

Family Case Tip Sheets

Using Witnesses at Trial

This Tip Sheet was created to help you prepare when using witnesses in a Family Law trial. The information provided is general in nature and should not be taken as legal advice. Only a lawyer can provide legal advice.

Who Will Your Witnesses Be?

Testifying in Court means that witnesses give spoken evidence under oath. Think about who might need to testify at your trial as soon as possible. You will have to tell the Court who your witnesses will be at the Trial Readiness Inquiry, if one is scheduled for your case. This can be up to 30 days before the first day of your trial.

Preparing Questions to Ask Your Witnesses

Before the court hearing, write down the questions you want to ask your witnesses and the purpose of each question. Use these notes as a guide when you question each witness. Do the same thing for the questions you want to ask when you cross-examine the other side's witnesses.

Making Sure Your Witnesses Show Up

Talk to each person you want to have as your witness as soon as possible and make sure they know when you will need them to come to court for you. If an important witness cannot or does not want to come to court, explain that you can get a subpoena from the Court Registry (a document that requires them to attend) to make sure they come. You will also need to prepare an Affidavit of Service for each person you have subpoenaed. The Affidavit of Service is a court document that proves that the potential witness was informed about the date of the trial.

Questioning Witnesses

When you are questioning your own witness you can use open-ended questions. These questions are ones that cannot be answered with a yes or no. Examples would include "What did you do that day?" or "Why do you think that?"

After you question your witness, the other party will also have a chance to question that witness. This is called cross examination. Make sure your witnesses know that the other lawyer or other party may ask them some questions about the evidence they have given. The judge may also ask questions.

You'll also have a chance to cross examine the other party's witnesses. If the witness knows something that would be helpful to you that they haven't said, you can ask them questions about this information. When you cross-examine you can use close-ended questions. These are questions that may be answered with a yes or no. Examples would be "You went to the park that day didn't you?" or "Are you sure you went to work that day?"

Taking Notes as Witnesses Speak

Write down what each witness says, as accurately as you can. If a witness testifies about the exact words someone said, record what they say exactly, word for word. As you cover each question, mark beside it whether you made your point through the witnesses. If something else happened, make a short note of it. Before you finish, make sure you asked all your questions and made all your points.