

ADMINISTRATION OF JUSTICE

COURTROOM TESTIMONY AND DEMEANOR

I. INTRODUCTION

- A. Testifying as a witness in court is a very important part of the legal process to ensure a fair trial takes place.
1. In a criminal case, what you say and how you say it can keep an innocent person from going to jail or ensure that a guilty person is not set free to commit new crimes.
 2. In a civil lawsuit, while your testimony will not usually send anyone to jail, it can significantly affect fundamental legal rights.
 3. Taking the time to learn to be a good witness in court is crucial, because the jury will arrive at a verdict not only based on what witnesses say, but on their impression of a witness.

B. Courtroom testimony is evidence given by a competent witness under a sworn oath administered to tell the truth.

- 1. A witness is competent if he or she can communicate effectively on the stand and understands the duty to tell the truth.**
- 2. A witness may be called to give testimony only on evidence about which he or she has personal knowledge.**
- 3. Testimony is typically delivered orally by a witness at trial or in writing in the form of an affidavit or a deposition.**

C. For most people, the idea of being subpoenaed to testify in either a criminal or civil trial can be a very stressful thought.

- 1. A subpoena is a court order directing you to be present in court on the date and time stated.**
 - a. Failure to appear may be interpreted as contempt of court by the judge, and may result in dismissal of the criminal charges.**

2. A courtroom can be a very intimidating place with the Judge, jury, and opposing counsel all listening to everything that is said.
 3. Think of your testimony as a chain of events.
 - a. Be prepared to state the events in the order of their occurrence.
 4. Do not try to memorize your testimony.
 - a. Memorized testimony sounds rehearsed and false.
 5. Use expression in your testimony.
 - a. Your expressions as well as your voice inflection and gestures are important factors to consider.
- D. Diligent investigation and careful preparation of cases may be wasted if a witness fails in the very important task of providing good courtroom testimony.

1. Prior to trial a witness should organize their testimony by first making a list of all testimony and/or evidence they may be called upon to present in the case.

E. There are two types of witnesses that can be used to provide testimony:

1. Lay witness: A witness having personal knowledge of the facts or evidence about which he or she will testify.
2. Expert witness: A witness who by reason of education or specialized experience possesses superior knowledge regarding a subject about which average persons with no training are incapable of forming an accurate opinion or making a correct conclusion.

II. CONDUCT AND Demeanor WHEN TESTIFYING IN COURT

- A. The first and primary rule of being a good and effective witness is to establish credibility by telling the truth.**

1. When called as a witness to testify, stand upright while taking an oath to tell the truth.
 - a. Pay attention to the admonition and say “I do” clearly, so that all can hear.
2. Do not embellish, shade or otherwise slant your testimony in an attempt to aid either side of the trial.
 - a. Witnesses are not expected to know everything and there is nothing wrong with an honest, “I don’t know”.
3. Perjury is a crime that occurs when an individual willfully makes a false statement during a judicial proceeding, after he or she has taken an oath to speak the truth
4. Witnesses should testify as to something they know and not guess.
 - a. Guesses are inherently unreliable, and are therefore inadmissible in court.
 - b. A witness may be asked to give an estimate, and estimates are sometimes relied upon in courts.

c. The difference between a guess and an estimate can be demonstrated as follows:

(1) If someone asks you the size of the courtroom in which you are testifying, because you have seen it, you can give an estimate of its size.

(2) If you were asked the size of the judge's chambers, and you had never been there, any answer you would give would constitute a guess.

B. Pause before answering any question that is asked, no matter how simple it may be or how sure you are of the answer.

1. Pausing accomplishes several things that are important to the witness and to the trial.

a. A pause provides an attorney the opportunity to object to the question in case the question may be deemed immaterial or irrelevant.

b. It gives the witness time to make sure they understand the question.

(1) If you do not understand the question, ask for clarification by saying that you do not understand the question.

c. It provides a witness the opportunity to consider their answer and to be sure that it properly responds to the question they were asked.

d. A pause allows a witness to control the tempo of the questioning and stops a lawyer from firing rapidly paced questions which can cause confusion.

C. Limit answers to the questions that are asked.

1. Do not go off on tangents or explanations of why you answered the way that you did.
2. When a witness called by the prosecuting attorney is being questioned by the defendant's attorney, they should keep answers as short, concise and as brief as is possible.
3. When asked questions by the prosecuting attorney, they may be more verbal and expand on the answers.

D. Witnesses cannot outsmart attorneys by tailoring their responses to questions in an attempt to guide the attorney in another direction or to make themselves look better.

- 1. Remember that the attorneys are not the ones who make the decisions in the case.**
 - a. This means that when answering a question witnesses should address the finder of fact, which in most cases will be the jury itself.**
 - b. It is the jury that will weigh a witnesses testimony and the credibility or incompetency of the witness.**

E. Being nervous while testifying is very common, look at the jury one person at a time to help relax.

- 1. Make eye contact with each of them and speak as if you are addressing only one of them.**
 - a. It is far easier to talk to one person than to a group, so pretend that you are only talking to one juror at a time.**
 - (1) By doing so, you will be more relaxed and at ease while on the witness stand.**

F. Do not argue with the attorney, stick to the known facts and just state them clearly.

- 1. Do not allow the attorney to make you angry or upset as that can cause you to make statements that you do not mean and could ruin your credibility with the jury.**
- 2. If you are asked why you're in court testifying, don't volunteer any reason other than that you were asked to testify or that you were compelled by subpoena to testify**

III. APPEARANCE WHEN TESTIFYING AS A WITNESS IN COURT

A. How a witness looks is often as important as what they say because it is human nature to prejudge individuals based upon how they dress, move, act and talk.

- 1. As a witness, it is important to present yourself to the jury in a positive light so that they will like you and be more likely to trust what you have to say.**

- a. The first impression that you create will be based upon your appearance.
 - b. Neatness and cleanliness help create the impression that you are an efficient, organized person.
2. A trial is a very solemn proceeding and what you choose to wear must fit into that type of environment.
- a. If you think of a trial as theater, you can understand that actors always “dress the part”, and your role as a witness is no different.
 - b. Your attire serves to inspire confidence because it emphasizes your attention to detail.
3. Dress in a manner that tells everyone looking at you that you are honest, trustworthy and that they should give weight to what you have to say.
- a. This means that you have to indicate by your attire that you take your testimony very seriously.

b. This means that your style of dress should be conservative in nature.

(1) For men, at a minimum you should wear a neck tie that is subdued and not loud or flashy.

(a) Shoes should be freshly shined, hair trimmed, clean clothes and no visible tattoos or body jewelry.

(2) Women should avoid wearing low cut or revealing clothing as well as excessive jewelry.

B. How a witness testifies on the witness stand is just as important as their appearance.

1. When taking the stand and when leaving it, do not show emotion toward one side or the other as that detracts from your credibility.

a. The first duty of a person called to court is to show proper respect for the court at all times.

2. Be prepared to testify.
 - a. Know your case well enough to be able to report all of the facts unaided except for such things as dates, numbers and measurements.
3. Have any written notes available for use as reference if permitted.
 - a. Remember that the attorney may examine your notes if you use them for reference while on the witness stand.
 - b. Do not have anything in your notes that may be embarrassing to you.
4. Witnesses should maintain good posture by sitting erect and keeping both feet on the floor.
5. Hands should rest comfortably in the lap which will help prevent fidgeting with them in a manner visible to the jury.

IV. ANSWERING QUESTIONS DURING TESTIMONY

A. When answering questions, you should focus your eyes on the jury or the attorney who is questioning you.

1. If you look at anyone else, such as the defendant or someone in the gallery, it can seem as if you're seeking approval or checking to see how you should answer, which can hurt your credibility with the jury.
2. Attorneys will often ask that you look at the jury when your side's attorney is doing the questioning (direct examination) as it helps the jury to focus on your testimony.
 - a. It also helps to build trust and rapport with you.
3. This advice is often followed with a request that you focus only on the adverse attorney when they get up to cross-examine you (allowing the jury to become more passive listeners).

B. Answer the question asked and only the question asked.

1. Focus more on being concise with your answers than providing every small detail.
2. Being concise with answers is especially important during cross examination.
 - a. It is very important to avoid volunteering additional information.
 - b. If the question calls for a yes or no answer, and you can do so, answer yes or no.
 - c. Do not include information that you did not directly see or hear.
 - (1) Hearsay evidence is not admissible as testimony.

C. In many courtrooms, a microphone will be used to record your testimony; its purpose is not to amplify your voice.

1. Speak loudly enough that the juror farthest from you can hear your answer.

2. Don't answer questions with shrugs or head shakes and don't use slang, terminology, or professional jargon a jury will not understand.
 - a. Testimony is usually being recorded or written down by a court reporter and for that to happen, you must speak clearly and unambiguously.
3. Be careful to wait until the question is finished before answering.
 - a. Make sure you understand the question being asked before you begin to answer.
 - b. Remember that a court reporter is tasked with transcribing the proceedings.
 - c. If you're talking over someone else, much of what you say may not make it onto the record.

V. CROSS EXAMINATION

- A. The purpose of cross examination is to search out the truth and to expose ignorance, corruption and bias on the part of witnesses.

1. It is used to destroy the credibility of the witness.
2. To expose a direct falsehood in the testimony of a witness is its major objective.
3. It will take on the appearance of direct attack and will attempt to come from an unexpected quarter.
 - a. Two of the most common methods of causing witnesses to make mistakes and get confused are:
 - (1) The browbeater tactic of intimidating a witness by overbearing looks or words, stern manner or arrogant tone of voice.
 - (a) This may arouse you to anger and may cause you to make ill-advised retorts.
 - (b) The way to counter this is to know your case and to testify truthfully.
 - (2) Treat you so nicely that you will agree with him/her on the next question.

- (a) Be sure to listen carefully to the entire question and understand it before answering.
- (b) The attorney will try to cause you to say the opposite of something that you or someone else has previously stated under oath.

4. Expect the unexpected.

- a. Frequently the cross-examiner will insist that you answer questions with a simple yes or no.
 - (1) You may try to avoid such a situation by stating that you cannot answer the question in the manner requested.
- b. Correct your own errors and mistakes without hesitation.
 - (1) It will make you appear honest and more human.
- c. If you don't know the answer to a question, say so.

5. Clearly state what you know without revealing your personal feelings or portraying your convictions that the defendant is innocent or guilty.
6. Casting doubt on your reliability is a common way to try to discredit you in court.
 - a. One method of trying to discredit your is to ask you a question and then confront you with the answer to that same question which you gave earlier, possibly in a pre-trial conversation or found in a police report.
 - b. If your notes do not cover the subject or you could not determine the fact requested, say so.
 - (1) If you answer, do not try to be precise and accurate.
 - (2) Make it clear that you are depending on memory to recall the answer.
7. Another tactic is to confuse you in hopes of making you angry.
 - a. Keep your temper under control.

- b. If you do not understand a question, do not hesitate to say so and ask the attorney to re-word the question.
 - c. If the question is very long, pause, then ask the attorney to repeat the question, the attorney usually cannot.
- 8. Most of the "exposure" of technical errors are simply intended to make you seem incompetent, ridiculous, or unreliable.
 - a. Another purpose is to make it appear that you purposely tried to conceal some evidence.
- 9. Testing your ability to estimate distances is another way of trying to trip you.
 - a. Attorneys may ask you about how far something significant or insignificant is and you try to estimate.
 - (1) The attorney may pick out a distance in the courtroom and ask your opinion of the distance.

(2) If you are wrong in the latter, he will probably make a big issue; however, maintain your composure.

B. Precautions to consider when giving testimony.

1. Resist two temptations which are very likely to get you in trouble.
 - a. The temptation to state as a fact what you assume to be true because other people told you.
 - b. The temptation to give conclusions or inferences or opinions unless you are asked.
2. Tell of the events in the sequence in which you experienced them rather than as you think they happened in the incident.
3. If you lie, guess or embellish in testimony you will most likely be caught and the value of your testimony will be destroyed.
 - a. If you lie, you may also be charged with committing the crime of perjury which could result in your next court appearance being that of a defendant.

VI. LEAVING THE WITNESS STAND

- A. Once you have given your testimony, you will be directed to step down from the stand.**
- 1. It is common procedure for the trial court to exclude all witnesses from the courtroom while others are testifying.**
 - a. This is to insure that the testimony of a witness does not influence the testimony of another.**
 - b. If there is such an exclusion order, you must wait patiently for your turn to testify, you may not discuss the case with any other witnesses.**
 - c. Once you have testified you are free to leave the courtroom, or remain in the audience, unless otherwise ordered by the Judge or requested by the prosecutor.**
 - 2. Avoid lingering in the hallway outside the courtroom before, during, and after trial each day.**

- a. All efforts should be made to avoid contact with any seated or potential **juror**.

B. If you have to get back to work following your testimony or if you would just like to leave if you are no longer needed:

1. When the judge says "You may step down," ask the judge, "Am I **excused** Your Honor?"
 - a. At this point, the judge will usually ask both sides if either has further need of your **services**.
 - b. Unless one side or the other wants to use you on redirect, re-cross or **rebuttal**, you'll be excused and allowed to leave.
2. Once you finish your testimony, leave the courtroom unless you have been **instructed** otherwise.
 - a. Customarily, the court permits the prosecutor to have an officer (usually the initial **investigator**) remain with him throughout the trial.