

How To Be A Good Witness

The Subpoena

Attorneys on both sides of a case decide who they want to have a chance to question in order to bring out the facts they think support their side of the case. The formal process of calling a witness to testify requires a legal order from the court, called a *subpoena*. A subpoena directs the witness to appear in a specific place at a specific time to answer questions regarding the facts surrounding a legal dispute. You may be called for a pre-trial deposition at an office, or for an actual court proceeding, or both. The subpoena will be delivered, or "served," by someone who is not party to the case. This is required by law, and not intended to embarrass or intimidate you.

Responding to A Subpoena

You must respond to any subpoena exactly as directed. Your employer must let you go when asked, and may not sanction you for your absence, but is not required to pay you for the missed time. The party that subpoenaed you will pay you a minimal daily witness fee and reimburse you for mileage, both at rates set by the State of Maine. In some cases, for specific reasons that may include age, illness, geographic distance, or scheduling, the attorneys for both sides may agree to take your deposition by video tape and/or through video-conferencing at another location.

Make adequate arrangements.

No one can tell ahead of time how long you will have to wait before you are called to the witness stand, or how long your testimony and the attorneys follow-up questions may take. You will not be able to leave to move your car from an expired parking space, or relieve a babysitter, catch a bus, or make a second shift. You will be more relaxed if you know that your other obligations have been handled before you go to court.

Dress appropriately.

T-shirts with objectionable pictures or sayings are not appropriate. Men will be asked to remove their hats. Choose clothing that is neat and comfortable.

The Deposition

A deposition is legal testimony before a trial takes place. You may be called to give a deposition months or even years before a case actually goes to court. The attorneys will want to be able to ask you questions while the events or matter under discussion are fresh in your mind. Depositions are typically given in a conference room or office rather than in the courtroom. A court reporter will be there to record your testimony. Lawyers for both sides of the case will be there, as may the parties they are representing. You also have the right to have your own lawyer present at your own expense to advise you if you think there is a possibility the questions may open you to any legal risk. You will take an oath to tell the truth, and then the lawyers will ask you questions. Soon after you give your deposition, you will receive a copy of the

transcript to review for accuracy. This is not an opportunity to change the substance of your testimony, or add new information: you may only correct anything that the court reporter may have misheard or mistyped.

There is nothing improper about discussing the case ahead of time with the lawyers involved, or with your own lawyer. If you are asked under oath whether or not you have done so, do not be afraid to tell the truth.

In The Courtroom

The rules of court forbid the use of your deposition instead of live testimony in the courtroom in most instances, even if your deposition was videotaped. If the case reaches court, and attorneys from either side think that your testimony will help them build their case, you can be subpoenaed to testify in court on the same matter. This time it will be before a judge and maybe a jury, as well as any members of the public who care to attend. Cases in juvenile court may be closed to the public. In most other cases, the court is open.

You may be able to sit in the courtroom to watch the proceedings. Sometimes, however, a judge may bar a witness from the courtroom before testimony. If this happens, don't be offended. The court wants to make sure your testimony reflects your experience, and that you are not unconsciously influenced by the attitudes, emotions, or statements of other witnesses.

When You Testify

1) Listen carefully.

Don't try to answer a question you did not hear or understand. Ask that it be repeated or explained.

2) Think before you answer.

Take your time. What the court needs from you is your most accurate information. If you make a mistake when answering, correct it immediately.

3) Speak clearly, loudly, and slowly.

4) **If you are not sure, say so!** If questions arise about distance, time, or speed, for example, and you have to estimate, make sure you say that your answer is an estimate. And if you don't know, don't make things up - say you don't know.

5) Answer only the question asked.

You will probably be able to answer many questions with a simple "yes" or "no." Answer every question as briefly as possible while still being accurate. And do not volunteer additional information.

6) Never argue with the attorney.

7) Stop speaking immediately if the other attorney objects.

Don't try to complete your answer. The judge will decide if you should continue.

"The truth,
the whole truth,
and nothing but the truth."

Our system of justice depends upon the ability of the court to find out the facts.

You are legally required to testify when called by the court to do so.

And you must always tell the truth.

Not showing up as required and lying under oath are both crimes for which you can be sent to jail.

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