

DO'S & DON'TS OF GIVING TRIAL OR DEPOSITION TESTIMONY

(Privileged & Confidential Material: do not show to third parties until after case is completed)

- Tell the truth
- Take your time answering or reviewing documents given...it's important to understand what you are being asked about
- Verbalize your answers: the court recorder will not record you nodding your head
- Do not guess
- Do not make assumptions
- Say when and what you don't understand or agree with of *any part* of any question asked
- Clarify your disagreement/concern/issues with the opposing attorney's word choice or insinuations
- Do not answer something that you don't totally agree with the way the question was stated
- Do not answer something that rests upon an assumption or makes an implication, correct how the question was worded and say how the question asked is wrong before you answer anything
- Do NOT argue or ask questions of the Court, attorney or any other person in the room (except you should ask the attorney to clarify his/her question or ask the Judge if you have procedural questions).
- Only answer one question at a time, if the opposing attorney asks multiple questions then ask which question he/she wants you to answer and only answer one question at a time
- Limit your answer to ONLY what the person asked about and do NOT explain or go into any greater detail than asked
 - Answer based upon the question asked, no more and no less.
 - Do not answer about a similar incident/occurrence unless that is specifically asked about
- Try not to plead the 5th Amendment (that prevents testifying against yourself in regards to a possible crime): It makes you look guilty, looks like you're cherry picking and not telling the whole truth, and impairs your credibility.
 - Anyone, especially criminal defendants, can plead the 5th Amendment at any time during his/her testimony. However, if you take the risk of testifying you should limit your testimony to the specific question/fact/instance asked. NEVER voluntarily mention something that could constitute a crime or a separate offense (as you could be charged based upon your sworn, voluntary testimony).
 - One should only plead the 5th when such would be a direct or indirect admission of guilt to a crime or civil offense.
- Some questions can be answered yes/no, but try to first qualify or limit your answer before you give the yes/no answer if necessary to prevent yourself from looking bad or being stuck in a bad position
- If answering with a yes or no (when appropriate), do not say uh-uh (instead of no) or uh-huh (instead of yes). Each of those on a later recording can be interpreted as the other (to later try to contradict or impeach you).

- Do not volunteer information OR fill in silences even if the opposing attorney is giving you non-verbal signals for more information (such as a confused look, etc)
- Limit testimony to only what you know and not what you think
- You only “know” what you have personal knowledge of...saw, heard or observed for yourself
 - you don’t have personal knowledge about something some other person told you ...the only exceptions to that are if it was said by one of the parties or is against the person’s interest who said it
- State when you truly don’t remember something and do not go into the area further except what can remember about the question asked (if anything)
- Do not use extremes like “never” or “always” ...you will be made to look foolish
- Do not make unreasonable or outrageous comments/stances...you will lose credibility as a witness
- Do not contradict your stances on issues or your previous testimony
- do not get distracted by objections or badgering, stick to your answer regardless of how many different ways the question is asked
- do not get upset or become defensive, it will show in your answer...so ask to *take a break* when you don’t know the answer or when you need to recompose yourself
- do not answer legal questions that you do not know, indicate that whatever actions being asked about were pursuant to legal process or legal advice and stop there
- do not disclose anything said to your attorney or in the course of your representation...such information is privileged unless you waive such by disclosing it
- be who you are, be genuine...not rehearsed. You are who you are and you know what you know, so don’t change any of that, just don’t share too much or what wasn’t asked that doesn’t help you.
- know your own case and do not waiver on your stances on the issues: keep in mind all the big positives/defenses that help your case, all the big negatives/issues that hurt your case and how to mitigate or make the big negatives seem less bad (but do not make excessive excuses because the jury will think you haven’t taken responsibility for your actions)
- when objections are made, such is done to preserve the objection for the record. Since the Judge will not be present to rule upon the objections, you still must answer unless your Attorney specifically tells you not to answer (only done in limited cases due to privilege or unreasonable questions that result in irreparable harm)
- If testifying in Court or in front of a decision-maker (judge or jury):** Sit up straight in your chair, look attentive/interested/responsive, dress appropriately (nice pants & a nice shirt without slogans), cover up tattoos as much as possible, have a neat and clean appearance and use relatively decent grammar, address the Court and witnesses properly (your honor, sir/mam, officer, doctor, etc.)