

TESTIFYING IN A COURT TRIAL

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Working in the investigations field I often find myself providing investigation services to attorney clients and clients in the insurance industry. What these two industries have in common is any evidence you provide these clients in particular is likely to end up as evidence in a court trial. As a result, it is likely that you will be called to testify in court at some point. One of the most common questions I am asked by a potential new client in one of these fields is, 'Have you ever been asked to testify in court'? The reason for concern in this area is simply that this is a point when irreparable damage can be done to the client's case. For the purpose of this article I will discuss a few of the things one should consider before taking the stand.

The first consideration is appearance. You should dress and act the part of the professional that you are. This means conservative business attire. No loud colors or flashy jewelry. You will be under a microscope the moment you arrive at the court. You will not only be under scrutiny by the judge or jury but by every one at the court house. Keep this in mind when you are waiting to be called. You will not want to seem overly anxious. Watch what you say. You never know who is in the hall outside the court room. Dress and act professionally.

Be prepared. Make sure you review your case files before you show up in court. Some time may have passed since you conducted your investigation so make sure you are clear on what you stated in the past. If you do not remember something, say so. Do not try and memorize your testimony. You do not want to appear as though you were rehearsed on what to say. If your testimony requires you to refer to notes, make sure your notes are organized and can be referenced easily. You do not want to be fumbling through a stack of papers and appear unorganized and unprepared. Be clear on the facts and answer all questions honestly.

When you are sworn in speak clearly and say "I do". Make eye contact with the jury. Once on the witness stand sit up straight and keep your hands away from your face. Otherwise this will take away from your credibility. Studies of body language show that it is common for people to touch their face when they lie. Answer all questions clearly and do not use gestures. Remember, there is a court reporter recording what you say. Look at the person asking the questions. Listen carefully and make sure you understand the questions fully before giving your answer. Do not look at your attorney when answering a question as this will appear that you are looking for help. Stay calm and answer each question honestly. If you do not understand the question ask for clarification. Answer each question directly without embellishing the question. In other words, only give the information asked for. An example of this is if you are asked, 'do you know what time it is'. Most people would blurt out the time. For this example, if there were a clock within your view, the answer would be yes. If you were asked to state the current time. Then you would give the time. Only give the information you know is fact. Do not make assumptions. If you were asked, is the time you stated in fact the accurate time? The answer would be, I do not know, as the time you stated was according to the clock you read it from; there is no way you could know



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that the clock is 100% accurate. As an investigator, you will want to keep this in mind when writing a statement. Remember a statement is written testimony. This may be held up as evidence that could come back and bite you. As another example, if you witness a subject enter a room, walk to a table, and place a brown paper bag on the table, take out a carton of milk and pour it into a glass how would you describe what you saw? You can not make assumptions and state them as fact. So, with this in mind, you would have to say something like the following. You observed the subject enter the room and walk to a table. The subject then placed what resembled a brown paper bag on the table and removed a container that had the appearance of a milk carton. The subject then poured a white substance from that container into what appeared to be a clear drinking glass. This is a simple example but it makes a clear point. You can not state that it was a carton of milk unless you know it was in fact a carton of milk. Never state an assumption as fact. This will make you look bad under cross examination. If you make a mistake, admit it. This does far less damage than trying to cover it up.

When being questioned on the witness stand, stop speaking if either attorney makes an objection. Let the judge make his ruling before continuing. Do not take anything personal. Let either attorney be as offensive as they want. Do not get flustered, as this may be the point. Again, stay calm and answer the questions clearly. Above all, tell the truth exactly as you know it. If you embellish the truth even slightly you can discredit your entire testimony. Remember, you are not the one on trial.