PRE-TRIAL PREPARATION TIPS

Table of Contents

I. PURPOSE OF A TRIAL..... 2

II. DESCRIPTION OF A TRIAL..... 2

III. DRESS AND APPEARANCE..... 3

IV. CONDUCT DURING TRIAL..... 3

V. SUGGESTIONS FOR TRIAL AND PITFALLS TO AVOID..... 3

VI. DO NOT DISCUSS YOUR CASE WITH THE OPPOSING PARTY..... 6

VII. REMEMBER TO REMAIN CONFIDENT AND RELAXED..... 6

I. PURPOSE OF A TRIAL

As discussed, the purpose of a jury trial is to review facts of your injuries, past, present, and future pain and suffering, your medical treatment, past, present, and future lost wages, and similar elements of your claim in front a jury of your peers.

II. DESCRIPTION OF A TRIAL

Although each case is different, most trials progress in a similar manner. The first day of the trial will be spent interviewing, analyzing, and identifying those individuals that will sit on a jury panel to hear your case. After this is complete, attorneys will each have an opportunity to make an opening statement to the court and to the jury of the case. Thereafter, we will begin establishing your case by calling witnesses to testify. For each witness, the opposing attorney will have an opportunity to question them about their prior testimony.

The defense will then have an opportunity to call any witnesses they choose to make their case. We will now have the opportunity to question any of these witnesses about their prior testimony. Once all parties are finished with witnesses, closing statements will be made by all attorneys. At that time, the jury will be excused to begin their deliberations. The length of deliberations varies, and a decision can be rendered quickly or may take more time. Once the jury reaches a decision, we will be called back into the courtroom for the reading of the verdict.

Typically, the parties sit at separate tables with their attorneys and any other members of their office. Remember, while you are sitting at this table, you will be in view of the judge and jury and you should maintain a professional appearance. Remain attentive throughout the trial.

III. DRESS AND APPEARANCE

Your appearance is very important. The opposing party, judge and jury's first impression of you will be based on your appearance and your attire.

Attire: Please dress in a conservative, business-appropriate manner. For a complete list of appropriate attire read Dress and Appearance Tips for Legal Proceedings.

IV. CONDUCT DURING TRIAL

During your trial, the judge and jury will be observing your behavior, listening to questions and answers, and deciding the case on the basis of whom they believed and whom they liked more. How you present yourself is an important factor weighed by the jury. The jury is composed of people of diverse race, age, religion and status in life. Despite their charge to decide the facts of the case based on the presentation of witnesses and evidence, the impression you make on the jury will also influence their consideration of your case. Assume that some members of the jury will naturally like you and some will naturally dislike you. Conduct yourself in a professional manner and be aware of how you present yourself to the jury.

When, and if, you testify at trial, we will do our best to prepare you and minimize any apprehension you have. Taking the stand can be intimidating, but it is important to remember to remain confident, informed, solid, and apparently unshakeable.

When you are called to testify, you must approach the witness box and will be given an oath by the clerk. This affirms that you will testify truthfully and to the best of your ability. Your attorney will then ask you a series of questions. When we are finished, it will be the opposing attorney's opportunity to ask you questions based on the testimony you just provided (this is called cross examination). This questioning is similar to how the opposing attorney questioned you at your deposition. After the opposing attorney has finished her or his examination, we will be allowed to ask you questions based on the cross examination.

When you are called to testify, you may have to answer questions about facts you find distressing. For example, the opposing attorney may raise issues about your prior bad acts in an attempt to discredit you. This can make you feel embarrassed, angry or defensive. Although you feel this way, you need to remain composed so that any discomfort is not readily apparent to the jury. We will be prepared to diminish any harm the opposing attorney brings up through this questioning, but it is important that you do your part in making a good impression on the judge and the jury.

V. SUGGESTIONS FOR TRIAL AND PITFALLS TO AVOID

The following is a series of general rules developed as a result of participation in hundreds of trials. Many of these rules are similar to the rules given to you in the "Preparing for Deposition Booklet," however, there are some key distinctions. Please review them carefully; they can be of assistance.

A. TELL THE TRUTH.

Of course, this does not need to be stated. Everyone understands this. This paragraph is not included because of doubt about your credibility or honesty. On the contrary, I have faith in your integrity. However, in my opinion, every lawyer is obligated by the Rules of Professional Conduct to specifically inform his clients to testify honestly. The truth, whether in the deposition or on the witness stand at trial, will never really hurt a litigant. A lawyer may successfully "defend or explain" the truth, but there is no defending or explaining why a witness lied or concealed the truth. In the eyes of the judge or jury, untruth devastates the credibility of a witness and hurts immeasurably.

B. NEVER STATE FACTS THAT ARE BEYOND YOUR KNOWLEDGE.

Frequently, a witness is asked a question, and in spite of the fact that the witness feels she should know the answer, she does not. The witness is tempted to guess at or estimate the answer to avoid admitting lack of knowledge. This is a serious mistake. If you do not know an answer to a question, even though you think

you may appear uninformed or evasive by stating that you do not know, you should nevertheless admit your lack of knowledge. "I guess," "Possibly," "Probably," "Maybe," "The odds are that…," "I have no reason to doubt…," and similar answers are generally the wrong answers from which your opponents can show that you either do not know what you are talking about or that you are deliberately misstating. Often, the opposing attorney knows the answer to his question but asks nonetheless, hoping you feel compelled to guess. DO NOT GUESS! If you recall, state your recollection. If you do not recall, say that you "do not recall at this time". Provide no explanation of your failure to recall and offer no further assistance to the examiner.

C. NEVER ATTEMPT TO EXPLAIN YOUR ANSWER.

You are there to give the facts as you know them, and if a proper question is asked, you may be required to elaborate on your answer. However, you are not supposed to apologize for or attempt to justify those facts. Simply state the facts required to answer the question you were asked and then stop. A lawyer may look at you incredulously, smile, or pause for an extended time in order to make you self-conscious. Do not fall victim to this old tactic. Answer and stop.

D. DO NOT ANSWER A QUESTION WHICH CALLS FOR A SIMPLE "YES" OR "NO" WITH A STATEMENT THAT INVITES FURTHER PROBING.

For example, you may be asked "Did you speak with Mr. Smith last week?" If you answer "No, I didn't speak with him last week," you are in actuality saying "I spoke with him but not last week." Opposing counsel surely will continue questions concerning conversations with Mr. Smith. An answer of "No" is more likely to prevent further questioning.

E. DO NOT LET THE OPPOSING ATTORNEY OR PARTY GET YOU ANGRY OR EXCITED.

This destroys the effect of your testimony and you may say things which may be used to your disadvantage later. Attorneys sometimes try to get the opposing party mad, hoping that they will say things, which may be used against him. Remember to keep calm and collected. Under no circumstances should you argue with the opposing attorney.

F. IF THE JUDGE OR ANY ATTORNEY BEGINS TO SPEAK, STOP YOUR TESTIMONY IMMEDIATELY.

Do not speak again until the judge or attorney has completely finished speaking. Listen carefully to what they have to say. Attorneys may object to a question, so it is important not to answer the question if an objection has been raised in order to allow the judge to rule on the objection.

G. WAIT UNTIL THE QUESTION IS COMPLETED BEFORE BEGINNING YOUR ANSWER.

There are some pitfalls that may arise if you try to answer the question before it is completed. (1) Although you may anticipate the balance of the question, you may guess incorrectly, and as a result, answer incorrectly. (2) I may want to object to the question. My objection is lost if you answer too quickly. (3) In order to accurately transcribe your testimony, the court reporter must hear the complete question and answer. The reporter cannot accurately capture the words with two persons talking simultaneously. (4) You should think about both the question and your answer before you give your answer. Obviously, if you answer before the question is complete, you have not thought about the question. This is dangerous.

H. YOU MAY TAKE YOUR TIME IN ANSWERING A QUESTION.

Of course, you should answer in a direct and straightforward manner, so as not to give the opposing counsel the impression that you are composing an answer. However, you should avoid being drawn into a series of rapid fire questions and answers by the other side. Remember that the opposing counsel is attempting to encourage you to "blurt out" answers before you have time to think or I have time to object. Resist the temptation. TAKE YOUR TIME!

I. YOU ARE NOT REQUIRED TO GIVE INFORMATION THAT THAT IS PRIVILEGED.

If you are asked a question that would require you to give such information, simply state that your answer would have to be based upon information learned from your attorneys and say nothing more. Additionally, I may object to the question and the opposing attorney will likely not be able to ask you that question.

J. BE VERY CAREFUL ABOUT ESTIMATING TIME OR DISTANCE (OR ANYTHING ELSE).

Most people have difficulty with estimates. Examiners love for their witnesses to estimate because it creates a difficult situation for the examinee to resolve and can make them become uneasy, upset, or flustered. After an estimate you can expect a series of irritating questions attempting to require you to narrow the range of your estimates. Obviously, that is a trap into which you should not fall.

K. DO NOT TRY TO DECIDE BEFORE YOU ANSWER WHETHER A TRUTHFUL ANSWER WILL HELP OR HINDER YOUR CASE.

Answer truthfully. Your answer should not vary because of the effect you believe the answer will have on the case. The witness stand is a relatively poor place to make hurried judgments about the legal consequences of testimony. Avoid the temptation to adjust your answer in accordance with its possible consequences.

L. REMEMBER THAT YOUR RECOLLECTION HAS FADED WITH RESPECT TO MANY OF THE ISSUES IN THIS LITIGATION.

Never say "my memory is bad," "I'm not good at remembering names," or anything similar. This is a form of apology or justification for not remembering (see paragraph (B) above). You do not owe anyone an apology or explanation for not remembering. Simply state "I do not recall at this time," and stop. Never say, "I do not remember, it's been too long—it's been ten years." Other things affect recollection as much, or more than, time. For instance, you probably recall where you were and what you were doing during a historic event. You may not recall what you were doing last week. The point is that the importance, complexity, duration, or intensity of an event affects recollection more than the passage of time. At any rate, do not apologize for or attempt to explain a failure of recollection.

M. WATCH OUT FOR LEADING QUESTIONS.

The opposing lawyer is trying to either characterize your testimony by using terms favorable to his case or require a short answer to a question garnished with words that are argumentative or "loaded." If you have given a satisfactory answer, stick with it. If opposing counsel continues to ask you leading questions, your attorney may object. You need not accept opposing counsel's characterizations or limit yourself to his vocabulary.

N. IF YOU ARE HANDED A DOCUMENT BY COUNSEL AND ASKED A QUESTION ABOUT IT, MAKE SURE YOU READ THE DOCUMENT BEFORE YOU ANSWER THE QUESTION.

If you don't recall certain testimony, you may be asked to refresh your recollection using a document. Do not read this document aloud. Instead, use it only as an aid to remember facts that you have forgotten or don't entirely recall. Do not be concerned or nervous if the document is lengthy and requires time to read. Read it carefully, and then return the document to counsel to resume your testimony.

O. IF YOU DO NOT UNDERSTAND THE QUESTION, INSIST THAT OPPOSING COUNSEL REPHRASE IT.

If the question contains a premise with which you disagree or about which you have no knowledge, do not answer the question or answer it only after you have related your disagreement or lack of knowledge. We should not help our opponent by providing the answers to poorly phrased questions. We should make them work for every bit of information they require.

Several times during your testimony, objections may be made by me on your behalf. Most objections are to preserve privileges that you may have. Others may be to preserve the objection for appeal. Do not be disturbed or confused by my objection. The judge will rule on the objection and sometimes may require attorneys to present their justification for the objection. Wait until the objection has been ruled on, and then, the examiner will resume questioning and you may answer his next question and continue your testimony.

P. NEVER JOKE DURING A TRIAL.

Humor may not be apparent and you may look crude or cavalier about the truth. Avoid flippancy. Never use profanity—not even "hell" or "damn." Never use racist, sexist, ethnic, religious, or other slurs. Remember, the jury will be assessing your behavior. A jury trial is serious business and therefore requires a serious demeanor..

Q. BEFORE, DURING, AND AFTER A JURY TRIAL, DO NOT CHAT WITH THE OPPONENTS OR THE OPPOSING ATTORNEY.

Remember, the other attorney and the opposing parties are not your "friend" for purposes of this case. If the opponent(s) or the opposing attorney initiate a conversation with you, respond politely and promptly end the conversation. Do not let their friendly manner cause you to drop your guard. Also, while I will be "friendly" and professional, it does not mean that I believe they are acting reasonably. This is a decision that we will make as the trial progresses.

VI. DO NOT DISCUSS YOUR CASE WITH THE OPPOSING PARTY

Remember, the other attorney and the opposing party(ies) are not your "friend" for purposes of this case. Do not let their friendly manner cause you to drop your guard. Again, attorneys sometimes try to get the opposing party mad hoping that they will say things that may be used against them. Further, you may encounter the opposing party or their attorney outside the courtroom. Under no circumstances should you discuss your case with the opposing attorney or speak to me about your case while anyone else is present. If there is something you wish to discuss, ask me to speak with you in private, so I can discuss such with you.

VII. REMEMBER TO REMAIN CONFIDENT AND RELAXED

The trial is the time to finally present your case to the jury. Now you will be able to have your side of the story heard. Of course, the other side will be presenting their facts, allegations, witnesses and evidence. Do not get

discouraged if you hear something you fear is damaging to your case. The jury will be deciding the case on a variety of factors, some very subjective, and it is extremely difficult to predict their verdict. Just remember that we are well prepared and be confident.

I apologize for the length of these instructions. However, your trial is very important, and I want to give you the benefit of these suggestions. Actually, trial is not difficult if we are well prepared, confident, and relaxed. I believe that you will be more confident, well prepared, and relaxed if you read and re-read these instructions carefully and participate in your pre-trial conference.