

RULES FOR GIVING SWORN TESTIMONY

- 1. Listen to the question. If you do not understand the question, ask that it be repeated. Repeat it to yourself if necessary.**
- 2. When answering, always tell the truth. You are answering questions under oath. Failure to tell the truth is a violation of the law (perjury). Additionally, if you are caught lying, your veracity will forever be damaged in the eyes of the judge or jury.**
- 3. Do not over or under exaggerate your responses.**
- 4. Do not let the voice inflection or demeanor of the opposing attorney affect your responses or demeanor. This is just part of the drama within the courtroom designed to intimidate you or trap you into a hostile reaction.**
- 5. Take your time when answering. Although every second may seem like an hour, keep in mind that attorneys often feel the same way when pausing between questions to get their bearings. It's part of the question and answer process and no one is counting.**
- 6. Answer only the question asked. Do not provide additional information that was not elicited. This is known as a "non-responsive" answer, and may result in an objection or, even worse, in you providing opposing counsel with additional ammunition they were not aware of prior to your volunteering information. Remember, "yes" or "no" or "I don't know" may be an acceptable answer. If you feel the need to explain yourself further, or if your attorney feels that you need to explain yourself further, this can be addressed on your re-direct examination or rebuttal testimony.**
- 7. Do not answer questions with questions. This is often perceived as a witness trying to "outsmart" the attorney, an action that tends to anger the judge (and jury), and even worse, may give the Court a negative impression of you based upon your attitude.**
- 8. Answer distinctly and loud enough for all to hear. Do not nod or shake your head, or give a quizzical look. The court reporter needs to record your response, and the judge might not be looking at you during all of your testimony.**
- 9. Be confident and firm in your response, but do not yell or raise your voice in an attempt to get your point across. Generally, there are microphones in the courtroom.**
- 10. Do not guess unless specifically asked to guess.**
- 11. Always be courteous—do not argue with the opposing attorney.**
- 12. Remain calm. Under no circumstances should you lose your temper. As unfair as it may seem, no matter how bad the attorney may appear to be "badgering" you in your mind, if you lose your temper, it will most likely reflect negatively upon you, not the attorney questioning you.**

13. Never testify that you did something because your attorney told you to, unless your attorney has requested you do so in advance. This information is privileged, and you may waive that privilege if you attempt to testify to such information, thus opening the door to opposing counsel's further inquiries.

14. Never testify to what you and your attorney discussed, unless your attorney has requested you do so in advance. This information is privileged, and you may waive that privilege if you attempt to testify to such information, thus opening the door to opposing counsel's further inquiries.

15. Never testify as to what occurred during settlement negotiations, mediations, or the contents of any settlement offers, unless your attorney has requested you do so in advance. This information is generally deemed confidential, and also may open the door to further undesired testimony.

16. If an attorney stands to object to a question, do not answer it, wait for the judge to make a ruling ("overruled" or "sustained"). If the objection is "overruled", you may answer the question. If the objection is "sustained" you may not answer the question. Once the judge has ruled, if you are not sure whether you can answer the question, just ask. If you have forgotten the question by the time the Judge has ruled, ask that it be repeated.

17. There are two types of witness examination. Direct examination and cross-examination. Direct examination is generally directed to non-hostile witnesses or witnesses on the side of the party who is putting on his or her case at that time. Cross-examination is generally directed to hostile witnesses or witnesses who are testifying against the party who is putting on their case at that time. There is no specific required order. For example, opposing counsel may call you as a hostile witness and cross-examine you before your attorney takes you on direct.

18. Opposing counsel may ask you "leading" questions on cross-examination. A leading question is a question essentially puts words into your mouth that counsel wants you to echo back, suggesting to you the answer they desire, and not allowing you to explain your answer. Leading questions can sometimes be frustrating to the witness and create a feeling of helplessness. Listen carefully to these questions and give the appropriate truthful response. Stay calm and try not to get trapped.

19. It is generally objectionable for your attorney to ask you leading questions on direct examination. This means that your attorney will ask you direct and open questions that you must already know the answer to. Your attorney cannot tell you the answer and cannot stop you from giving the wrong answer.

20. When sitting at counsel table, only speak in low whispers (and it is preferable to pass notes if time permits). The judge can hear everything you say. Additionally, your attorney is trying to listen to testimony, and may lose track or focus if you interrupt. You will be provided with a notepad and pen, and it is preferred (except in an emergency) that you not whisper in your attorney's ear during examination, as it may cause your attorney to lose track of the testimony, or to miss an objection.

21. The judge will be watching your behavior at trial, along with the court reporter & bailiff (who may report to the judge later). Do not laugh at inappropriate times, stare down the opposing party

or the opposing attorney, or behave in any other such inappropriate manner, nor should you appear to be without emotion. Be yourself, behave normally.