

# Ten tips to testifying as a witness

A practical guide

## Ten tips for testifying as a witness

Being a witness in a custody or divorce trial/hearing can be tricky.

There are some things you need to know to be sure you get the most out of your testimony.

-Tracey Bee

### Tip # 1. PREPARE BY PRACTICING

Whatever it takes for you to get used to the idea of being in the courtroom where tension is at all time high and emotions are peaked, then do it. This means that you should practice the questions & your answers, and practice focusing on a centered point. And it also means practicing any tips that will help you relieve stress.

## Tip #2. LISTEN TO THE QUESTION ASKED

Most people listen to the question while formulating their answer. This minimizes your ability to really focus on the actual question. This sounds pretty obvious but it's not. A helpful technique to be sure you are listening to each question is to repeat the question in your head. If you cannot repeat the question in your head, then you either did not hear the question or you have forgotten the question. In this case, you can certainly request that the attorney repeat the question.

If the question is unclear, or ambiguous, you can request that the attorney or litigant ask the question another way. Simply say "I don't understand your question, could you ask it a different way?"

Try to ignore the manner in which the question is delivered especially if the questioner is the other party (pro se). Some pro se litigants (and lawyers) will often try to intimidate witnesses or attempt to manipulate a witness' testimony in a number of ways. It is even more important in these instances, to prepare yourself for these antics. Try not to react, just calmly listen to the question asked as if it were being presented to you in writing. Visualizing the question without the questioner's manipulative tones will help a lot.

Pay careful attention to any documents or tangible evidence that might be shown to you during the trial. Carefully review any document that you are asked to identify, regardless of your familiarity with the document. Listen carefully to any questions that are posed regarding a particular document. Witnesses often identify documents that they have never seen because they didn't read through the document in question before stating that they are familiar with the document. Understand that if you have not seen the particular document with which you are presented, you need to say so very clearly. Otherwise, you may get caught in the trap of answering questions regarding a document that you have "identified," but have never actually seen before.

### Tip #3. MAKE SURE YOU UNDERSTAND THE QUESTION ASKED

It is important that you familiarize yourself with all legal terms, court language, and relevant verbiage used in custody or divorce matters. By the time of trial, you should have taken the initiative to do your own work in learning these things. Make sure you not only listen to the question but that you clearly understand it as well.

As stated above, in the previous tips, doing your best to make sure that you are prepared (regardless of whether you have an attorney or not) is critical. Witnesses often attempt to answer a question without having a full and complete understanding of the question in an effort to avoid looking stupid. Don't do this!!!

Do not be embarrassed or afraid to ask that a question be repeated or rephrased. Even in situations where it is obvious that the questioner is trying to make an issue out of a witness's inability to understand a question, for example, by asking the court reporter to read back the question rather than simply repeating it. Understand that such tactics, which a lot of lawyers use, may be part of their strategy to frazzle you.

### Tip #4. ANSWER THE QUESTION ASKED AND ONLY THE QUESTION ASKED

Once you have listened to the question, answer only that question and do not offer any additional information. Keep it short & sweet, unless you know for sure that there's an opportunity to volunteer some information that is critical to other issues in the case. (This should be discussed with me beforehand though because it is very tricky.)

Never answer a question by asking a question. Do not be evasive with your answers. It is the questioner's job to present the evidence and/or defend against the evidence, not yours. If you are unsure, then you should answer only the questions that are asked and do not embellish.

## Tip #5. TAKE YOUR TIME

Witnesses are not under any particular time limit to answer questions that are posed. While trials are usually underestimated in the time that's allotted, it is still advisable to take your time. You won't remember everything, that's just to be expected. However, you are more inclined to forget things when you try to rush or give in to the questioner's tactic of trying to rush you. It is even okay to ask the judge for a minute if you need it.

## Tip #6. DON'T ARGUE

It is understandable that you might have issues with who the questioner is and the tactics they use to question you. This is perfectly normal. However, no matter what try not to argue with them. Be sure that no matter how much anger you feel toward the questioner, you always remain civil and respectful. The courtesy that you can show the questioner will be seen by the Court as a sign of strength, not a sign of weakness. (And in some jurisdictions, will be considered as one of the Best Interests of the Child factors.)

Don't fall for the questioner's attempt at trying to get you upset, angry, or out of character. Many people, lawyers, and non-lawyers know that by getting you riled up that they can get you off track with what is most important. In addition, there are great risks involved in trying to argue with the opposing party or their counsel. First, it is quite likely that neither the judge will appreciate your attitude. Second, your desire to tangle with the questioner could easily cause you to miss out on your opportunity to get your testimonial evidence on the record.

## Tip #7. AVOID BOXING YOURSELF IN

Be very careful in your answers to avoid using absolutes such as “always,” “never,” “all,” and “every”, unless you are absolutely sure it is the right answer. Although not a lot of pro se litigants know how to use this to their advantage, lawyers do. Skilled attorneys will jump on those absolutes whenever they can, and they will make you look silly. For example, if the other lawyer asks if you have ever called your ex-wife an ugly name and your response is “Never!”. If the other lawyer then shows you an old email where you reference her as something less than flattering, you will be forced to backtrack on your testimony and explain that you didn’t remember that, or that you didn’t consider that particularly “ugly”. Such backtracking makes you look less than credible.

Even if when you feel that it is a completely honest answer, it can be hard to remember every last thing that you have said, done and seen in your life. To respond with such absolutes reduces the credibility of your testimony. Remember that the other attorney is asking the question for a reason. It could be because s/he is waiting for you to lie, because they have proof otherwise. Or it could be to get a reaction out of you (Don’t give the reaction!). Or it could be to see if you will give an answer that is not likely to be believed by the Court and will only make you look foolish (like “I would never say something like that!”). It is better to say “I don’t believe so” or “I do not recall that” rather than “I never said that” or “that never happened.” Additionally, it is almost always better for you to leave yourself open by responding “to the best of my recollection” or “that is all I can remember at this time.”

## Tip #8. ALWAYS TELL THE TRUTH

It might be tempting to not tell the truth when testifying. Despite the fact that every witness who testifies at depositions or at trial is required to swear under oath to tell “the truth, the whole truth and nothing but the truth,” the temptation to embellish the facts or outright lie is sometimes difficult to resist. Unfortunately, the effects of getting caught in a lie can be devastating either now or in the long run. For that reason, you must always stick to the truth. Sincerity and straightforwardness should be the touchstone of your testimony. Evading questions or telling outlandish stories will only hurt you (let the other side do that all on their own).

There will be times when you know that a particular set of facts critical to your case are about to be opened up by the opposing party/counsel. If you know that there was a time that you behaved badly, get in front of it, don’t avoid it. You should know exactly what the other side plans on bringing up to discredit you so use it to your advantage. It’s best to own up to it openly and honestly, accept responsibility for your actions, acknowledge the consequences, and be remorseful. Lying about it or downplaying the serious nature of the conduct will only cause you more problems. The consequences of being caught in a lie are substantially worse than the momentary discomfort that may accompany telling the truth.

Once the judge learns that a witness has been untruthful, it is likely that they will discredit the witness’ entire testimony. And if you are expecting that judge to award you custody of your children or award you money or property after you have allowed them to see you as untrustworthy, you have reduced your chances significantly.

## Tip #9. BE ON TIME

Being prompt shows responsibility and the importance that you place on the issues at hand. If you are late, it could be interpreted that you don't care about what is being decided in your case. There are some judges who believe that there are no good excuses for being late and they will hold it against you. If your case is via video, then be sure to have the login information a day before and practice logging in. If it's in person, then take a practice run to the courthouse a day or two beforehand (preferably at the same time of day.)

## Tip #10. DRESS AND ACT APPROPRIATELY

You should dress for court appropriately; business casual attire is usually advised. However, don't overdress so that you are uncomfortable. You need to be comfortable, but respectful. Women, leave the flashy jewelry and the Chanel bag at home and do not wear too much make-up. Slacks or a skirt are appropriate and a blouse with sleeves or a jacket. Bare shoulders are not appropriate.

If you are not used to wearing business casual attire, don't wait until the day of to wear it. Try it out for a few days prior so that you have fewer things to distract on the day of court.

Remember that everyone should be addressed by their last name or title, including the opposing party. This shows the court that you respect it as a place of authority.

It is perfectly acceptable to show appropriate emotions. If you start to cry, do not get angry at yourself. Take a moment to collect yourself. If you need to take a break, it is acceptable to request a few minutes. Do not let your emotions get out of control, but appropriate emotional responses tend to show sincerity and lend credibility to the testimony.