

## Providing Testimony —Guidelines for Testifying in Court

In America today, thousands of people are summoned to appear and answer questions in a court of law every day. With the growing amount of lawsuits being filed against businesses, organizations and individual citizens in the last few decades, it is not out of the realm of possibility for a person, at some point, to be called to testify in court for a case either as a witness, expert, or as person being sued by another party. Even when a person may not be an actual party to a case, the process of testifying in court can be both a frightening and confusing experience if ill prepared for the courtroom setting. Depending on the nature of the case and the answers given by you in court, it is also possible to increase the likelihood of being found liable, sued at a later date, or to even be found in contempt for the responses you provide in court. The purpose of this brief is provide general guidelines to protect you when in court as well prepare for a day in court on the stand.

While you are “on the stand,” the following 37 points will help prepare you to be a credible and well-versed witness, be it for the defense or the prosecution. You should read them carefully and, when in doubt as to how to proceed, consult the attorney of record or the district attorney’s office for clarification.

1. Tell the Truth!
2. Be yourself!
3. Be natural and use common language.
4. Do not try to use big words to impress.
5. Try to avoid work related jargon or slang.
6. Your role is to testify, not to convince the jury.
7. Speak in a clear tone of voice.
8. Sit up straight.
9. Avoid covering your mouth or resting your chin on your hand while you are speaking.
10. Speak loudly and at a normal rate of speed so that the court reporter and the jury can hear your words.
11. When asked a question, pause, think about the question and think about your answer before you start talking.
12. Yes or No answers should be directed to an attorney. If asked a simple question, do not provide additional information that can lead to more questions.
13. Longer, narrative answers, however, should be directed to the jury (or the judge if a jury is not present).
14. Answer the questions with a “yes” or “no,” if possible, and then explain. Be brief and on point if a narrative answer is requested. Do not expand upon other areas outside the scope of questioning.
15. Avoid answering any question that you do not understand completely. Ask to have the question clarified.
16. “I do not know” or “I do not remember” are valid answers, if appropriate.
17. "I do not know" means that you do not and never did know something.
18. "I do not remember" means that you may have known something at some previous time, but do not remember it now.
19. Use terms like “approximately” when asked for measurements of time and distance.
20. Avoid appearing arrogant or egotistical.
21. Avoid giving the answer to a question until the attorney has finished asking it.
22. Avoid allowing yourself to be talked into false testimony or affirming incorrect statements.
23. Listen carefully to each question, and be sure that everything in it is true before adopting it as your own. For example: “Isn't it true that” is often a phrase used by attorneys when posing a question. You should think carefully and comprehend the meaning of the entire question before answering.
24. If you realize that you have made an error in your testimony, immediately ask the judge for permission to correct the error.
25. If your testimony is interrupted for any reason, stop talking. This is especially true when it is interrupted by a question from the judge or counsel's objection.

26. Avoid being anxious to volunteer information.
27. If you have any apparent interest in the outcome, your credibility may be reduced in the minds of the jury.
28. Avoid testifying, reading from or otherwise referring to your report without first asking for permission from the judge to refresh your recollection by looking at it.
29. Remember that all documents taken by you to the witness stand can be examined by either attorney.
30. If you are asked to read a document out loud by an attorney or the judge, read it slowly so the court reporter can record your testimony.
31. Remember that you cannot offer or volunteer your opinion unless you are testifying as a court qualified expert witness.
32. An expert witness (e.g., a DNA expert) is entitled to express an opinion in the areas of his/her expertise.
33. Do not be intimidated by the attorneys. They are simply representing their clients.
34. Remember to only answer the question asked of you. Do not hesitate to ask for clarification if you are uncertain about a question.
35. Speak up especially during crucial points in your testimony. When mentioning something crucial in your answers, be sure to be loud, deliberate and clear that you are indicating important information to the lawyer and jury; don't rush through the important information. Remember that everyone must hear your answers (judge, jury, court reporter, clerk, interpreters, attorneys and clients).
36. Avoid answering the question with the phrase "I believe..." "I think..." or "I am not sure..."
37. You are to testify only as to what you saw, heard, smelled, tasted or felt, unless you are an expert witness qualified by the Court to give your opinion(s).

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## Do's and Don'ts When Testifying

DO take a subpoena seriously. It has the force of a court order. That doesn't mean, by the way, that a judge has actually taken an interest in you (they are usually prepared by an attorney for a party) but a judge will be annoyed if you ignore a subpoena.

DO be honest and forthcoming with your testimony, however, do not go off on a tangent and provide extra information that can lead to additional questions or comments from a judge. Answer questions fairly and with intellectual honesty. You saw how badly a recent President looked when he tried to get cute with his testimony. Of course, also remember that perjury is a felony.

DO be honest and forthcoming with your attorney. Even if it is embarrassing, even if it makes you look like an idiot or a crook, it is better if your attorney knows. Lying or covering up illegality to your attorney can prejudice your case later on or prevent your attorney from giving you the best legal representation possible. Giving your attorney insufficient information is like hiring a chauffeur and not telling him or her that your brakes don't work. Remember, your attorney cannot disclose or reveal information you provide no matter how embarrassing.

DO make yourself available to your attorney for discussions regarding the case, including working on discovery and preparation for depositions and trial. It is not a waste of your time if it helps you to win the lawsuit. Return the calls and communications of your attorney promptly.

DO follow your attorney's advice about how to behave in the deposition or the courtroom. Don't be afraid to ask him or her if something is appropriate. It's one of the things that you are paying your lawyer for. Your attorney will tell you what he or she wants from you if you are deposed or have to take the stand in a trial.

DO dress well and as comfortably as you can. A suit is best, for a man or a woman, but if your head spins and you gag at the thought of a tie or a skirt, dress as nicely as you can. If you are a police officer, military personnel, or cleric, your uniform is always appropriate. Your credibility as a witness is in some small degree judged by your clothing. Even little things like shined shoes and a clean shirt make a huge difference.

DO give your attorney everything in your relevant files, even if it is embarrassing or incriminating. If you have the document, the odds are that someone else does too.

DON'T ever guess. You are in a deposition or on the stand to give facts, not to try to figure out what might have happened. Even if it makes you feel stupid to say it, sometimes "I don't know" is the right answer.

DON'T help. It is human nature to want to explain things so that your listener understands. Resist the impulse. It is your opponent's job to get the answers. It is your job to answer only the question asked, and not help.

DON'T expand on subject matter. You may feel compelled to expand upon information that is relevant to your testimony but is not being asked by the attorney of record at the hearing. Resist that impulse and just answer the questions asked to the best of your ability without providing additional points for your adversary to explore.

DON'T try to be funny, unless you are actually Dave Barry. There are several reasons for not even trying. First, and most obviously, not everyone has the same sense of humor; some people, and there are judges in this category, have no humor at all. Second, your words are taken down by a court reporter to be read later. The court reporter does not take down facial expressions, gestures, or tones of voice. You can be saying "yes" in a sarcastic whiny voice while making quote marks with your fingers, and what will appear on the page is "Yes." Also being funny can be interpreted as a sign you are egotistical or covering up information.

DON'T get distracted. Pay strict and guarded attention to the questions being asked. If your attention wanders, you could make mistakes or misunderstand.

DON'T answer a question you don't understand. If a question is vague or compound ("Did you go to the store and who did you see and what did you say to them?") or assumes something that isn't true, you have the right to have the question restated or rephrased.

DON'T be afraid to ask for a break during a deposition. They can take hours, and it is inhuman to expect you to sit and squirm if you need a restroom break. Keep in mind the opposing side wants to get all the information out of you in a fast manner that flows. Breaks, while assisting your comfort also disrupt the flow of questions from your adversary.

DON'T even think of asking for a break while you are at trial. Breaks are entirely in the control of the judge, and asking for a break (unless something dreadful happens, like you start crying) looks very bad.

DON'T take any drugs or alcohol before you testify. This may seem obvious, but you'd be surprised. Remember that "drugs" also includes things like cold medicine, or even more caffeine than you are used to. You should also be careful what you eat before you testify. That isn't the morning to skip breakfast if you usually have it.



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