

WITNESS PREPARATION AND HEARING GUIDE

GENERAL INFORMATION

The purpose of the *Witness Preparation and Hearing Guide* is to provide the first time witness useful tips and information.

A witness taking the stand should appear positive and cheerful, but be polite and serious at all times. A friendly, prepared witness is much more effective than one who appears angry and unable to answer any questions.

The following tips and information begin at the point the witness takes the stand to the end when the witness is dismissed.

CATEGORIES

GENERAL INFORMATION 1

DIRECT TESTIMONY 4

CROSS EXAMINATION 6

COMMISSIONER QUESTIONS 7

RE-DIRECT 7

RE-CROSS 7

HANDLING OF CONFIDENTIAL 8

PRACTICE SESSION

APPENDIX

Mind your manners

1. Dress professionally and conservatively. No low necklines.
2. Be polite to the Commissioners and the Attorneys.
3. Maintain good posture.
4. Maintain your composure – don't get mad. Don't be defensive. Don't take it personally if you feel you are being "attacked" under cross-examination.
5. Control the tempo of the questions and your answers. Don't rush your answers or get frustrated or defensive.

Testimony.

1. Tell the truth. Stick to the facts. Stick to the truth. Listen for a question. If no question is pending, do not respond.
2. Speak loudly enough so everyone can hear you. Keep your hands away from your mouth. You need to speak distinctly.
3. Give an audible answer so the court reporter can hear it. Do not nod your head yes or no, or answer with "uh-huh" or "uh-mm".
4. Remember to speak slowly and loud enough so that the court reporter may transcribe your testimony.
5. If you need a break during the hearing, direct your request to the Chairperson.

Only answer the question you are asked

1. Answer "Yes" or "No" if possible.
2. Do not volunteer information or opinions that have not been asked for (UNLESS you need to explain your answer).
3. If you do need to explain your Yes/No or short answer, provide the explanation – don't expect the attorney or Commissioner to ask for it.
4. Ask the attorney to repeat or rephrase the question as needed

Remember to take a few deep breaths and take your time making yourself comfortable in the witness stand. Feel free to take your time answering questions – think about your answer before speaking.

If an objection is made by any Attorney, STOP talking. Wait for the Chairman to rule on the objection before answering. Do not try to squeeze in an answer after an objection has been made.

Attempt to use familiar and understandable language

1. Avoid using words or acronyms the Commissioners may not be familiar with.
2. If you use an acronym make sure that you know what it stands for and spell it out the first time that you use it (i.e.: "This state's IOU's – that's Investor Owned Utilities – typically....")
3. Avoid legaleze or legal terms when testifying.
4. Avoid evasive language when answering a Commissioner's question.

Look at the Commissioners when answering questions

1. When answering questions, respond to the Commission and not the attorney who asked the question. The Commissioners are the ones who will decide the case, and thus need to hear the information that you are testifying to.
2. Look at (respond to) a single Commissioner that asks a question.

What to do when there is an objection

1. "Sustained" means the Chairman agrees with the objection and you do not have to answer the question.
2. "Overruled" means that the Chairman disagrees with the objection to the question and you will be required to answer. This does NOT mean that you need to give an answer if you do not know it. It is still permissible to answer "I don't know" or "I cannot recall."
3. Frequently, the ruling may be "the witness can answer/respond if he knows."
4. A witness CANNOT make an objection to a question. Objections must be made by the attorneys.
5. Listen carefully to your attorney's objection. Frequently, it is a cue as to how to respond to the question.

Take your time and remember who you represent

1. Let the lawyer or Commissioner finish the question before responding.
2. If you need to refer to notes/documents ask to do so.
3. If you are referring to a document tell the Judge/Commissioners what you are referring to (i.e. "According to my notes, which I am now referring to and which I prepared on August 20, 2009 while visiting the company's offices, I found....")
4. As a witness for the entity on whose behalf you are testifying, you are not carrying the ball for other parties. You are not enforcing the requirements of other entities. You are there to present your entity's position.
5. Make sure you know your entity's position. As part of the case management procedures, make sure in your preparation that you clearly know and understand your entity's stance.
6. Know the purpose of your testimony.
7. Identify the three or four key points of your testimony and stick to them. Under cross-examination or in responding to Commissioners' questions, sticking to your key points will help you.

If the answer is likely to be challenged or has already been challenged give the simple/basic answer first and then support it with additional facts, data, references, or examples.

If you do not understand a question, say so and the lawyer or Commissioner asking you will probably rephrase it. If you do NOT know the answer to a question, say so. If you do not REMEMBER an answer, say so.

If you do not understand a question, ask for it to be repeated.

1. If you STILL don't understand the question don't be afraid to ask for it to be repeated a second time or to ask the attorney to rephrase it in a format you can understand.
2. If you need a break, ask for one. Keep in mind how long you are on the witness stand and recognize that you may be tired and need a short recess/bathroom break.

Do not try and make up an answer.

1. If the question is a technical one and you need to refer to your notes/calculations to provide an answer ask to do so ("I am not certain, but if you will permit me to refer to my notes I believe that I can answer that question.") Whether your entity wants you to "go the extra mile" by providing such information is an issue that should be discussed in preparation for the hearing.
2. If the question is a factual one ("When did you speak to Mr. Smith") and you cannot remember - a proper response is "I don't remember" or "I don't recall."

Listen to the case as it is presented before you testify.

1. Pay particular attention to the "opposing witness" if there is one and feel free to take notes to carry with you to the stand.
2. You can frequently get a feel for what the Commission has identified as the important issues/facts in a case based on their questions, and you should prepare yourself to answer similar questions when you take the stand.
3. Do NOT roll your eyes, snicker or make other inappropriate noises when other witnesses are testifying or the lawyers speaking.
4. If you believe that there is an important point that you need to share with your attorneys, write it down and pass a note - it is rude to speak while a witness is on the stand and usually only confuses the attorneys who are trying to listen

When you are dismissed from the stand it is good form to say a simple "Thank You" directed at the Chairman.

After cross examination, your attorney may ask you more questions; this is called "redirect examination." The cross-examiner may then also ask more questions; this is called "re-cross-examination." If there are questions by the Commissioners, typically, questions concerning the Commissioner's questions are allowed. Remain in the witness stand until dismissed by the Chairman

DIRECT EXAMINATION

Your attorney's questions should be phrased to elicit complete factual statements from the witness. With few exceptions, leading questions are not permitted on direct examination but are allowed on cross-examination. The facts are supposed to come from the witnesses and should appear in the record in their own language.

PRESENTATION OF YOUR SUMMARY

1. Try not to read your summary. Be familiar and comfortable enough with your summary that you can maintain eye contact with the Commissioners during delivery.
2. Consider whether to use a PowerPoint presentation.
3. Decide whether including key points from your summary would be best presented via a graph, picture, diagram or chart.
4. Remember you want the Commissioners to focus on those facts that you believe are most persuasive to your case.
5. The Commission has equipment that will allow you to project a photo or other document on an overhead. While seated in the witness box, you can draw on the document that is being projected.
6. **REMEMBER:** USE INFORMATION THAT WAS INCLUDED IN YOUR PREFILED TESTIMONY. GENERALLY, YOU CANNOT ADD NEW DATA OR INFORMATION TO YOUR SUMMARY. (Exception: where information has changed and it is necessary to correct or update the information supplied in prefiled testimony. You should discuss these issues with your attorney when preparing your summary).
7. Practice the delivery of your summary.

A witness to an automobile accident was testifying. The following exchange took place between the lawyer and the witness:

The lawyer: "Did you actually see the accident?"

The witness: "Yes, sir."

The lawyer: "How far away were you when the accident happened?"

The witness: "Thirty-one feet, six and one quarter inches."

The lawyer (thinking he'd trap the witness): "Well, sir, will you tell the jury how you knew it was exactly that distance?"

The witness: "Because when the accident happened I took out a tape and measured it. I knew some lawyer would ask me that question."

CROSS EXAMINATION

Purpose of Cross-Examination

There are two primary purposes of cross-examination. One is to overcome, qualify, or explain testimony given on direct examination. The other is to attack the credibility, knowledge, and recollection of the witness by exposing inaccuracies in the direct examination or by exposing the witness' bias or prejudice toward the other side.

Types of Cross – Examination

There are two types of cross-examination: corroborative and destructive. Corroborative cross seeks to have the adversary agree with the facts which support your position. During this phase, the attorney tries to get the witness to agree with every good admission previously made in his favor.

Destructive cross discredits the adversary and his direct testimony. This type of cross-examination is more difficult to execute.

The main thrust of cross-examination will normally be to bring out all details that tend to show that the facts stated on direct examination are not probable or credible.

Remember the cross-examiner will look for the weak points in the witness' version of the story and focus his/her cross-examination on those areas.

Scope of Cross-Examination

A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.

Preparing for Cross- Examination

1. Identify the strengths and weaknesses of your testimony.
2. Prepare responses to address weak areas. Identify and have those key points from your testimony in bullet form in front of you to aid you in preparing responses.
3. Follow the tips provided in Section I of this Guide.
4. Listen to the question and tell the truth.
5. Do not be defensive. As a witness, you are there to present your findings on behalf of your entity.
6. Don't guess. If you don't know – say you don't know.
7. Don't argue with the cross-examining attorney.

COMMISSIONER QUESTIONS

1. Tell the truth.
2. Be direct.
3. Answer the question, but do not offer unsolicited information.
4. If you don't understand the question, say so.
5. If the Commissioner asks you for information that you do not have with you, but is information that can be provided, answer truthfully, but – defer to your counsel as to whether a late-filed exhibit can be provided.
6. Follow-up questions to Commissioner' questions may be allowed. However, the questions must be related to matters brought up by the Commissioner's question. Listen carefully to the questions asked by the cross-examining attorney as your Attorney may object if the question is unrelated to the Commissioners' questions.

RE - DIRECT

1. Questions on re-direct are limited to the matters covered in cross-examination.
2. Generally, re-direct is not pursued unless there is an error that needs to be corrected or it is clear the witness misunderstood the question posed in cross-examination, and the witness's testimony needs to be rehabilitated.
3. If your attorney is asking a question on re-direct, know listen carefully to the question.

RE - CROSS

Re-cross may be denied. If it is allowed, it is limited to matters covered in re-direct.



HANDLING OF CONFIDENTIAL INFORMATION

1. Make sure you read and understand the terms of any Confidentiality Agreement or Protective Order of the Commission calling for confidential treatment of information provided to you. Prior to reviewing confidential information, you must sign the confidentiality agreement. If you have any questions, talk to your Attorney.
2. When preparing your prefiled testimony make sure to highlight (in a light shade of grey) that information you believe has been designated as Confidential. If you have any questions as to whether certain data is Confidential, talk to your Attorney as soon as possible. Redacted copies of the testimony will need to be prepared and the confidential version must be hand delivered to the Commission for filing. In addition, a motion may need to be filed. It is very important to identify early in the process whether Confidential Information will be incorporated into prefiled testimony. At hearing, if you are asked a question by a Commissioner or an Attorney that requires you to divulge Confidential Information. STOP.
3. State that you cannot respond without divulging Confidential Information. At this point, either your attorney or the attorney seeking to preserve Confidentiality will request the Chairman to clear the room.



PRACTICE SESSION—Talk to your supervisor if you are interested in participating in a witness preparation class.

