

TRIAL WITNESS INSTRUCTIONS

1. Turn off cell phones, laptops and iPads in the presence of jury/Judge; both inside or outside of the courtroom.
2. Avoid saying you “*would do it differently today.*” Your decision was based on the information you possessed at that time.
3. It is fine for character testimony based on experience, not just your five senses (“*My experience is . . .*”).
4. When asked about policy, procedures or a prior deposition, always counter with “*Show me the document.*” Do not attempt to answer from memory.
5. There are no snap answer to hypothetical policy questions. Such questions require assumptions. “*I need more information before I can answer that question.*”
6. When I object, STOP TALKING, and listen to my objection. My objections often give you the answer (i.e. “*Objection - speculation*” = “*Are you asking me to guess?*”).
7. You are not limited to “yes/no” answers by opposing counsel. You can explain your answer if “yes” requires assumptions.
8. A discrepancy between your deposition testimony and your trial witness testimony is OK. If it happens, explain by saying, “*both are true statements, then and now, but I have better recall today.*” That being said, please re-read and know your deposition transcript before trial.
9. Admit obvious truths - even minor failures to follow procedures - but explain why.
10. Not my job to “*know all policies*” that apply. “*I rely on HR and Agency counsel for policy questions.*”
11. Avoid negative body language (clenched teeth, fists, dead stares, sighing, rolling eyes, slamming exhibits down).
12. Always tell the truth. Other witnesses can answer for their part of the case. Don’t guess or speculate. Don’t worry about anything but what you did, said and heard.
13. Do not listen into the bench conferences between the lawyers and the Judge. This makes you appear as a protagonist and biased.
14. When questioned, look at the attorney asking the questions, not at me, the other AG, or agency counsel.
15. When the Judge speaks — SHUT UP! Always show respect and address the Judge as “*Your Honor.*”
16. Dress appropriate to your station in the Agency. Business casual is fine, but no T-shirts, jeans or tennis shoes.
17. Avoid quick answers under opposing counsel’s cadence. Do not get into a quick question/answer routine. Take a deep breath, and think before you answer each question.
18. Do not show anger toward Plaintiff or his/her attorney. Only say “*I’m sad*” or “*I am disappointed.*”
19. Do NOT ever say you want Defendant to win. Instead, “*I’m here to tell truth, and let the jury decide the trial winner.*”
20. Avoid statements of extra truthfulness (“*to tell you the truth*”/“*to be honest*”).
21. After the Judge invokes *The Rule*, do not discuss your testimony with anyone except your attorneys.
22. Avoid communicating with jury outside courtroom. Be polite. “*Good morning*” is fine, but no extended conversations.