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HOW TO PREPARE AND TESTIFY IN COURT

Whether you are a board member or an employee of a management company, you may be called to testify in court in response to a subpoena for records or as a witness to events. Here are some practical hints and suggestions on what to do and how to do it well when you are asked to serve as a witness.

Before You Testify

1. If you are going to testify concerning records, become familiar with them. You should know what the records contain and be able to refer to them easily if you must do so while you are on the witness stand. In an assessment case, this means you must understand all of the entries (charges, payments and credits) on the ledger and be able to explain them in terms of dates, amounts and reasons for the entries. In a collection enforcement case, you must be familiar with and understand all correspondence and documents in the file as well as the governing documents. It may be helpful to make a list showing the chronology of events if there are numerous letters and documents. If you are not generally familiar with your company's procedures for making and keeping these records, find out from your supervisor or owner. You may be asked to authenticate them as records made and kept in the regular course of the company's business. Be sure that the attorney has been provided copies of all records well in advance. If those records were not provided to the opposing party at least twenty days before trial in a county court matter they will not be allowed in as evidence in the trial.
2. If you are going to testify concerning some event that happened months, or even years, before, try to refresh your recollection. Talking with coworkers may help to recall details that you had forgotten. But do not try to develop a common story. Remember: your testimony must state what you recall, not what somebody else told you.
3. You will likely be interviewed prior to the trial by the association's attorney. When you meet with the attorney listen carefully and answer all of his/her questions thoroughly. It is critical that you not hold back any information even if you believe it is insignificant or irrelevant. It is just as critical that you tell the attorney you don't know or don't recall if indeed that is the case. If there are facts you are aware of that the attorney does not ask about let him or her know those facts. Don't try to be helpful by guessing. If you have questions for the attorney, write them down and be sure to ask them during your discussion.

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On Your Day In Court

1. Dress neatly, but do not overdress. Your normal business (assuming it is not casual) attire is probably about right. Do not wear sunglasses in the courtroom. If you need reading glasses be sure to bring them.
2. If you have received a subpoena, take it with you. It may prove useful, for example, if you are not sure in which courtroom the trial is being held.
3. When you do arrive outside the courtroom, if you do not know the attorney who has subpoenaed you, ask for him/her and introduce yourself. If the trial is in progress and you must wait for a recess, it is best to remain outside the courtroom.
4. The attorney will probably want to discuss your testimony with you, which is a proper thing to do. If you are producing company or association records, however, do not turn them over to the attorney until the judge orders you to do so, unless the attorney for the company or association is there or you have been told to do otherwise by the company's or association's attorney.
5. Avoid any undignified behavior such as loud laughter from the moment you enter the courthouse. Smoking in the courthouse is prohibited. Turn off your cellphone and pager.
6. Be careful what you say in the courthouse halls. You never know who may overhear your conversation.

When You Are On The Stand

1. When you are called as a witness, stand upright while taking the oath. Pay attention and say "I do" clearly, so that all can hear. Try not to be nervous; there is no reason to be. Try not to answer with "uh huh or huh uh" as these are often misunderstood and do not create a clear record. Do not answer with a nod or shake of the head.
2. Prior to approaching the witness chair make sure you spit out or swallow any gum.
3. While you are on the witness stand, you are sworn to tell the truth. Tell it!
4. When you are answering a question, talk to the members of the jury, if there is one. Look at them most of the time and speak to them frankly and openly as you would to a friend or a neighbor. Do not cover your mouth with your hand. Speak clearly and loudly enough so that the farthest juror can hear you easily. If there is no jury, look at and talk to the judge instead.
5. Speak in your own words. There is no need to memorize your testimony before hand; in fact doing so is likely to make your testimony sound "pat" and unconvincing. Be yourself.
6. Listen carefully to each question and make sure you understand it before you start to answer. If you do not understand the question, ask to have the question repeated. If you still do not understand it, say so. Never answer a question that you do not fully comprehend or before you have thought your answer through.
7. Answer directly and simply, with a "yes" or "no," if possible, only the question asked, then stop. Do not volunteer additional information that is not requested. Otherwise your answer may

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become legally objectionable under the technical rules of evidence and may also cause you to appear biased. If, however, an explanation is required, say so. Sometimes an attorney will try to limit you to a "yes" or "no" answer. If that happens, simply say that you cannot answer the question "yes" or "no." Usually the judge will let you explain, but in any event, the jury or judge will get the point.

8. The court and jury will want the facts that you yourself have observed, not what someone else told you. Nor are they interested in your conclusions or opinions. Usually you will be unable to testify about what someone else told you, and only "expert" witnesses are allowed to give their conclusions and opinions.

9. When at all possible, give positive definite answers. Avoid saying "I think," "I believe," or "In my opinion" when you actually know the facts. But if you do not know or are not sure of the answer, say so. There is absolutely nothing wrong with saying "I don't know." You can be positive about the important things without remembering all the details. If you are asked about little details that you do not remember, just say "I do not recall." If you know that the answer is in your notes, explain that and ask to be allowed to look at your notes. NEVER GUESS.

10. If a lawyer asks you about something written in a document, ask to see the document. You have the right to see what is being referred to prior to answering the question.

11. Do not exaggerate. Be wary of overbroad generalizations that you may have to retract. Be particularly careful in responding to a question that begins, "Wouldn't you agree that . . .?" Note also that statements like "Nothing else happened" are dangerous; after one more thought or another question, you may remember something else. Say instead, "That's all that I recall," or "That's all I remember happening."

12. If your answer was wrong or unclear, correct it immediately. It is better to correct a mistake yourself than to have the opposing attorney discover an error in your testimony. If you realize that you have answered incorrectly, say "may I correct something I said earlier?" or "I realize now that something I said earlier should be corrected."

13. Stop instantly when the judge interrupts you or when the other attorney objects to what you say. Do not try to sneak in an answer.

14. Always be polite even if the opposing attorney is not. Do not be an argumentative or sarcastic witness. Remember, the attorney has a big advantage: he/she can ask the questions.

15. The honest witness has nothing to fear on cross-examination. Some of the rules set forth above may make more sense, however, if you understand what an attorney tries to do on cross-examination. If your testimony has not been harmful to his/her case or if he/she thinks that questioning you further will prove fruitless or counterproductive, he/she may waive cross-examination or ask a few perfunctory questions. If, however, your testimony has been damaging to his/her client, the opposing attorney will want to argue to the jury or judge that they should not believe you. To make that argument, he/she wants to make it appear that you are not telling the truth or that you do not know what you are talking about. In either case, the usual approach is to try to get you to say things that the attorney can show are not completely true. He will then argue to the jury or judge: Since the witness lied or was wrong on this point, his/her entire testimony is unworthy of belief." A favorite "trick" question that attorneys will sometimes use is: "Have you talked to anybody about this case?" If you say "No," the jury will think that probably you are not telling the truth, because a good lawyer always talks to his witnesses before they testify. Simply

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say that you talked to whomever you did - - the association's lawyer, a board member or anyone else.

16. Testifying for a substantial length of time is surprisingly tiring and causes fatigue, crossness, nervousness, anger, careless answers, and a willingness to say anything in order to leave the witness stand. If you feel these symptoms, strive to overcome them, or ask the judge for a five-minute break or to allow you to have a glass of water.

17. Now read these suggestions again. Some of them will mean more the second time through.