

Information for the Pro Se Litigant

HOW TO HANDLE WITNESSES WHEN REPRESENTING YOURSELF



A Practical Guide to Courtroom Protocols

When Should I Bring a Witness to Court?

In cases that come to trial (or fact finding hearing), both sides often tell a different version of the same story. Each side may be telling a version that best serves his or her own interests. The testimony of someone who is not a relative or friend may make your side of the story more believable. Caution: intentionally giving false testimony and asking another to give false testimony are crimes.

It may be a good idea to bring a witness with you simply to tell the Court that you are an honest person (character witness) or to confirm that what you are telling the Court is true (fact witness).

In a criminal or delinquency case the accused does not have to testify. If you choose not to testify, the testimony of other witnesses may be essential.

It is not necessary to bring witnesses to a pretrial but you should be prepared to tell the judge at the pretrial who you intend to call as witnesses at the trial.

What If My Witness Cannot Come to the trial?

Testimony given in the courtroom is normally required so that the other side has an opportunity to ask questions of your witness as well. A written statement or handwritten note from a witness will not be accepted by the Court unless the other party agrees. A deposition is a costly alternative to live testimony.

The safe and sure approach is to have your witnesses subpoenaed. (A subpoena is a court order to appear issued days, if not weeks, before the trial. A court clerk will explain how you can have a subpoena

issued.) If your witness is not subpoenaed and does not come to your trial, you may lose your opportunity to have an essential witness testify.

Even if subpoenas are issued, it is prudent to call witnesses the week of the hearing and again the day before the hearing to remind them.

Who Should I Bring as a Witness?

- Someone who knows you and your reputation in the community (character witness).
- Someone who knows about the situation that brought you to Court from things he or she has seen or heard (fact witness). Having witnesses write down their observations as soon as possible may help them remember the events weeks or months later at the trial.

While it is appropriate to have a friend or family member as a witness, it is helpful to have someone who does not favor one side over the other (unbiased witness).

How Do I Prepare My Witnesses?

- Write down a few questions that will help the witness tell the story.
- Review your questions with the witness ahead of time, so you know what answers will be given in the hearing.
- Make notes about possible questions that the other side may want to ask your witness, and ask these questions ahead of time, as well.
- Make it clear you want honest testimony – no perjury. Two people who observe the same incident usually have some

discrepancies in their recollection of the facts.



What Should I Do With My Witnesses at the Court Hearing?

Start by asking the witnesses their name and address.

- If you have professional witnesses (such as a counselor), you must ask what their job is, what their educational degrees are, and how long they have been doing their job.
- Then ask specific questions” about what information they have about your case.

You may not ask “leading questions of your own witnesses. Leading questions suggest the answer you want them to give. **You must keep your questions open-ended.** Examples to use include:

- “Please tell us what you saw immediately before the accident.”
- “How did my children’s father act when he would pick them up from day care?”

Leading questions typically require only a response of yes or no. An open-ended question asks for details. Be prepared for objections and do not get flustered.

What About the Other Side’s Witnesses?

The other side will usually question his/her witnesses first. The Judge will give you an opportunity to “cross examine” them (that is, to ask them your own questions). You do not have to ask any questions if you think the witness will only repeat what was already said.

When asking questions of the other side’s witnesses, you are allowed to ask leading questions. Examples to use can include:

- “Isn’t it true that you didn’t see the accident?”
- “Didn’t my husband yell and swear at the children when he came to pick them up from day care?”

Rules to Follow When You Are Questioning Witnesses

- Keep your questions short
- Be cautious about asking a question when you do not know what the answer will be – the answer could hurt your case more than help it
- If you don’t get the answer you were expecting from a witness, do not argue or accuse the witness of lying. It makes you look bad before the Judge. Remember - politeness at all times!
- If a witness refuses to answer a question, ask the judge to make the person answer.

Sample Character Questions to Ask My Witnesses

- “What is your name and address?”
- “How do you know me?”
- “How long have you known me?”
- “During the time you have known me, have you become familiar with my reputation in the community?”
- “Do I have a reputation for good character and honesty in the community?”
- From what you know about me, am I someone the Court can rely upon to tell the truth?”

Sample Questions to Ask My Fact Witnesses

- “Were you a witness to the fight?”
- “From the beginning, what did you observe?”

**Prepared for you by
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Information for the Pro Se Litigant

RULES TO FOLLOW WHEN REPRESENTING YOURSELF



**A Practical Guide to
Courtroom Behavior**



The Court is a very traditional place. When representing yourself in Court, you are trying to persuade a Judge or jury that you are right. You should act, dress, and speak in a way that helps you with your case. Here are some tips:

BE ON TIME

What will happen if you are late?

- Your case can be dismissed.
- The Judge may make a decision without hearing your side.
- You could be ordered to pay a fine or even jailed.

What should you do if you are late?

- Call the Court, ask to speak to the clerk. Ask the clerk to tell the Judge why you are late and when you expect to arrive.

DRESS NEATLY

- You do not need fancy clothes, just make sure that you are neat and clean.
- Tank tops, shorts, ripped jeans, and revealing clothing are not acceptable. T-shirts, especially those with messages, are not appropriate for Court. Remove your hat/cap and gum.

BE RESPECTFUL

- How you act is as important as how you look. Just like an attorney, you must be respectful to everyone in the Court, including the Judge, Court staff, and the other party involved in your case. Stand when speaking to the Judge.
- Do not speak while others are speaking.
- Do not get into an argument with the other side or the Judge. If you disagree with what the other side is saying, wait until he or she is done and then tell the Judge.
- Speak to the Judge only when you are told it is your turn. Address the Judge as "Your Honor." Never interrupt the Judge.
- Try to control your emotions as much as possible, especially anger.

DO NOT BRING YOUR CHILDREN TO COURT UNLESS THEY ARE A PARTY OR WITNESS TO THE CASE

- It is okay to bring your child if it is a custody or visitation case and the Judge needs to talk with your child. Bring someone to supervise your child while you are in the courtroom. In all other cases, find someone to look after your child at home.

NO CELL PHONE, CAMERA OR RECORDER IN THE COURT

- Turn your cellular phone off before you enter the Court.
- Request permission before you bring water into the courtroom.

WHAT TO EXPECT WHEN YOU ARRIVE AT THE COURTHOUSE

Check in at the Clerk's office to find out where you should sit until your case is called. You may have to wait for other cases to conclude. You must remember to be patient.

When your case is called, remain at the table and stand facing the Judge. The Judge will tell you when to sit and when to speak.

When the Judge asks you to present your case, tell the Judge what it is that you are requesting, and why you are requesting it. Unless it is a pretrial hearing, you must present your evidence (witnesses, etc.).

After you have finished, the other side will have a chance to ask questions of your witnesses.

Next, the other side will present his or her case. Don't forget, if you disagree with something the other side says, you will have an opportunity to ask the other side questions when he or she is finished talking.

During the hearing, you may be asked questions.

- If you don't understand the question, say so. Don't answer the question until you fully understand the question.
- If you don't know the answer to the question, say so. Do not be afraid to admit that you don't know something.

Decisions are not always given right away. In some cases, you will receive the Judges decision in the mail after the hearing.

WARNINGS

DO NOT TRY TO TALK TO THE JUDGE ABOUT YOUR CASE BEFORE YOUR CASE IS CALLED

Except in certain emergency situations, the law prevents the Judge from communicating with (talking to, reading a letter from) one party, if the other party is not a participant in the communication. This one-sided conversation is called an "**ex parte communication**" and it is prohibited.

Any motion, letter, or request you send to the Court will not be considered by the Judge (because it is an ex parte communication) unless you send a copy of that communication to the opposing party as well.

For example:

If you file a motion requesting that the Court date for your case be changed, you must send a copy of this motion to the opposing party, as well. You must also let the Judge know by a "certificate of service" that you have done this. Otherwise, the Judge will not even consider your motion.

DO NOT ASK THE COURT STAFF FOR LEGAL ADVICE

Court staff are NOT ATTORNEYS and cannot provide legal advice. More importantly, they are employees of the Court and must, like the Judge, treat both sides in a case fairly. They can only answer questions about court procedures and rules.

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