

# TIPS FOR TESTIFYING

These Tips are designed to be used for victims and witnesses who are either giving a deposition or who are actually testifying in Court.

\*\*\*Please Note: You may be approached by a representative of the defendant before trial. Typically this contact will be made by an investigator or attorney for the public defender's office. In some cases defendants may hire private investigators and civil attorneys to represent them. The defendant has a right to ask questions in order to prepare for a trial. *As a witness, you have the absolute right to ask that a prosecutor be present when anyone wishes to ask you formal questions about a case.* Please contact the prosecutor or victim advocate as soon as you receive any of these requests or a subpoena!

## BEFORE COURT:

- 1) Talk with the prosecutor assigned to your case. Ask what the prosecutor plans to bring out with your testimony and what he or she anticipates will be the focus of cross-examination. Tell the prosecutor what you believe are the important facts you can testify to (both positive and negative points.) Make sure that you are given telephone numbers for the prosecutor and victim advocate and the court in which you will be testifying.
- 2) Give the prosecutor and victim advocate all your current contact information as well as a contact number for a friend or family member if they are unable to reach you at home or work. If you are testifying as a professional witness, it may be helpful to provide a copy of your resume, vitae or training history as soon as you know you are going to testify.
- 3) Come prepared. If the police have taken a statement from you make sure that you have read it over before you testify. You may also want to bring a book to read, as court does generally take longer than anticipated. Be prepared to wait.
- 4) Ask when you and where you should arrive, and whether special parking arrangements need to be made. Call just before coming to court, just to make certain there have been no last minute continuances or changes.
- 5) Dress conservatively. People base their opinions on the credibility of a witness on a blend of criteria. Your body language and dress will be taken into consideration, if only on a subconscious level.

## DURING YOUR TESTIMONY:

- 1) You may bring your copy of any records you may have to court if you like. In most cases the prosecutor will have copies of important information that they plan to introduce. Be sure to show any documents you plan to use or refer to with the

prosecuting attorney before the trial. Anything you use in testifying may be examined in its entirety by the defendant. Your personal notes are no exception, so limit what you take with you to the stand.

- 2) Relax. Take a deep breath. It is normal for your heart rate to increase and your breathing to speed up when you take the witness stand. Your nervousness will pass once you are settled into your chair and the questions begin. The first questions are easy. (“Please tell the jury your name and how to spell it.) You will have to provide an answer for every question. If you do not have an answer, or do not know the answer for certain, it is perfectly acceptable to say “I don’t know.” Stay calm and answer confidently.
- 3) Judges are addressed as “Your Honor” or “Judge”. Use sir or ma’am in your answers.
- 4) Be totally honest in answering your questions. You are technically an impartial witness testifying about the events you observed, or about areas in which you are totally knowledgeable. The jury will expect you to be unbiased.
- 5) Take your time in answering questions. There is no need to rush. Take deep breaths if you need to concentrate to answer the more difficult questions. If you are in need of a break to collect your thoughts, or get a drink of water ask the Judge for a break.
- 6) If someone “objects”, just stop talking. The lawyers and the judge will discuss whether the question is one that you can answer. “Overruled” means you can answer. “Sustained” means you should not answer and you should wait for the next question. The attorneys will help you if this situation arises.
- 7) Answer just the questions that you were asked. In most cases a simple “yes” or “no” is all that is needed. If you need to explain an answer further, say so.
- 8) If you do not understand the question, be sure to ask for clarification. Many times lawyers get ahead of themselves and sometimes the questions can be confusing.
- 9) Be clear in your answers and be truthful.

#### **KEY REMINDERS ABOUT CROSS EXAMINATION:**

After the prosecutor questions you, the defendant’s attorney will have to opportunity to question you as well. This is called cross-examination.

- 1) Do not get angry or agitated. The prosecutor will be listening carefully and will not allow the defense attorney to badger or harass you without objection. Just take a deep breath, answer calmly and confidently.
- 2) Ask the prosecutor what kinds of questions you can expect from the defense attorney.

- 3) Do not worry about the effect of your answers to defense questions. The prosecutor gets to ask questions when the defense is finished in what is called “redirect”. If something needs to be clarified the prosecutor will do that with you.
- 4) Your calm, positively phrased answers to cross-examination questions will enhance your credibility.