

Preparing Witnesses Rules to Remember

- 1. Direct Witnesses To Tell the Truth.**

Honesty is always the best policy. Witnesses must testify as accurately as possible about what they know, what they heard, and what they did. If they encounter a question, which they cannot answer without 100% certainty, they should avoid a yes or no answer and reply that they are “**testifying from memory,**” and their answers are “**accurate to the best of my ability to remember.**” Don’t lie or be evasive in answering questions; either will hurt your case.
- 2. Caution Witnesses to answer only the questions asked.**

The best way to do this is by giving a one-sentence answer, or very short answers, and, then, keeping quiet. That way, you force opposing counsel to ask specific questions.
- 3. Witnesses should never volunteer information.**

Answer only the question(s) asked. Speak clearly without non-verbal communications (eg nodding yes or no with your head).
- 4. Witnesses should fully answer every question asked.**

Who, what, when, where, why and how questions may sometimes be answered with a single word or phrase. However, witnesses should be ready to give a full and accurate response to follow up questions.
- 5. Instruct Witnesses how to answer open-ended questions.**

When witnesses finish responding to an open-ended question, they should say these magic words “**that’s all I can recall at this time.**”
- 6. Direct Witnesses can ask to explain their answers.**

Witnesses should ask if they can briefly explain an answer to a question that calls for a yes or no answer.
- 7. Warn Witnesses to think about the question before they answer.**

Witnesses should listen closely to each asked question and think about the question before answering it. Therefore, they will avoid misinterpreting questions or giving damaging answers, and allow them time to couch their answers in words that will have a positive effect on their overall testimony. Refer to Your notes or reports for accuracy.
- 8. Instruct Witnesses to obey the approximation rule.**

Have a witness use the word “**approximately**” when they are not absolutely sure of a time or date.

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9. **Direct Witnesses not to guess.**

Witnesses should never guess at an answer without explaining that they are estimating.

10. **Instruct Witnesses on how to support their conclusions.**

Whether witnesses draw a subjective or factual conclusion in their answers, they should have a supportive basis for their response.

11. **Warn Witnesses never to say “never”.**

Words like “**never**” and “**always**” should not be used answering questions. These words can be used against them, and are not necessary to fully answer questions.

12. **Explain opposing counsel’s style to Witnesses.**

Familiarize witnesses with opposing counsel’s personality and tactics before the deposition takes place or the trial begins. Then, they will know what to expect. The opposing attorney may try artificially to speed up or slow down your examination in order to upset you and throw witnesses off balance. If this happens, answer at your own pace and try to remain calm. Your attorney will protect you; listen and look for his or her directions.

13. **Tell Witnesses not to be intimidated or intimidating.**

Witnesses should not try to intimidate opposing counsel (eg. arguing, making unpleasant facial expressions, or insulting the opposition). The jury will not sympathize with a bully. Always be positive and polite when testifying. If you feel you are tiring and need a short break, ask for one; it will be granted.

14. **Advise Witnesses to let your opponent finish asking a question.**

Instruct witnesses not to interrupt opposing counsel’s questions; because that can open up the door for another dozen questions witnesses may not be prepared for.

15. **Coach Witnesses on how to point out interruption.**

If a witness’s statement is interrupted by opposing counsel, make sure the witness lets the attorney go ahead and finish speaking. Then, the witness should say “**I’m sorry, but I haven’t completed my answer to the previous question.**” The record will contain this interchange.

16. **Tell Witnesses what to do if they are not sure how to answer a question.**

Witnesses should tell opposing counsel that they do not understand the question and ask for clarification; or they could ask opposing counsel to restate or rephrase the question. Both ways give witnesses more time to collect their thoughts before answering.

17. **Instruct Witnesses to always be polite.**

Courteous witnesses make a positive impression on jurors and judges (eg. instead of saying merely “yes” or “no” a witness could say “yes sir.” This shows respect, no matter what the opposing counsel resorts to.

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18. Advise Witnesses to look jurors in the eye.

Witnesses should try to overcome being nervous or shy and speak to the members of the jury as if they were neighbors and friends. Witnesses should look at the jurors most of the time instead of looking at the lawyer who is examining them.

19. Coach Witnesses on their appearance.

Make sure your witnesses dress and behave appropriately (eg. if your witness is a police or fire officer, have them wear their uniform; it improves credibility). Witnesses should dress neatly as they would be for a celebration dinner, or Sunday at church.

20. Prepare your witness for their testimony.

If your witness is going to be asked to draw a diagram or sketch a scene from memory while testifying, then, go over the specifics of the visual aid before they testify. If your expert witness requires demonstrative evidence or exhibits for deposition or trial, start working early with your witness and an Exhibit Specialist to evaluate the need for exhibits, thereby, allowing sufficient time to create and produce whatever is needed.

Remember witness preparation should begin several weeks before a crucial deposition or the start of a trial with rehearsal of direct and cross-examination. Several brief witness segments could be videotaped, and the taping stopped after each segment. This could be followed by a discussion and suggestions for improvement. You should also run a crucial witness through a focus group or perform a mock trial for reactions to witness credibility and believability.