

One Hundred and Twenty-Four Useful Rules for Witnesses

1. Listen to the question. Pause. Think before you answer.
2. Make sure you understand the question. Don't answer unless and until you understand the question.
3. If you don't understand the question, say so. Ask the questioner to explain, repeat, or rephrase the question.
4. Tell the truth.
5. Answer clearly and directly.
6. If you don't know the answer, say "I don't know."
7. If you don't remember the answer, say "I don't remember."
8. Don't confuse "I don't know" with "I don't remember."
9. Where appropriate, qualify your "I don't remember" answer. Say something like "I don't remember at this moment" or "I don't remember without looking at" the document that is the subject of the question.
10. Answer "yes" or "no" if appropriate.
11. Don't answer "yes" or "no" to a yes-or-no question if the question cannot be answered accurately with "yes" or "no."
12. Where appropriate, ask for documents that will aid your memory, saying something like, "I don't remember at this moment what I wrote but if you show me the document it may help me answer your question" or "If you'd like me to tell you what the document says, please show it to me."
13. Don't speculate.
14. Don't guess.
15. Speculate or guess if you are asked to speculate or guess, but qualify your answer by identifying it as speculation or as a guess.
16. If you are unable to speculate or guess, say so. Where appropriate, explain why, saying something like "I am unable to speculate on that because I don't have sufficient information."
17. Don't feel obligated to speculate or guess because the questioner suggests, and tries to make you feel, that you "should" know the answer.
18. Don't be embarrassed if you can't answer a question because you feel you "should" know the answer. If you don't know the answer, say so. If you can't remember the answer, say so.
19. Don't assume.
20. Assume if you are directed to make assumptions. Then make sure the assumptions are clearly stated. Qualify as appropriate, e.g., "At your direction I am assuming that the car was traveling at 60 m.p.h. even though I have no knowledge of the speed. Based on the assumption you want me to make my answer is ..." or "What you're asking me to assume is an impossibility."
21. Be positive, assertive, confident, certain, strong, and precise.
22. Be certain or be quiet.
23. If you can't be precise, and you must approximate, say so. Say something like "it was around three p.m." or "it was about 50 feet."
24. Answer only the question asked.
25. Don't volunteer. Never volunteer.
26. Don't help the questioner by answering the question that should have been asked.
27. Don't help the questioner by supplying information to fix the question.
28. Where appropriate, don't answer the question as asked. Rephrase the question as part of your answer. For example:
 - o Q. Isn't it true the car was blue?

A. It was blue, but it wasn't a car. It was a pick-up truck.

29. Don't let the questioner put words in your mouth. For example:

- o Q. Isn't it true the car was blue?

A. No.

Q. What color was it?

A. I would call it aquamarine.

30. Don't ask the questioner questions about the questioner's questions. If you don't understand the question asked, say you don't understand.
31. Don't think out loud.
32. Don't be apologetic or self-deprecating. ("Oh, I should know the answer. My memory is going.")
33. Answer questions; don't offer editorial comment. ("That's a good question." "That's an interesting question." "I'm glad you asked me that question.") If you need time to think about your answer, pause and think—silently. When you're ready to answer, answer.
34. Don't give wishy-washy, weasely, equivocal answers—"possibly," "probably," "maybe"—where you can and should be positive, assertive, confident, certain, strong, and precise.
35. Beware of imprecise questions, that contain wishy-washy, weasely, equivocal words like "possibly," "probably," "maybe."
36. Don't exaggerate or overstate.
37. Answer from your personal knowledge, based on what you experienced with your senses, what you saw, heard, touched, tasted and smelled.
38. Give short, succinct, concise answers.
39. Remember the transcript. Annunciate. "Uh-huh" can be erroneously recorded as "un-unh" and *vice versa*. Non-verbal communication—body language, gestures, voice tone, etc.—does not make it into the transcript.
40. Don't use formulations that dilute your credibility. If you preface your answer with a term like "frankly" you are suggesting that you may be other than frank when giving answers not labeled as being frank. The same is true of formulations like "the truth is ...," "to be totally honest ...," etc.
41. Don't go off on tangents. Stick to the point. Don't ramble. Don't respond with extraneous details and irrelevancies.
42. Don't offer information that wasn't requested. You are not obligated to provide all details and relevant information if not asked for it.
43. Give complete answers. Don't omit important details and relevant information.
44. Don't engage in "mind-reading" by testifying to what others thought or felt. Instead, testify to what you saw and heard; the fact-finder can draw the proper conclusions about what the others thought or felt, if relevant.
45. Pay attention. Focus. Concentrate.
46. Listen to every objection. Stop talking when an objection is made. Think about the objection. It may call your attention to a flaw in the question. If I object, it usually means the question and answer are important. Don't answer until I direct you to answer, after the objection is completed.
47. If I instruct you not to answer, follow my instruction. Don't answer.
48. If I instruct you to answer, answer, but follow the rules, i.e., listen to the question, pause, think before you answer, etc.
49. After an objection, wait for my instruction. Don't follow the questioner's instruction. Wait to hear from me.
50. I'll only instruct you not to answer if we have a sound legal basis for refusing to answer and we have a reason to keep the testimony out. Generally, this will occur when the question asks for privileged information or the inquiry is abusive or otherwise grossly improper. If we're at trial,

the judge will generally rule immediately, and either sustain (grant) the objection or overrule (reject) it and direct you to answer. At deposition, however, generally you have to answer all questions, even if they ask for irrelevant information.

51. Be calm. Don't get angry.
52. Be controlled. Don't ventilate.
53. Don't argue with the questioner. Leave the arguing to the lawyers. Your job is to answer questions.
54. Be polite and courteous.
55. Be serious. Your testimony is no place for humor, sarcasm or irony.
56. Beware of unfamiliar terminology and expressions in questions.
57. Use words and terminology that are comfortable for you. Answer "in your own words."
58. Don't use offensive language. Don't use profanity, except as appropriate.
59. Don't let the questioner interrupt your answer. Say something like "I haven't completed my answer. May I complete my answer?"
60. Don't interrupt the questioner. Listen to the entire question.
61. Don't answer a question until you have heard the entire question.
62. Pause and think as long as necessary before answering.
63. Look the questioner in the eye while being questioned.
64. Look the questioner in the eye while answering.
65. Remember the transcript. You are dictating. Watch the court reporter while answering. Make sure the court reporter hears your answer. Help the court reporter with spellings, unusual words, etc.
66. Don't look at me or anyone else as if you need help answering.
67. Correct mistakes. If you realize you've been inaccurate or incomplete, say so. ("Excuse me. A few minutes ago you asked me how many times I requested my personnel file and I said three. I just remembered that I asked a fourth time, too.")
68. Request recesses: bathroom breaks, time to stretch, for a cigarette, for a cup of coffee.
69. Don't use drugs, prescription or otherwise, that will affect your performance.
70. Don't chew gum while testifying.
71. Don't eat candy, or anything else, while testifying.
72. Turn off your cell phone. Turn off your pager.
73. Be on your best behavior.
74. Don't cop an attitude. Don't be arrogant, flippant, hostile, evasive, uncooperative, nasty or superior.
75. Be yourself.
76. Dress appropriately.
77. Dress comfortably.
78. Be comfortable with the questioner's pauses and silences. Don't feel obligated to fill silences. Answer the question, stop, and wait for the next question.
79. Don't answer a question with a question, rhetorical or otherwise. If you can answer, answer. If you don't understand the question, say so.
80. Keep in mind that no matter how pleasant the cross-examiner, the cross-examiner has interests different than, and likely hostile to, your interests.
81. The cross-examiner is not your friend. Be civil but don't chat, socialize, or explore common acquaintances. Business is business.
82. If appropriate and useful, write notes outlining your answer before you give it, to make sure it is complete and organized. Don't write anything you don't want the cross-examiner to see.
83. Beware questions that assume facts, as in "Have you stopped beating your spouse?"
84. Beware questions that require a choice between alternatives selected by the questioner, like "Was the light red or green?" If appropriate, answer "neither" and wait for the next question.
85. Beware questions that purport to summarize your earlier testimony.
86. Beware questions that rephrase your earlier testimony.

87. Beware compound and multiple questions.
88. Beware vague questions.
89. Beware ambiguous questions.
90. Beware questions about what “might have,” “could have,” “must have,” or “possibly” happened.
91. Beware questions that use absolutes, like “never” and “always.”
92. Be careful of answering with absolutes, like “never” or “always,” unless you are absolutely sure.
93. Answer the question first, then add explanations: “Yes, except that ...” or “No, but ...”
94. Speak up.
95. Sit up straight.
96. Nothing is “off the record,” even if the court reporter isn’t recording.
97. Don’t object. Be the witness, and let me be the lawyer.
98. Beware questions that foreclose later recollection, like “Have you told me everything about the events of March 15?” Answer something like: “I have told you everything that I can recall right now.”
99. It is proper that you prepared for your testimony.
100. It is proper that you discussed your testimony with me.
101. Acknowledge what you did to prepare your testimony, including review of documents, interrogatories, deposition testimony, notes, etc., unless I instruct you not to answer because the questions calls for privileged information.
102. Review everything in advance.
103. Don’t review anything in advance that you don’t want to have to acknowledge having reviewed.
104. Review only what I tell you to review.
105. Don’t bring anything that you don’t want to be questioned about.
106. Bring what you need: checklists, documents key to your testimony, notes, etc.
107. Show me everything you’ve brought before the deposition starts.
108. Don’t answer questions about a document until you have read the document. (“If you’d like me to answer that question, I’d need to review the document.”)
109. Take your time and read any document that you’re questioned about. Take as much time as necessary. Let the cross-examiner wait for you.
110. Don’t assume anything about the authenticity of a document. Check it. Look at the dates and the signature. Make sure all the pages are there. Don’t identify it unless you are positive.
111. State appropriate qualifications regarding your review of a document, like “This is a 57-page document. I’ve only had time to skim a few pages. If you want me to review it thoroughly so I can answer your questions definitively, we should go off the record for a couple hours.”
112. Tell me about all the skeletons in your closet now, so we can prepare for cross-examination. No surprises. Our discussion is privileged.
113. Admit what you have to admit.
114. Don’t admit what isn’t true.
115. Don’t be evasive. If you’re worried about being cross-examined on some subject, tell me now. Tell me what you’re worried about and why. I’ll help.
116. Don’t agree with the cross-examiner unless you are satisfied that the leading question is 100% accurate. Your “yes” or “no” answer to a leading question makes the premise and phrasing of that question your sworn testimony.
117. Don’t worry about hearsay. Some hearsay is admissible, some is not. Some hearsay is favorable to us, some is not. If a question calls for inadmissible hearsay that is unfavorable, I’ll object.
118. Keep in mind the difference between what you know, what you’ve inferred, what you’ve assumed, and what you’ve been told. Keep in mind, too, when you learned what you now know.
119. Don’t volunteer to do anything later. Don’t promise to do anything later. If the cross-examiner wants you to search for documents or provide a name, the request should be directed to

me. Respond: “Why don’t you make that request to my lawyer. That’s why my lawyer gets the big bucks.”

120. Don’t discuss confidential business in the hall, the elevator, on the stairway, in the cafeteria, the restroom, or anywhere else that you may be overheard.
121. Beware the mid-afternoon doldrums. Don’t lose your concentration because of fatigue or boredom. Take a break to regain focus.
122. Don’t be overwhelmed by the fact that I’m giving you 124 rules, some of which contradict others.
123. Break the rules if you have a good reason.
124. It’s not just you. Testifying at a deposition is an unusual, artificial, disconcerting experience for everyone and preparing for a deposition is hard work.