

How do I prepare to be a witness in a collection trial? Preparation of a witness doesn't have to be complicated. Let your witness know the facts and your theory of the case, and what you hope to prove in court. You should also walk the witness through what happens in court — that she or he be called to the witness stand, sworn in, questioned by your lawyer, then cross-examined by the other side.

Sometimes there will be redirect, asking some follow-up questions based on the cross-examination, and then the other side will re-cross. Then, in all likelihood, the witness will be excused with the instruction not to talk to other witnesses about the case before the litigation concludes.

The witness should always speak freely, based on her own knowledge of the facts and circumstances, without a great deal of influence from anyone else. You should never give your witness a prepared speech or words to say. Most lawyers know funny stories about witnesses who were caught reciting memorized statements in court, or reading speeches they concealed in their clothing. But those stories aren't funny at all to the party who lost the case when it became clear to the jury that the witness was reading or reciting somebody else's words. It's even OK if they have to answer: "I don't know" to some questions...that's normal.

REMEMBER: Witnesses must be able to testify from their own recollection of what happened. That's true even if the witness isn't going to say exactly what you want to hear.

What if no one at our company has any personal knowledge of the collection issue? When no one has personal knowledge, do the best you can to create a solid paper trail: a clear set of records and documents for your witness, so it appears that your company keeps clear and accurate records of transactions and events. With good preparation, a disorganized company can come across as highly organized. With poor preparation, even a scrupulous company can look like it doesn't even know how to use a paper clip.

Sometimes you have to concede certain factual claims or issues because you don't have a witness to testify in response to the defendant's claims. If you discover that you have to concede issues that are very important to your case, it's time to negotiate and to settle your case for the best amount you can get. The facts and circumstances are what they are, and it's not always easy to make lemons into lemonade.

Do we always have to physically appear at the trial? Sometimes when a witness can't be physically present for trial, you can make arrangements to take testimony in advance, or to have him testify electronically. Under exceptional circumstances, it may be possible for a witness to testify at a hearing by remote communication such as by telephone or through videoconferencing.

Courts favor testimony that's given live, in court. Other methods of presenting testimony are the exceptions to the standard rules, and may be available under only limited circumstances. Start with the expectation that the judge will insist that the witness appear in person. Don't anticipate that you can present testimony by any other means unless you first confirm it with the court

Can my deposition be used? Sometimes a deposition or other form of sworn testimony can be preserved so that a witness doesn't have to be physically in the courtroom or dispute resolution hearing to be heard. Generally speaking, you must make arrangements beforehand, based on the unavailability of the witness for a hearing, and give all parties the opportunity to participate in the examination and cross-examination of the witness.



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