

Preparing to Testify- Ten Tips to Being a Winning Witness©

Your divorce will likely require you to testify, either at the time of the final “proveup” hearing, a short proceeding where the agreement reached by you and your spouse is presented to the court for approval, or at certain types of preliminary proceedings. The testimony at the proveup is somewhat routine, and rarely requires a great deal of advance preparation. The preliminary proceedings, are somewhat more complicated, and generally fall into two categories: a “discovery” deposition, or a hearing before the court concerning temporary matters, such as a request for temporary child support or maintenance.

Unfortunately, most folks ideas about “testifying” are formed by movies and TV shows, which, almost uniformly and due largely to creative and time constraints imposed on those mediums, bear little relation to what you will experience. You will likely find your testimonial experience vastly different from what you have seen on TV.

The following information is provided to help assist you in preparing for your “day in court,” and to answer certain common questions which almost everyone has. Prior to testifying, you and I will discuss your testimony with specificity to the issues involved, and, as always, be sure to ask any questions you might have. Remember, I’ve done this before. You probably haven’t. Therefore, there is no such thing as a “stupid” question.

Prior to discussing your testimony, you will need to know the purpose for which the testimony is to be given. A “deposition” is part of the larger process known as discovery. The idea behind discovery is to encourage settlement by requiring parties to

disclose all of the information they have concerning the issues pending in the divorce. You will be required to answer certain questions and provide documents, such as tax returns, paystubs, bank records, etc., during the discovery process. The deposition is, in essence, the culmination of that process of disclosure.

A deposition is a sworn statement, taken in the office of one of the attorneys, before a court reporter, who takes a transcript of everything that is said. Your spouse's attorney will ask you questions, and you will be required to answer those questions. In a discovery deposition, very few questions can be objected to, although often, questions which you must answer at your deposition will not be allowed to be asked of you should your case proceed to trial before the judge.

Although depositions are not taken in every case, they are taken in many cases to expand upon economic information, opinions and other matters. You and I will discuss whether it is necessary for me to take the deposition of your spouse, because there are expenses involved that might not be warranted given the facts of your case. Generally, if your spouse's attorney wishes to take your deposition, I will take the deposition of your spouse.

Hearings concerning temporary, or interim issues, are conducted before the judge in the mornings, Monday through Thursday, currently, and usually are limited to fifteen minutes. They are, therefore, very brief and summary in nature. Your testimony will, as a result, necessarily be very limited, as we will only be afforded an opportunity to present to the judge the facts most important to the issue which we are asking the judge to resolve that day.

So what can you, as a litigant, do to prepare yourself for testifying? The following represent ten simple rules that everyone can employ and rely upon to being a "winning witness." By

following these suggestions, you can contribute greatly to the success of your case.

1. **Tell the truth.** Simply put, there is no greater damage you can do to your case than by not telling the truth. No matter how damaging you might think the truth to be, it is never as damaging as a falsehood.
2. **If you make a mistake, correct it.** No one has immediate and completely accurate recollection of every fact or conversation. If you are confronted with a document or some prior statement which conflicts with your testimony, do not be afraid to say “I made a mistake.”
3. **Be yourself.** Do not attempt to portray yourself as someone you are not. A lack of sincerity on your part is almost as devastating to your case as not telling the truth.
4. **Short answers are the best answers.** The best answers to any question are: Yes, No, I don’t know, I don’t remember. Answer the questions asked in as few words as possible to be truthful. The more you talk, the more you will be asked. Keep it short; less in this case is more (helpful to you!)
5. **Listen to the question.** Let the questioner complete his or her question before answering. First of all, the court reporter can only take down what one person is saying at a time. If you are talking over the question, the reporter will have a more difficult time. Also, you might think you know the question being asked, but find out it is not what you thought, and your answer will look odd and out of place.
6. **Be sure you understand the question.** All lawyers will eventually ask a question which makes little sense in English or otherwise. Lawyers also tend to use words you might not know, or use language that is tortured or difficult to comprehend. Never be afraid to say “Could

you repeat that, I don't understand your question." Never answer a question you don't understand.

7. **Don't guess or estimate.** Unless you are asked to do so, never guess or estimate in an answer. If you know the answer in approximate terms, i.e., "How much is in your checking account today?" be sure to say "I'm guessing" or "approximately," in your answer.
8. **Do not volunteer anything!** Most folks naturally want to be helpful. This is neither the time nor place to be a volunteer. The more you volunteer, the more trouble you will find yourself in, particularly if you offer answers that you aren't really sure of in your desire to appear "helpful" to opposing counsel. Similarly, avoid offering excuses or explanations, which only lead to more questions. You are there to answer questions, only. Excuses and explanations are my job.
9. **Do not debate or argue with Opposing Counsel.** It is also a natural inclination for you to want to convince your spouse's lawyer of why you are right and he or she is wrong. These attempts will uniformly be unsuccessful, and only generate more questions. Being argumentative or confrontational with opposing counsel will similarly lead to nothing positive, and, in a courtroom, will only serve to annoy the judge.
10. **Answer the question.** Do not attempt to analyze why you are being asked this question, or what the next question will be, or what you will be asked in ten minutes. Answer the question asked, as if it were the first, last and only question you will be asked.

There is usually very little you can do to help your case, because the facts and law are what they are. However, if you follow these simple suggestions, you can have a positive influence on the outcome of your case.

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