

Progressive Life Center

Child Welfare Social Workers

The Law, the Legal Process & the Courtroom

April 14, 2008
9:30 AM-2:30 PM

1933 Montana Avenue, NE
Washington D.C.

Presenter
Harvey Schweitzer

What Does it Take to be a (Really Good) Witness?

- a. Who is asking you to testify
- b. How to prepare your testimony-Who helps you
- c. Reviewing records and taking notes prior to testifying
- d. The usual advice
 1. Know the facts
 2. Know the record
 3. Do not memorize
 4. Speak slowly and clearly
 5. Answer the question asked
 6. It's O.K. to say "I don't know"- No guessing
 7. Conforming your testimony to other witnesses- Don't
 8. Answer positively-Not doubtfully
 9. Admit sympathy/belief
 10. Be careful with what you say and how you say it- Beware of inconsistencies
 11. Correct mistakes immediately
 12. *Be ready for the first question*

FAQ's

- a. What is can I do with (my) records before I testify and when I testify?
- b. What is the difference between Hearsay and Personal knowledge?
- c. What is a business record?
- d. What is past recollection recorded?

- e. What is present recollection refreshed?
- f. What is an official record?

Tell the Truth

- Do not "stretch" your knowledge to fill in gaps or to gain credibility.
- Be especially careful of dates and times and repetitive situations such as visits.
- Qualify your answer if you do not know specifics: "generally," "often," "usually," "sometimes," are okay!
- Explain why you cannot be more specific: "there were 25 visits last year; I do not remember each one of them."

Be Yourself

- Difficult in a stressful situation.
- Do not use humor to defuse the situation; it backfires.
- Sincerity is the goal.
- Promote your assets and acknowledge your liabilities.
- Establish credibility.

Do Not Equivocate

- Be definite and firm about what you know and admit what you do not or can not know.
- Feelings and concerns are not helpful or relevant.
- Usually you are a fact witness; what you "think" or "believe" is irrelevant.
- Stay away from phrases like: "It seemed like..."
- Answer positively.

Make Sure You Understand the Question

- Never even try to answer a question you do not understand.
- Ask that the question be repeated or for clarification!
- Beware of lawyerly gobblygook.
- Do not answer compound questions: "When you first met Ms. Jones in her home on June 29th where was she living and what, if anything, did she tell you about what you wanted her to do to get her children returned to the home?"

Be Humble

- Do not boast or over-advocate.
- Be prepared to admit biases, beliefs, prejudices and sympathies and how they will or will not

How to be a Better Witness in Court

Child & Family Services Agency/Virginia Commonwealth University

**James Marsh, The Children's Law Center, Inc.
Harvey Schweitzer, The Center for Social Work Management**

We will present simulations of courtroom testimony that will illustrate examples of situations that arise in judicial proceedings including:

- a. Qualifying the witness as an expert**
- b. Introducing a written document ("business" record)**
- c. Using the case file to remember testimony (refreshing recollection)**
- d. Using the case file as testimony (past recollection recorded)**
- e. Using case note summaries**
- f. "I don't know the answer" – "I'm not sure"**
- g. Being asked for a yes or no response to a question**
- h. "Opening the door" in cross-examination**
- i. Being asked a question you don't think you need to answer**
- j. Prior and subsequent workers' notes**

How to be a Better Witness in Court

Some courtroom concepts of importance to social workers

- a. What is an expert witness
- b. What is the "special observer" concept
- c. What is the "lay person's opinion" concept
- d. Why do you need to know the difference between hearsay and first-hand knowledge
- e. What are the "rules of evidence"
- f. What is an "objection"
- g. What is a "leading question"
- h. What is relevancy and materiality
- i. What is the "rule on witnesses"
- j. What is "ultimate issue" testimony
- k. What is "judicial notice" and when is it used
- l. What is an "official record"
- m. What is a "hypothetical question"
- n. What is a "party admission"

Practice Tips and Pointers

- a. How to Prepare to Testify and who should help you
- b. When to say more-When to say less
- c. Correcting mistakes in testimony on direct and cross-examination
- d. Explaining deficiencies and errors in the case work
- e. Dealing with a difficult lawyer-Don't get mad, get even
- f. Too much legal knowledge?
- g. The danger with having "feelings and concerns"
- h. Answering questions positively not doubtfully *or* What's wrong with saying: "I think, It seems"
- i. Know the facts-Know the record
- j. Do not memorize testimony/Do not read testimony
- k. Influence of the testimony of other witnesses
- l. Be ready for the first question
- m. Correct mistakes immediately
- n. Be prepared to admit biases, beliefs, prejudices and sympathies and how they did or did not influence your testimony
- o. Answer the question asked
- p. Tell the truth, the whole truth and nothing but the truth