lie are substantially worse than the momentary discomfort that may accompany telling the truth. For example, while it may be uncomfortable for you to admit an affair, it is far less damaging for you to admit to this indiscretion than the resulting consequences of lying about the situation.

Once the judge or jury learns that a witness has been untruthful, it is likely that the witness' entire testimony will be tainted. And if you are expecting that judge or jury to award you custody of your children or award you money or property after you have allowed them to see you as untrustworthy, you have reduced your chances significantly.

Rule 9: BE ON TIME

Being prompt shows responsibility and the importance that you place on the issues at hand. If you are late, it could be interpreted that you don't care about what is being decided in your case. There are some judge who believe that there are no good excuses for being late and they will hold it against you.

Rule 10: DRESS AND ACT APPROPRIATELY

You should dress for court as if you are going to church to or to an important business meeting. However, don't overdress so that you are uncomfortable. Men, if you regularly wear a suit to work and are comfortable wearing a suit, then a suit would be appropriate for court. If you have not worn a suit since your cousin's wedding three years ago, then wear slacks and a Polo shirt. Do not wear shorts, flip-flops, jeans or tee shirts. You need to be comfortable, but respectful. Women, leave the flashy jewelry and the Chanel bag at home, and do not wear too much make-up. Slacks or a skirt are appropriate and a blouse with sleeves or a jacket. Bare shoulders are not appropriate.

Most aspects of Family Law are serious in nature. Be very cautious about making jokes or sarcastic comments, in the courtroom or even out in the hall. Some people use humor to calm themselves or to "lighten" the situation, but in Family Court it will usually come across as inappropriate.

It is perfectly acceptable to show appropriate emotions. If you start to cry, do not get angry at yourself. Take a moment to collect yourself. If you need to take a break, it is acceptable to request a few minutes. Do not let your emotions get out of control, but appropriate emotional responses tend to show sincerity and lend credibility to the testimony.