



A Guide To Being A Witness

A trial or evidentiary hearing involving witness testimony can be a disquieting affair – both for the practitioner and the witness. For the practitioner, there is a certain anxiety attached because a witness' performance could be unpredictable. For the witness, being on the stand could be an unnerving experience – especially those who are giving evidence for the first time.

In order to make the experience a little less unnerving for the lay witness, we have set out a guide, which we hope would be of assistance to both counsel and the witness.

12 Basic Principles to being a good witness

Rule 1: “Take Your Time”

Sit comfortably and for the most part face the Judge/Arbitrator when answering questions.

Avoid any expression of nervousness, gestures, movements and other habits which can irritate or distract the proceedings.

Be alert to the questions, listen carefully to them before answering.

Take time to think about the question. Then work out what you want to say before you answer and express yourself in full and complete sentences. Always watch the Judge/Arbitrator to ensure that he understands you.

Rule 2: “Always Remember You are Giving Evidence for the Record”

Make sure your meaning is clear. Do not use ambiguous language – words can often have more than one meaning. If you are not careful, you run the risk of being misunderstood.

Your evidence will be written down or recorded in some other form for later reference.

The best way to deal with this is to listen to yourself as you speak and ensure that you are conveying in speech what you intend to say in your mind.

Rule 3: “Tell the Truth”

If you have prepared your case carefully and deliberately, you have nothing to fear in cross-examination. Simply tell the truth and answer all questions as best you can.

Opposing counsel may attempt to suggest that your evidence has been coached or tailored to suit your own case. You are permitted to say that you have honestly and fully expressed your own thoughts during the proceedings.

Rule 4 “Be Polite - always”

Be wary of the impression you are creating. Do not appear arrogant, snobbish, rude, “smart”, hostile or evasive.

Do not allow the cross-examiner (opposing counsel) to upset you. No matter how sarcastic, rude or offensive he gets, do your best to maintain your calm and dignity.

Sometimes, being offensive is a deliberate tactic to make you lose control so that it is easier to put words in your mouth.

Some degree of credibility is essential in order to convince the Judge/Arbitrator as to your reliability as a witness.

Rule 5: “Never Answer a Question You Don’t Understand”

You may be asked long-winded or convoluted questions. Sometimes, many questions are woven into one.

You are entitled to ask that the question be broken down.

You are entitled to have the question repeated if a question is unclear, or if you do not understand the question.

You are entitled to know exactly what is asked.

You are also entitled to state the question as you understand it before you answer it.

Do not however try to answer a question unless you fully understand what it is!

Answer only the question put to you and do not volunteer anything. If an answer requires an explanation, you may seek permission to expand on your answer.

Rule 6: “If You Can’t Remember, Say So”

Do not be embarrassed in replying to a question: “*I do not know*” as you are not expected to know everything. The trial is not a memory test so do not worry if you cannot remember exact details. You must try however to answer the questions put to you as best you can. Do not avoid giving an answer.

If you cannot answer a question, say so and explain why.

Witnesses can refer to their witness statements or the hearing bundles when necessary to refresh memory or clean up an inconsistency.

Rule 7: “Don’t Guess”

Do not, through fear of admitting weaknesses, make up answers when answering questions from counsel, or indulge in guesswork or speculation.

Rule 8: “Keep It Simple”

Be clear and precise in your answers.

Answer the questions from counsel directly.

Never try to outwit your cross-examiner. It is far too difficult to give evidence effectively if you are always trying to work out what the cross-examiner is getting at. Just answer the question that is put to you and do not try to second guess his reason for asking it. Keep your language simple and direct. Do not argue with your cross-examiner.

Rule 9: “Be familiar with the case documents and prior statements”

You cannot be an effective witness unless you have studied the documents being used in the hearing and you know what your case is about. Be aware of any prior statements you have made in letters and be aware of exactly what you have said in your witness statement and in evidence in chief. If not, you run the risk of inadvertently contradicting a document or prior position you have taken or stated.

If a contradiction nevertheless exists, then it should be explained.

Rule 10: “Use Your Counsel”

You are permitted to ask your counsel for help in locating documents or parts of your testimony in a witness statement. You should however always ask for permission from the Judge/Arbitrator before you do so. You could say “*may I ask someone to help me find the correct paragraph in my witness statement where I said*” or “*may I ask for some help to locate the letter stating that...*”.

Rule 11 – “How to explain your answers”

If an answer requires an explanation, the witness should answer the question first and then state that they wish to give an explanation.

Sometimes, you may be asked a question that cannot be answered with a simple yes or no - yet your cross-examiner will insist that that you do - and may not give you a chance to explain your answer. You are permitted to insist that you wish to explain your answer but if you are not allowed to do that, remember that your counsel has the right to re-examine you after the cross-examination is finished. So long as you have made it clear that you have something more to say, your lawyer will know that he needs to come back to this point in re-examination and give you the chance to explain. If there is any chance you may forget what you wanted to say, it is alright to ask for a moment to take a note.

Rule 12 – “Stay alert”

The proceedings can be long and tiring. It’s easy to lose your concentration – so please get adequate rest before you give evidence. If you are getting tired, you may ask for a short break.