

THE WITNESS STATEMENT

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The witness statement is an important aspect of the legal services provided by investigators to their attorney clients. The witness statement serves a number of purposes in a legal matter. The first is to gather information or investigate the facts needed by the client to form the strategy that will be used to bring the case to settlement in a civil matter or form the defense in a criminal case. This information will be crucial for the client to decide how best to proceed in any legal matter. The second purpose of the witness statement will be to preserve a record of a witness's recollection of events that may otherwise be forgotten over time. The third purpose of this type of statement is to provide a means of impeachment if a witness should give conflicting statements during deposition or on the witness stand.

In most cases the witness statement will be used as evidence in a case. It is for this reason that the skill of the investigator is of the most importance. If the investigator does not exercise caution in the manner in which the statement is obtained it may be inadmissible as evidence and do serious damage to the client's case. This makes choosing the right investigator to handle this aspect of the investigation imperative. It is important that the witness not be misled in any way as to who the investigator is and who they represent, especially when dealing with a victim. The approach and tact of the investigator can make or break a case at this crucial point.

I like to use a direct approach with a witness. I introduce myself to the witness and let them know I am a private investigator and I work for an attorney. I say, 'I understand you may have some information relating to a case I am working on and I wonder if you wouldn't mind if I asked a few questions'. I also let them know that I am just gathering information on a case and I have no personal interest in the outcome of the case. This usually puts them a little more at ease and they seem a little more willing to speak with me. I let them know that they are in no way obligated to answer any questions and they can end the interview at any time if they choose. I try and take a relaxed attitude so the witness will not feel the need to be guarded. I begin by saying that I do not write well and to save me from having to try and read my notes later that I would like to record the interview so I don't forget anything as I pull my recorder out. I begin by stating my name and I am an investigator working for the law firm of attorney so and so and this is a recorded interview of Mr. or Ms. so and so regarding case number whatever. I then ask the question of the witness, 'do you understand that this interview is being recorded'? They respond, 'yes' then the question; 'do I have your permission to record your statements'? Then I proceed with the interview. I start by asking them to tell me what they know and then I let them tell me the story in their own words. As I listen to them speak I check off key points on my list of facts I need to cover and ask questions regarding key points that may have been missed. By using an approach like this it is difficult for a witness to claim the statement was given under duress or they were intimidated by the investigator. In the event a witness refuses to be recorded I use the



same approach without recording the statement and then I will dictate the witness statement in front of them presumably so as not to forget anything. I turn on the recorder and make the statement that I am dictating the statement made to me by Mr. or Ms. so and so regarding case whatever in their presence. I will begin to dictate the statement in front of the witness. During this process I will intentionally make a mistake and the witness will correct me. After asking them if they know their statement is being recorded I ask them to explain what was wrong with the statement. At this point the witness usually recounts the statement and will even answer questions. By using this approach I am able to get the witness statement recorded in the witness's own words and still meet the two party notification requirements without lying or misleading the witness in any way. These are just examples of successful techniques I have employed when dealing with a witness in a case.

The key is to remember that a private investigator has no authority to compel a witness to give a statement and at no time should the investigator give a witness cause to believe otherwise or do anything to cause the statement to be challenged as evidence in a case.