

Blog:

TESTIFYING AT A DEPOSITION OR TRIAL? HERE ARE SEVEN RULES TO FOLLOW

It seems to happen to everyone at some point: you're called in to testify at a deposition or at trial. You maybe a small business owner, a manager in a large corporation or an individual caught up in a lawsuit you'd rather not be in. For many, it's the first brush with the legal system and the experience can be intimidating.

Unfortunately, lawyers often only have time to concentrate on substantive issues when preparing a client for testimony. There is usually little time to focus on how clients can communicate credibly and present themselves appropriately at depo or in court. This leaves witnesses to their own devices, which could spell disaster in the witness chair.

Here are seven rules to follow when giving a deposition or testifying in court. Follow these rules and you'll go a long way toward providing credible and persuasive testimony.

Keep your body language open and undefended. Don't cross one or both of your arms over your chest, it's read as defensiveness. Avoid slumping, slouching, twisting your body to one side, leaning to either side, or supporting your chin with your hand, elbow on the table.

Be consistent. If you're asked the same question in slightly different ways, stick with your original answer. Only change it if it's inaccurate, not just because opposing counsel repeats the question.

Give the information requested, not more. Don't volunteer. If you're asked for one example, give one, not two. If you're asked for your date of birth, don't volunteer where you were born and how happy your Mom was.

Answering the document question: "Isn't it true that you signed the May 3rd agreement?" "May I see the document please?" Always review whatever document is being referred to before answering, even if you think you know what it is.

Withstand personality influence. Opposing counsel may act like your best buddy - casual, easy-going, warm-hearted, friendly and nice. Don't be swayed. It's the "honey attracts better than vinegar" approach, and you're still the fly.

Be wary of the "yes" set. Opposing counsel wants to get you to agree to their version of the facts. When you find yourself agreeing with opposing counsel – as sometimes you must ("The earth is round, isn't it?"), listen extra carefully to the next questions. The more times you say "yes" the more likely it is you'll say "yes" when you shouldn't.

Deal with inconsistencies appropriately. You will inevitably say something on the stand that is different from what you stated at deposition. Opposing counsel will pounce on it. "At your deposition, you said you didn't see the specs, but now you tell us you did. Were you lying then or now?" Stay calm. "I've had more time to think about it, and I realized I did see the specs." Your unruffled response will tell the jurors it's no big deal.

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