

## **GUIDELINES FOR STUDENTS ACTING AS ATTORNEYS AND WITNESSES**

These guidelines provide information for students as they prepare to be witnesses and attorneys in mock trials.

### **A. GENERAL SUGGESTIONS**

1. Always be courteous to witnesses, other attorneys, and the judges.
2. Rise when addressing the judge.
3. Direct all remarks to the judge or witness, not to opposing counsel.
4. Don't make objections unless you are relatively sure that the judge will agree with you. Judges don't appreciate attorneys who constantly make objections or attorneys who make objections without being able to explain the reason for them.
5. If the judge rules against you on a point or in the case, accept the defeat gracefully and act cordially toward the judge and the opposing team.

### **B. ATTORNEYS**

1. OPENING STATEMENTS:
  - a. Objective: To acquaint the judge with the case and to outline what you are going to prove through witness testimony and the admission of evidence.
  - b. What Should Be Included:
    - (1) A short summary of the facts;
    - (2) Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has the burden in this case;
    - (3) The applicable law;
    - (4) A clear and concise overview of the witnesses and physical evidence that you will present and how each will contribute to proving your case.
  - c. Advice in Presenting:
    - (1) It is essential that you appear confident in your case.
    - (2) Use eye contact when speaking to the judge.

- (3) Use the future tense in describing what you will do (*i.e.*, “The facts will show,” or “Our witnesses' testimony will prove”).
  - (4) Do not read too much. Lookup occasionally at the judge.
- d. Other Suggestions:
- (1) Learn your case thoroughly (facts, laws, burden of proof, etc.).
  - (2) Avoid too much narrative detail about witness testimony. Avoid exaggeration and overstatement of facts that may not be proven.

## 2. DIRECT EXAMINATION

- a. Objective: To obtain information from favorable witnesses you call in order to prove the facts of your case, to present your witness to the greatest advantage, to establish your witness's credibility and to present enough evidence to warrant a favorable verdict.
- b. What Should Be Included:
- (1) Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.
  - (2) Be sure that all items you need to prove your case will be presented through your witnesses.
  - (3) Use clear and simple questions.
  - (4) Never ask a question to which you don't know the answer.
- c. Advice in Presenting:
- (1) Try to keep to the questions that you've practiced with your witnesses and ask a limited number of questions.
  - (2) Be relaxed and clear in the presentation of your questions.
  - (3) Listen to the answers.
  - (4) If you need a moment to think, don't be afraid to ask for a moment to collect your thoughts or to discuss a point with your co-counsel.
  - (5) Be sure to have all documents marked for identification before you refer to them at trial. Then refer to them as Exhibit 1, or Exhibit A, etc. After you have finished using the exhibit, if it helps your case, ask the judge to admit it as evidence.

- d. Other Suggestions:
  - (1) Avoid asking leading questions.
  - (2) Practice with your witnesses.
  - (3) When your facts are in evidence, stop questioning and say “No further questions” or “Your witness.”

### 3. CROSS-EXAMINATION

- a. Objective: To obtain favorable information from witnesses called by the opposing counsel and if a witness has no testimony favorable to you, to make that witness less believable.
- b. Types of Questions to Ask:
  - (1) Questions that reflect on the witness' credibility by showing that he or she has given a contrary statement at another time (for example, the witness first testifies to not being at the scene of an accident and later admits to being there). When such an inconsistency arises, ask the witness, “Did you make this statement on June 1<sup>st</sup>?” Then read it or show a signed statement to the witness and ask, “Is this your statement?” Then ask the witness to read part of it aloud or read it to the witness yourself and ask, “Did you say that?”
  - (2) Questions that show that the witness is prejudiced or biased or has a personal interest in the outcome (*i.e.*, the witness testifies that the defendant was her landlord and evicted her).
  - (3) Questions that weaken the testimony of the witness by showing that his or her opinion is questionable (*i.e.*, the witness with poor eyesight claims to have observed all the details of a fight that took place 50 feet away in a crowded bar).
  - (4) Questions that show that an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience (*i.e.*, a high school student or even a dentist testifying that in her opinion the defendant suffers from a chronic mental disease).
- c. Advice in Presenting:
  - (1) Be relaxed and ready to adapt your prepared questions to the actual testimony given during the direct examination.
  - (2) Always listen to the witness' answer.

- (3) Avoid giving the witness an opportunity to re-emphasize the points made against your case during direct examination.
- (4) If the witness is in fact “hostile,” don't give him or her an opening to explain anything. Keep to the “yes” or “no” answers whenever possible. Try to stop the witness if his or her answer or explanation is to hurt your case, by saying, “You may stop there. Thank you,” or “That's enough. Thank you.”
- (5) Don't harass or attempt to intimidate the witness.
- (6) Don't quarrel with the witness.

d. Other Suggestions:

- (1) Anticipate each witness' testimony and write your questions accordingly but be ready to adapt your questions at trial depending on the actual testimony.
- (2) In general, ask only leading questions (questions that suggest the answers and normally only require a yes or no answer).
- (3) Be brief. Don't ask so many questions that well-made points are lost.
- (4) Prepare short questions using easily understood language.
- (5) Ask only questions to which you already know the answer.

#### 4. CLOSING ARGUMENTS

- a. Objective: To provide a clear and persuasive summary of the evidence you presented to prove the case, along with the weaknesses of the other side's case, and to argue for your position.
- b. What Should Be Included:
  - (1) Thank the judge for his or her time and attention.
  - (2) Isolate the issues and describe briefly how your presentation addressed these issues.
  - (3) Review the witnesses' testimony and physical evidence. Outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses.

- (4) Argue your case by stating how the law applies to the facts as you have proven them.
  - (5) Remind the judge of the required burden of proof. If you have the burden, you must convince the court you have met it. If you do not, you must convince the court that the other side has failed to meet its burden.
- c. Advice in Presenting:
- (1) Do not read all the way through. Keep eye contact with the judge or at least look up occasionally.
  - (2) Be an advocate-forcefully urge your point of view. Avoid a boring review of the facts.
  - (3) Argue your side, but don't appear to be blind to the other side's arguments. Fairness is important.
  - (4) Be very careful to adapt your statement at the end of the trial to reflect what the witnesses actually said and what the physical evidence showed.

## **C. WITNESSES**

### 1. GENERAL SUGGESTIONS

- a. If you are going to testify about records or documents, familiarize yourself with them before coming to trial.
- b. When answering questions, speak clearly so that you will be heard.
- c. Listen carefully to the questions. Before you answer, make sure you understand what has been asked. If you do not understand, ask that the question be repeated or clarified.
- d. If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to do so.

### 2. DIRECT EXAMINATION

- a. Advice in Preparing:
  - (1) Learn the case thoroughly, especially your witness statement.
  - (2) Review your testimony with your attorney. Know the questions that your attorney will ask and prepare clear and convincing

answers that contain the information the attorney is trying to get you to provide.

b. Advice in Presenting:

- (1) Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.
- (2) Don't recite your witness statement verbatim. You should know its content beforehand so that you can paraphrase it or put it in your own words, but be sure that your testimony is never inconsistent with, nor a material departure from, the facts set forth in your affidavit.

3. CROSS -EXAMINATION

a. Advice in Preparing:

- (1) Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies or problems in your testimony and be prepared to explain them as best you can.
- (2) Practice with your attorney, asking him or her to act as opposing counsel.

b. Advice in Presenting:

- (1) Be as relaxed and in control as possible - an appearance of confidence and truthfulness is important. Speak loudly and clearly enough to be heard by the judges.
- (2) Don't panic if the attorney or judge asks you a question that you haven't rehearsed. Don't be afraid to buy time by saying something like "Excuse me just a moment while I try to remember."
- (3) Be sure that your testimony is never inconsistent with, nor a material departure from, the facts set forth in the witness statement. Minor and inconsequential embellishments are acceptable as long as they can be reasonably inferred from the fact statement. If asked on cross-examination to testify about information that is not a part of the case materials, you may invent an answer that is consistent with the other affidavits and facts in the trial. This is in fact an opportunity to create an answer helpful to your side.

Witnesses should keep in mind that such an answer can be disruptive when the other side objects and may even open the door to the judge issuing an adverse special ruling against you. The

wiser course may be to respond in character, but with an innocuous answer, such as “I don't remember” or “I don't believe I can answer that question, would you please rephrase it?” If pressed, you may still prefer to step out of character and say “I don't know. That's not included in the case materials.”