



Helpful Guide for Witness Preparation

Generally, witnesses in a trial, deposition, or other proceeding will be invariably nervous about their pending testimony. Furthermore, most witnesses are anxious and curious about what to expect, since many people never testify under oath. The following is provided to shed a little light on the process and to offer advice on how to prepare for the proceeding. Preparation is necessary in order to ensure that the proceeding reaches an accurate and just conclusion, as well as to alleviate much of the anxiety faced by witnesses. Witnesses must be prepared both as to the testimony that they will give and to the manner in which the testimony will be presented. The substance of the testimony can be enhanced or diminished by the manner in which the testimony is presented.

This guide presents a short outline of information designed to prepare a witness for testifying. While this outline is by no means exhaustive, it will give the witness an idea of what to expect and how to act in the unfamiliar and stress-filled environment of a trial or deposition. The result will be a better prepared, less nervous, clearer thinking, and more effective witness.

A. Your Testimony

- I. Tell the truth. Listen closely to the question, understand the question, think about your answer, and then answer honestly. You are sworn to answer questions honestly. Answer *every* question honestly, regardless of whether you think it helps or hurts the case. Whether or not a particular fact is to your advantage or disadvantage, or whether or not it is to the advantage or disadvantage to any party in the lawsuit, does not matter.
2. Understand the question. You cannot give an honest and accurate answer to a question if you do not fully understand it. You have a right to understand the question. If there is anything in the question that is unclear, ambiguous, or confusing, tell the attorney asking the question immediately. Don't attempt to answer a question until you are confident that you understand it. Also, you should not make any assumptions about the question being asked. If you make the mistake of assuming rather than knowing what the attorney is asking, you might make the wrong assumption and your answer could be wrong.
3. Answer the question that is asked. Do not give any more information than is required to answer the question honestly. *In other words, do not volunteer information.* If there is information you would like to volunteer, try to make a mental note of it and mention it to your attorney at a break in your testimony.
4. If a question can be answered accurately by a simple "yes" or "no," do so. However, if the question cannot be answered honestly and accurately in that fashion, say so.

5. If you do not know the answer to the question, say so.
6. Do not be embarrassed to admit that there is something that you cannot remember.
7. Readily admit facts that you know are true.
8. Do not speculate or guess. You can testify only as to your own personal knowledge. Do not speculate or guess as to things you don't know, for example, what someone else meant by what he or she said or wrote. Do not speculate or guess as to something that may have happened that you did not see or hear. Remember, just because someone else told you something does not mean it is true and accurate.
9. Be careful about questions concerning times and distances. If you are asked these questions and must give an estimate, make sure you say that it is an estimate. If you did not actually time an event or measure a distance, say so.
10. Stick to the facts. Do not be trapped into admitting that it's possible that something else happened other than what you remember. This is an unfair question because it asks you to guess and speculate. Witnesses sometimes answer "yes" to this and add that "well, anything is possible." Do not do this. Remember, as a witness, you must not guess or speculate. You are testifying under oath as to what you saw or heard, that is, about what you *know*. Never guess about what *might* have happened or *could* have happened. Your answer to this type of question ordinarily should be "I'm not going to guess about things."
11. If you realize that you have given a wrong answer, correct it immediately, even if it means interrupting an attorney.
12. Don't be too absolute. Do not use phrases such as "that's the only thing that was said" or "nothing else happened."
13. Do not hesitate to ask to see a document to refresh your memory. We all forget things, especially about events occurring months or even years earlier. If you believe or are aware that a document is available to refresh your recollection, ask to see it before answering the question. You serve justice better if you answer a question honestly after looking at a document than if you answer the question inaccurately without reviewing the document.
14. Don't be afraid to admit that you have talked with an attorney. It is perfectly proper and normal for you to have discussed the facts of a case and the testimony that you might give. However, be careful. The questioning attorney may try to infer that you have been told what to say in your testimony. That is true in the sense that you have been told to tell the truth. As to specific facts, that will be untrue because you must testify based on what you know, and your attorney cannot tell you what to say. If you are asked what your attorney told you to say, say "I was told to tell the truth."

15. Be careful of compound questions. A compound question is one that asks you two or more questions at once. (“Did you smell alcohol on his breath, or notice bloodshot eyes, or slurred speech, or any other signs of intoxication?”) A simple “yes” or “no” may be misinterpreted and may be “twisted” by an attorney to suit the client’s case.
16. Look out for questions that have double meanings or that are based on facts that are not true. Do not answer the questions until they are clear.
17. If you are uncertain whether you understood a question or want to consider it again before you answer it, you may have the court reporter reread it.
18. If your attorney objects to a question or requests that a question be reread by the court reporter, assume that the question is a critical one and make sure you give careful consideration to your answer before speaking.
19. Don’t exaggerate.
20. Do not answer when an objection is made. If an attorney objects to a question while you are answering, stop immediately and wait until you are directed to answer.
21. Assume that there is no such thing as “off the record.” The proceedings are always on the record, even if a witness requests to say something “off the record.”

B. Presentation

1. Wear clean, neat clothes. Attorneys consider a witness’s attire in deciding whether the witness is taking the lawsuit seriously and whether the witness will make a good impression in front of a judge or jury.
2. Do not wear unusual or excessive jewelry, unusual hairstyles, unusual clothes, etc.
3. Always be serious while you are giving testimony.
4. Speak clearly and loudly enough to be heard. Do not mumble or rush your answer. All of your answers must be oral. Do not answer by nodding or shaking your head. Say yes or no, rather than ahuh, uuh uh, nah, or yeah.
5. Always be polite. Sometimes this is very difficult because you may not be treated politely by an attorney. You will be a much more effective witness if you follow this rule. Smart, sarcastic, or offensive remarks tend not to be the thoughtful, reflective answers that good testimony requires.

6. Talk to the questioning attorney when testifying. Talk to him or her seriously as you would if you were in a courtroom.
7. Don't rush or hurry to give an answer. Let the attorney finish the question and then pause before giving your answer. Be sure that you understand the question; give yourself time to think; and then give a clear, accurate, and honest answer.
8. Be confident. Give positive and definite answers whenever possible. Avoid saying "I think," "honestly," or "to tell the truth" -such statements weaken your testimony.
9. Avoid nervous habits. It may help you to calm down if you consider that you have nothing to be nervous about because you are going to tell the truth and that it is perfectly normal to be somewhat nervous because you are in an unusual setting.
10. Avoid talking about the case anywhere other than in the courtroom or in private with your attorney. If you are anywhere the opposing attorney could be, don't talk at all about the case. Never talk loudly anywhere at any time.
11. Don't get angry or lose your temper. Most people do not think clearly when they are mad. Some people believe that expressions of temper and anger make a witness less believable and are signs of defensiveness. An attorney may try to make you angry. It may be how the attorney plans to do his or her job. Your job is to tell the truth and to remain calm. The attorney has had days, weeks, and even years to think of questions to ask you. Don't let anger cause you to hurry an answer and give an inaccurate answer.
12. Do not fidget, adjust your glasses, fold and unfold your legs, wring your hands, put your hands over your mouth, pick your fingernails, etc. They detract from your testimony and give the impression that you are uncomfortable about testifying.
13. Watch for signs of fatigue. Some attorneys attempt to wear the witness down. Signs of fatigue include acting tired, cross, nervous, angry, and being willing to say anything just to get the testimony over with. If you need a break, just ask for one and it will normally be allowed.

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