

Taking the Terror of out Testifying: Tips for Non-attorneys who Testify in Child Welfare Proceedings

Borrowed from
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"I've learned that people will forget what you said, People will forget what you did, but people will never forget how you made me feel." Anonymous

"People only hear what they understand." Jason Bloom, Jury Consultant

"Volunteers do not necessarily have the time; they just have the heart." Elizabeth Andrew

"You make a living by what you get. You make a life by what you give." Winston Churchill

- Your testimony begins the first time you start an investigation, write a report, input notes into Optima, or accumulate information. This is all subject to discovery and becomes the premise for the defense attorney's cross examination.
- Your reports should be objective, descriptive, and concise. Be prepared to defend your report in the courtroom. Your report should communicate facts and details without forming conclusions. We typically don't submit a CASA report for jury trials.
- Know the file. Do you know your file and can you articulate the evidence in the file in order to support your contention?
- Prepare. Create a timeline, time chart, or diagram. These devices have the ability to summarize and visualize testimony. This can be especially useful to fact patterns which have occurred over a long duration.
- Practice out loud. Hear yourself describing your case. When you take the stand this should not be the first time you hear yourself describing your case. The DA will often ask CASA's to explain what CASA is what the role of a CASA is. The jurors may or may not know about CASA.
- Relax the night before the hearing. Preparation is the best defense to stress. Pamper yourself and avoid compounding any stress.
- Speak with your supervisor prior to the hearing. Your supervisor will get updates from the DA's office and update you to give you an approximate day and time of your testimony. Typically, jury selection is the Monday of the hearing week. Witnesses will start after.

DAY OF HEARING

- Get up early and review, eat something, as if you are about to take a test.
- Dress appropriately and professionally. You want to convey that you understand the importance of this proceeding and you take it seriously.
- Generally, testifying to what was said by someone else is inadmissible.
- This can include non-verbal conduct which is meant to assert something.
- Statements said out of court can be defined as non-hearsay or there may be an exception to the statement.
- You can text your supervisor when you arrive and they will try to step out of the hearing to meet with you prior to your testimony. You will only be able to sit in court after giving your testimony. Your supervisor will try to cover court prior to your testimony to hear all other witnesses.

Exhibits and Foundations

- Any item introduced by a party to be published by the trier of fact must be moved into court after proper foundation has been laid.
- Photographs- is the photograph a "fair and accurate representation" of the scene it depicts at that date and time?
- Documents-the document must be relevant and foundation must be laid as to the credibility of the document. Hearsay applies to documents.

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- Diagrams-a diagram must be a “fair” and accurate representation” of what it depicts. If the diagram is depicting specific measurements it may have to be to scale.

The Direct Examination Procedure

- Direct examination is followed by cross-examination
 - Cross examination may be followed by re-direct and re-cross

DIRECT EXAMINATION IS ALL ABOUT THE WITNESS

“Professionalism: It is NOT the job you do, it’s HOW you DO the job.”

In order to be found prepared, credible and professional a witness must testify with confidence. The testimony should be told in an active voice, rather than a passive voice. The testimony must be loud enough to be heard and slow and deliberate enough to be understood. The witness must testify with confidence. The fact-finder will trust the professional which appears confident and prepared.

The discussion of the six:

1. Who
 2. What
 3. When
 4. Where
 5. Explain
 6. Describe: Which incorporates describing detail and demeanor without drawing conclusions
- An effective direct examination is a compelling conversation
 - Leading questions are not allowed, the witness must do the testifying
 - Listen carefully to the question.
 - If you don’t understand the question, the correct answer is “I don’t understand.”
 - If you don’t know the answer, the correct answer is “I don’t know the answer.”
 - Stay in your expertise~ don’t speculate~
 - If you made a mistake or omission, admit it. A mistake will be forgiven but a denial will not.
 - Recognize the presence of the jury.
 - Be aware of body language.
 - Refrain from using jargons.
 - Remember if you’re being candid, there are no wrong answers.
 - Refrain from generalizations; they will make you vulnerable under cross-examination. Confine your answers to evidence and fact based responses.

MATTERS IN WHICH YOU MAY BE ASKED TO GIVE TESTIMONY

- Services provided and completed by the parents
- Visits and parents’ contact with a child
- Placement
- Facts to support permanency (return to parents, termination, etc)

REFRESHING MEMORY

The credible, prepared, and professional witness can generally testify without notes. However, if the case involves a detailed fact pattern over a long amount of time, the witness may request to take a file up to the stand and refer to the file at the discretion of the court. Discuss this with your supervisor prior to the hearing.

CROSS EXAMINATION

Cross Examination provides the defense attorney the opportunity to challenge your facts, statements, and credibility. Attorneys are supposed to zealously represent their client. Cross examination is not personal; it feels personal because the attorney wants you to appear defensive. When you present as defensive, you become an advocate.

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GENERAL TESTIMONY GUIDELINES

- Relax and breathe
- Listen closely and actively
- Take your time
- Only answer the question asked.
- Only provide the necessary information and nothing else.
- Ask for clarification if needed
- Be courteous
- Watch for the six discussed in direct examination.
- Watch for your opening of the six-this is when the attorney has lost control.
- Professionalism requires that you DO NOT argue with the lawyer even if the lawyer is prodding you.
- Refrain from sarcasm, humor, cute answers. Stay the most professional person in the courtroom, even when others are not.
- Refrain from facial expressions, eye rolling, and demonstrative movement.
- Admit mistakes and/or inconsistencies with candor.
- Don't be afraid of short answers, silence is OK.
- Cross-examination techniques include taking facts out of chronological order.
- Cross-examination techniques include asking the same question in different forms.
- Don't allow attorneys to take you into a different set of expertise.
- If you are answering yes to every question-WATCH OUT-the cross which makes you comfortable is the most dangerous cross examination.
- If you are nervous about testifying, talk to your CASA supervisor in advance about your concerns.
- Tell the truth, the whole truth, and nothing but the truth, even if it is detrimental to your case.

OBJECTIONS

An attorney may object for a number of reasons: for impact, disruption, and tactical purposes. The witness should immediately stop testifying and listen to the nature of the objection and the court's ruling on the objection. The court's ruling will allow the witness to understand what was or was not objectionable, which could be valuable information to the witness.

- Sustain: No, you MAY NOT answer.
- Overrule: Yes, you MAY answer.

IN CONCLUSION

The testimony in child protective proceedings requires you to testify in a credible, prepared, and professional manner. Every opportunity to testify is analogous to an extremely important test. However, as long as you tell the truth and testify in a professional and courteous manner, it is a test you cannot fail.