

McFARLING



LAW GROUP

TIPS FOR TESTIFYING AT A TRIAL, EVIDENTIARY HEARING, OR DEPOSITION

- Always tell the truth – It is better to be honest even when it is not flattering than to have the Judge catch you in a lie. If the judge thinks you are a liar about one thing, he/she can impute that you are a liar on other things that you are indeed being truthful about.
- You should only testify as to what you actually saw, heard or did. Don't guess or speculate.
- After you answer the question – STOP talking.
- “I Don't Remember” is an acceptable answer – If you do not remember, say you do not remember. Do not say “No” when you mean “I do not remember”. Saying “No” when you mean “I do not remember” can have you painted as a liar, if it is shown that something you stated “No” to something that did indeed occur. Conversely, saying “I do not remember” when you mean “No” can begin to appear as if you are being evasive in your testimony. “I don't know” is also an acceptable answer when you do not know something but not when you don't remember.
- Do not think out loud. If you need to think for a minute about the answer to a question, do it in your head and only answer if you are able to answer.
- You should be very cautious about using “absolute” words in your answers, such as “always,” or “never.” There is almost always going to be an exception, so saying something always or never happens is usually problematic.
- Be sure to understand the question – Sometimes attorneys speak in legalese and you may not understand the question. Do not answer unless you are absolutely positive what is being asked. Feel free to ask the attorney to repeat the question or simply say “I do not understand the question, can you please clarify?”
- Be cautious in answering questions that utilize relative terms such as “many,” “substantial,” or “often.” Ask for clarification of such relative terms before answering.
- Think and take your time before answering – Everything you say is on the record so you want to think carefully about your answers and not say anything you may regret. Do not take too long where it appears that you are stalling for time or thinking up an answer. Pause 2-5 seconds after a question is asked. This is important for several reasons. First, it will keep the other attorney from getting into a rhythm of conversation and make him/her work for the information he/she's trying to obtain. Second, you will know that he/she has finished his/her question. Third, it will cause you to think before you answer to make sure you understand the question asked. Finally, it will give me time to make any necessary objections on the record before you answer.
- Speak loud and clear – Your testimony is being documented through video and also your attorney, the opposing attorney, and the Judge all need to hear you clearly. All questions must

be answered verbally, head nodding is not acceptable. It can be very frustrating to the Court if they have to repeatedly ask that you speak up.

- Make eye contact with the Judge, do not look down- You are not in Court to convince the opposing attorney of your position, you are in Court to convince the Judge. When the opposing attorney or your own attorney are questioning you, be sure to answer the questions with your head up, rotating eye contact between the attorney questioning you and the Judge. For important points, make eye contact with the Judge to show sincerity.
- Do not engage in arguments with the opposing attorney- The opposing counsel may attempt to get you flustered or even act snarky with you. Do not enter into this behavior and begin arguing or being rude. The Judge will likely not fault the opposing party attorney's behavior but he very well may fault you for your own behavior.
- Be Polite – Refer to the attorney as Sir or Ma'am and when addressing the Judge use Your Honor.
- Be Serious- This is a serious matter and jokes and wisecracks will not reflect well on you.
- Cease Talking if you Hear an Objection – The Judge or the attorney will tell you when to proceed. If the Judge sustains the objection you will not have to answer. If the Judge overrules the objection you will have to answer. If you are unsure, ask if you need to answer.
- Answer Questions with an Answer, not a Question – Answering questions with answers such as “What would you have done?” is not appropriate. The opposing attorney is not on trial.
- Any combativeness toward that lawyer will probably just irritate the judge.
- You must provide an answer to a question posed – Unless an objection is made and you are specifically instructed not to answer a question all questions must be answered. Do not turn to your attorney or the Judge and ask “Do I have to answer that?” Unless told otherwise or there's an objection pending, the answer is yes.
- Be brief on cross-examination – Cross examination is when the attorney can ask you questions only pertaining to the direct examination. It is extremely important that you only answer yes or no with brief explanations and not offer additional unsolicited information. The opposing attorney is limited in cross examination, and elaborating on your answers could open the door to allowing additional inquiry they otherwise would not be able to pursue. That being said, if opposing attorney asks “why?” and you have a great answer, even if you already said it, take the opportunity to say it. The judge may give more weight to explanations given during cross examination.
- Testify Confidently – If you are prepared and telling the truth you should not be intimidated by the opposing attorney.
- Being Emotional is Acceptable – You may cry during your testimony and that is okay. Try to remain composed enough that your testimony can still be heard and understood.
- If you need a tissue, a drink of water, or a break to compose yourself, just ask the Judge for permission.
- Remain Composed at ALL times- The Judge is watching you, both while testifying as well as while you are at the counsel table. Do not talk while others are talking, make rude gestures, make faces, stare at the opposing party, yell out, or anything other than remain seated and composed. The other party will likely say things about you that are not true but it is never appropriate to act out or even whisper to your attorney “he's lying”. Communicate with your attorney in writing at the counsel table. All of the above will likely have the Judge think less of you.