

PRACTICAL COURTROOM TIPS IN A DOMESTIC CASE

[This handout was adapted from a similar one created by Feder, Morris, Tamblyn & Goldstein, P.C., of Denver, Colorado, and is used with their permission.]

1. **Tell the truth**

No one expects perfection, but if you tell the truth you will not be tripped up on cross-examination and the judge will believe you.

2. **Do not guess**

"I don't know" or "I don't remember" are acceptable answers, but guessing can get you into trouble on cross-examination.

Remember -- there's a real difference between "No" and "I don't remember."

For example, if you answer on cross that you don't remember whether something happened it means that it may or may not have happened. If the event could not have happened, then your answer should be "No."

If you are asked, "Isn't it true that you kept \$20,000 in a safe deposit box?" the answer is clearly "No, that is not true," as opposed to "I don't remember."

3. **Be sure you have heard and understand the question**

If you do not hear a question or do not understand it, do not try to answer based on what you think the question was. Instead, simply ask opposing counsel to repeat the question. Always wait for the lawyer to finish the question before beginning your answer. This may be difficult advice to follow. Remember, a question may actually contain several questions requiring several answers one at a time.

4. **Take your time**

Use good judgment in answering questions. Consider every question and give it some thought, if necessary, but do not look like you are stalling for an answer.

5. **Speak loud enough for everyone to hear**

Do not chew gum. Keep your hands away from your mouth. Remember that you must verbalize your answers, not just nod your head. The court reporter must write down everything you have to say.

6. **Look at the Judge**

From time to time during your testimony, especially at important points, look the judge straight in the eye. Don not forget that the judge is the person who must be persuaded by what you have to say.

7. **Do not argue with opposing counsel**

Keep your composure no matter what the other lawyer or your spouse does. Never lose your temper or let them provoke you. The judge may excuse a lawyer who misbehaves in the name of zealous advocacy, but if you act out, it will affect your credibility. The ruling of the judge will usually reflect a definite dislike for the spouse who is angry or flippant.

8. Be courteous

Say "yes, sir" or "ma'am" to opposing counsel, and if you must address the judge, use "Your Honor." Sometimes the other lawyer may interrupt you while answering. Let her finish the new question and then say: "Before I answer, I need to finish my answer to the last question."

9. Do not make jokes or wisecracks

Remain a lady or gentleman at all times. Be honest, straightforward, and courteous. Watch the tone of your voice.

10. If you hear an objection

Stop answering immediately and say nothing until the judge rules on the objection. "Overruled" means you must answer, "sustained" means you must not. Do not worry about remembering legal terminology. Either the judge or the lawyers will tell you what to do. Never interfere with dialogue between the judge and lawyers about objections or other matters.

11. Do not answer a question with a question

Opposing counsel is not on trial. Any combativeness toward that lawyer will irritate the judge.

12. You must answer every question

Do not bother to ask your lawyer or the judge if you must answer a particular question; unless an objection is made and sustained, you must answer.

13. On cross-examination

When you are being cross-examined the other lawyer will be asking you questions that, typically, require a "yes" or "no" answer. Remember -- that other lawyer is trying to get you to make statements that will hurt your case. Do not simply react to a question; it's important to think about your answers. Also, if the "yes" or "no" response that you give does hurt your case, the next words out of your mouth should be, "But can I explain?" The judge will allow you to explain your answer which will lessen or completely remove the damage that would have been done by a simple one word response.

14. Be positive and firm in your answers

You know you are telling the truth and you are well- prepared, so do not be intimidated by the other lawyer. If you are worried about your answer, do not show it. Do not memorize what you are going to say. Memorized testimony is not believable.

15. It's OK to cry

Don't be surprised if during your testimony you become emotional and cry. It

can be upsetting to talk about personal matters in Court. The judge will understand, and, in fact, it may add to, rather than detract from your credibility. If you need a tissue, a drink of water, or a break to compose yourself, just ask the judge for permission.

16. Remember that the judge is watching you

Not only during your testimony, but also at counsel table. Do not overreact during the testimony of other witnesses. Do not lose your temper. It doesn't make points with the Court, and it usually lessens the judge's respect for you.

17. Notes to me during trial

If you want to communicate with your lawyer while someone is testifying, write a note. Do not nudge or whisper to your attorney. It may be possible to listen, read and write at the same time, but no one can listen to the witness, the lawyer, and the client all at the same time!