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Basic Principles to remember if you must be a witness in Court

Most people have some form of apprehension about being called to testify as witnesses.

The trial of an action is not a scientific guess for the truth. Judges decide civil cases not on certainty but on probability. Judges will be able to decide after they sort through all the evidence, including the evidence of witnesses called upon to testify.

The outcome of most trials often depends from the inferences judges or juries draw after assessing the evidence as a whole.

If you have to testify in court, your testimony will be judged based on common sense and experience and on what appears to be probable.

Judges are well-trained to understand that the clothes you wear, your manners or clarity of expression are not as important as whether your story seems to the court to be more probable than your opponent's. Usually experienced judges will follow the following routine when assessing the evidence. They start from the undisputed facts which you and the opponent accept. Then they add to those facts which are likely to be true (for example facts recorded in contracts, invoices, records or spoken to by independent witnesses, such as innocent by-standards), then they weigh the evidence of the witnesses who have a direct or indirect interest in the outcome of the litigation. They judge such witnesses to be unreliable if their evidence in any material sense is inconsistent with the undisputed or indisputable facts, or if they contradict themselves on important points. They use these objective tests to separate true from false and come to a conclusion which story seems the more probable, the plaintiff's or the defendant's.

Even if you have the law on your side, the wise cause of action is to avoid being overconfident. Many grave yards are full of cases that became victims of false confidence and arrogance.

To minimize your chances of losing, be ready to prepare yourself well ahead of trial. It is important to be aware of all the facts and evidence, including all the evidence your opponent is likely to adduce.

If your evidence is self-contradictory or inconsistent with the undisputed facts, you are likely to lose your case. To prevent this, you must be careful to review all relevant documents and all previous statements, oral and written.

To minimize the traumatic experience which is often associated with giving evidence in court, you must be adequately prepared so that your evidence becomes more effective. One of the best methods of preparation is to be familiar with all the relevant facts of your case; review your own notes and records carefully; examine all relevant documents; in short, work hard to ensure your recollection is as complete and accurate as possible.

For your evidence to be most effective in court you must be focused; you shall concentrate on the relevant material evidence, and steer away from irrelevant or marginally irrelevant evidence. To help you understand in your mind what relevant and not relevant evidence is, ask yourself the following two questions:

1. What are the main questions that the court has to decide? (They are referred to by lawyers and judges as "issues")’

2. Is the evidence I am about to give directly connected or related with these questions? (If not, it is best to avoid referring to such evidence unless it is circumstantial or collateral to the main questions).

Stick to the facts and answer the questions that you are asked without too many qualifications. Also avoid giving the impression that you anticipate what is in the mind of the examiner.

You may wish to generate an outline of the important events in a chronological fashion. Try to re-live the relevant events as they occurred. A useful technique is to construct a list of specific questions based on the events you had experienced. Begin to sort out what you know firsthand and what you have learned from other sources.

Examinations of witnesses during the trial of an action are divided into the following categories: examination-in-chief, cross-examination and re-examination.

Examination-in-chief consists of a series of open-ended and non-leading questions which your lawyer will ask you about the relevant events and facts concerning the case. Listen to the question and wait until the whole question has been put before you begin to answer. If you do not understand the question, ask the examiner to repeat it. Answer the question you are asked completely, without volunteering additional information. Be precise and to the

point. If you do not know an answer, do not guess; just say "I do not know the answer to that". Do not rush. Do not argue or joke with the examiner. Be yourself. Above all tell the truth.

You may hurt your case if you are argumentative or give the impression that you are biased. Unless you are called as an expert witness (who may be asked to give an opinion) stick to the facts and avoid giving opinions. The difference between facts and opinion is this: facts relate to what you saw, heard and did; opinion relates to what you thought, inferred or guessed. When you give answers, speak toward the judge.

When your examination-in-chief ends, the opposing lawyer will begin his cross-examination which ideally should consist of a series of leading questions designed to elicit short answers, usually "yes" or "no", but not always. Here are some fairly standard points to remember when you are being cross-examined:

- Make sure you understand the question; if you don't understand it, say so;
- Answer the question asked. Give a complete answer, but do not volunteer any information not required by the question;
- When giving answers, use your own words, do not let words be put in your mouth; watch for false assumptions which may be rolled into the questions;
- If the question has more than one part, be assertive enough to ask the examiner which part you should answer first. Respond to all parts appropriately; if the question is confusing, your lawyer will probably object;
- Do not anticipate what the next question will be. Concentrate on the question asked and avoid outguessing the cross-examiner;
- Do not guess at an answer. If you do not know or remember, say so;
- The cross-examiner may ask you a question which cannot be answered with an unqualified "yes" or "no" answer. In such situations, be prepared to use the word "but" with the qualification "yes, but..."
- Avoid looking at the lawyer who has called you as his or her witness, as if you are looking for help or approval;
- Above all, avoid losing your temper or show that you are visibly upset;
- Avoid the temptation of trying to explain an unfavourable answer given by you; if the answer you gave was incomplete or wrong, the lawyer who has called you will have the opportunity on re-examination to solicit answers from you which hopefully will minimize or destroy the apparently harmful effect of those answers;
- You should not hedge or stall or argue with the cross-examiner; and
- Avoid giving the impression that you are too partisan or biased.

If a question is highly objectionable, your lawyer would most likely object. If this happens, stop talking; remain calm, collected and disinterested. After the argument is over, either the judge will ask you to answer or the cross-examiner will repeat the question or, if the question is ruled by the judge to be improper, you do not have to answer the question.

After the completion of your cross-examination, your lawyer will have the opportunity to ask you questions which are designed to allow you to correct or complete the answer or answers you have given in cross-examination. When you are asked such questions, listen carefully and ensure to give a complete answer which hopefully will repair any previously damaging answers or correct the wrong impression some of your answers during cross-examination have generated.

The judge may ask you questions during the examination-in-chief or cross-examination. Some judges are more inquisitive than others. Judicial interrogation is not necessarily a bad thing. But be careful not to let the judge put words in your own mouth. Be polite and courteous in your exchange with the judge, but guard against agreeing too readily with the judge's suggestions or paraphrases unless they are completely accurate.

If you are called to testify as an expert witness, there are additional points that you should take into account. Your function as an expert witness is to provide scientific or technical information.

Whether your testimony is expected to last thirty minutes or thirty days, this depends on the nature of the case. In order to prepare for this potentially exhaustive experience, you need to be physically and mentally prepared. Proper exercise, good diet and adequate sleep will help you cope. Reduction of alcoholic consumption is also advisable. The objective is to be and feel rested and confident. Remember if you become tired and stressed out, the chances are you will start uncritically accepting the facts being put to you by the cross-examiner.