

STATE OF CONNECTICUT



Court Support Services Division



Division of Criminal Justice

Courtroom Testimony & Demeanor

Clinical Coordinator Training

Prepared by: Francis J. Carino,
Supervisory Assistant State's Attorney

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Part I The Subpoena

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The Subpoena

Receiving a Subpoena

An order directing you to be present at the time and place stated to testify.

A *subpoena duces tecum* requires you to also bring with you items listed on the subpoena, such as reports, records or physical evidence (drugs, weapon, etc.).

Failure to appear may result in the dismissal of the criminal charges. Also, a fine and damages may be assessed.

The Subpoena

Receiving a Subpoena

A subpoena must be served at least 18 hours prior to the court hearing.

Service may be made on your Supervisor or other designee.

If you cannot appear as directed, it is important that you inform your supervisor and the attorney issuing the subpoena.

The Subpoena

Receiving a Subpoena

Appear on time or even 20 minutes early, more if you need to discuss the matter with the attorney that subpoenaed you.

Part II

Preparing for the Court Appearance

Preparing for the Court Appearance

Before the Trial

Preparation is the key to any successful hearing in any case.

- Gather relevant reports, test results, notes & statements.
- Review your notes, reports and documents.
- Make sure your notes are legible.
- Discuss possible questions with the attorney that subpoenaed you.
- If you have not had previous courtroom experience, visit the court and listen to others testify to understand and familiarize yourself with what you will face as a witness.

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Preparing for the Court Appearance

Before the Trial

- Before the trial starts, if permitted, walk into the courtroom and familiarize yourself where the witness chair is located and the path you need to take to get to it. This enables you to walk directly to the stand in a forthright manner and be sworn in.
- Discuss the case with the attorney that subpoenaed you prior to testifying;

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Preparing for the Court Appearance

Before the Trial

- Know the identity of anyone who approaches you to discuss the case;
- If subpoenaed, you are obligated to appear but you do not have to speak with anyone or give anyone access to reports until you are called to testify unless otherwise ordered by the court;

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Preparing for the Court Appearance

Your Appearance

- Your appearance is often as important as your message.
- People judge others based upon how they dress, move, act and talk and that can impact on whether they believe them or not.
- The manner in which witnesses dress and carry themselves in the courtroom will influence how others perceive them, their agency, their professionalism, quality of work, and self-confidence.

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Preparing for the Court Appearance

Your Appearance

- Appearing too casual or sloppily dressed can be seen as a weakness in these areas as well as infer a level of disrespect for the proceedings.
- Overdoing it can be perceived as arrogant and condescending.
- Appearance also includes gait, posture, and eye contact.

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Part III ***The Court Appearance***

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The Court Appearance

The Trial

At a trial, the attorneys will attempt to tell a story to the judge or jury about what happened using evidence and the answers of the witnesses to very carefully scripted questions.

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The Court Appearance

The Participants

➤ Civil or FWSN case:

Plaintiff - the one bringing the case against the Defendant.

- Must prove the case by “a preponderance of the evidence” (more likely than not to be right).

Defendant - the one defending the claim or allegation by the Plaintiff.

- Needs to prove, or show, by a preponderance of the evidence that the Plaintiff’s claim is incorrect.

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The Court Appearance

The Participants

- Criminal or delinquency case:

Prosecutor - the state or federal government making the charge

- Must prove the case beyond “a reasonable doubt”. (a “reasonable person” would not doubt that the Defendant committed the crime.)

Defendant - the one charged with committing a specific crime or set of crimes

- Presumption of innocence (does not need to prove innocence.)

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The Court Appearance

The Participants

- Judge

Jury trial - makes sure the trial is fair,
(adult only) - the rules of evidence are followed,
- makes decisions as to “matters of law”

Court trial - also serves as the “finder of fact”.

- Jury
 - listens to the evidence and
 - makes a finding as to what actually happened
 - apply the law provided to them by the judge to the facts to decide which party wins

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The Court Appearance

The Participants

- The attorneys in the case represent one side of the case or the other and are responsible for presenting the evidence and to help guide the judge or jury in a manner that it will benefit their client.

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The Court Appearance

Sequestration

- This is the separation of witnesses to avoid them hearing each other's testimony and discussing their testimony with anyone else.
- Failure to adhere to this order may range from dismissal of the charges to reprimands and exclusion of the evidence.

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The Court Appearance

The Process of Giving Testimony

- Direct Examination - The attorney who called the witness starts with questions first.
 - Leading questions not permitted.

“Leading questions” - more narrative in form and suggest the desired response. Frequently the subject of objections as being “leading” and “nonresponsive” or “narrative.”

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The Court Appearance

The Process of Giving Testimony

- Cross-Examination - Follows the direct examination of a witness.
 - Opposing counsel asks questions to test the accuracy, validity and veracity of the witness.
 - Questions may be leading, but are limited to the scope of the subjects covered under direct examination.

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The Court Appearance

The Process of Giving Testimony

- Redirect Examination – The first attorney may or may not ask further questions of their witness.
 - These questions would be limited to the scope of the cross-examination and not go into any new areas.
 - The purpose is to permit the attorney to “rehabilitate” or clarify responses given during cross-examination.

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The Court Appearance

The Process of Giving Testimony

- Recross Examination - Opposing counsel may or may not be permitted to ask the witness some additional questions if the judge determines that such questions are necessary to clarify any of the witness' prior testimony.

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Part IV

Tips for Testifying in Court

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Tips for Testifying in Court:

Your Demeanor

- Be respectful - When the judge enters the courtroom be sure to stand and do not sit until asked to do so.
- Do not make conversation in the courtroom. If you MUST speak to an attorney or anyone else, whisper.
- Do not eat, chew gum or drink anything in the courtroom.
- Avoid bringing your children unless they are involved in the matter at hand. They have a tough time sitting still and quiet during long hearings.

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Tips for Testifying in Court:

Your Demeanor

- While on the witness stand, sit with good posture keeping both feet on the floor. Rest your hands in your lap which prevents you from fidgeting with them in a manner visible to the judge or the jury.
- When taking the stand and when leaving it, do not show emotion or favoritism toward one side or the other or it will detract from your credibility and cause the judge or the jury to discount what you said while on the stand.

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Tips for Testifying in Court:

Your Demeanor

- If you are nervous, look at the jury, or other persons in the courtroom, one person at a time. By making eye contact with each of them and speaking as if you are addressing only one of them, you might be more relaxed and at ease while on the stand.
- Always maintain a professional appearance and demeanor; The judge may see you in the hallway, lobby, elevator, bathroom or parking lot.

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Tips for Testifying in Court:

Your Testimony

- The first and primary rule of being a good and effective witness is to tell the truth. Perjury is a crime.
- Be alert, attentive, professional and objective when testifying.
- Listen carefully and be certain you understand the question asked before answering –
 - if not – request clarification;
 - if you didn't hear it completely – ask for it to be repeated;
- Avoid giving the answer to a question until the attorney has finished asking it.

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Tips for Testifying in Court:

Your Testimony

- Pause before answering any question to:
 - provide the opposing attorney the opportunity to object to the question;
 - give you time to make sure that you understand the question.
 - let you consider your answer and be sure it properly responds to the question you were asked;
 - allow you to control the tempo of the questioning and stops a lawyer from firing rapidly paced questions at you which can cause confusion.

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Tips for Testifying in Court:

Your Testimony

- Answer only the question asked – sometimes “yes” or “no” is the answer; Don’t “volunteer” information.
- Always tell the truth - good or bad - the attorney asking the question should know the answer;
- If the answer is “I don’t know.” - say that - don’t guess;
- Refer to your records or report to refresh your recollection;
- Don’t use “I don’t know” to avoid difficult questions;

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Tips for Testifying in Court:

Your Testimony

- Once you give a definitive answer, don’t be bullied by a lawyer trying to get you to change your answer;
- Don’t offer an opinion unless specifically asked for one;
- Speak clearly and with authority; You are a professional and you want people to hear and believe what you are saying.
- The victim or complainant and the accused have names – use them. They are not “vics” or “perps.”
- Immediately correct any misstatement or confusing answer;

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Tips for Testifying in Court:

Your Testimony

- Answer all questions clearly. Nodding will cause the court reporter and the judge to tell you to answer audibly and make it look like you're not sure what you're doing.
- Keep your hands in your lap. Keep them away from your mouth.
- Avoid speaking with your head down, while looking at evidence or reports or talking into your hands;
- When you are estimating time, distance, etc, make it clear that you are doing so;

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Tips for Testifying in Court:

Your Testimony

- Provide definite answers where possible; Avoid “to the best of my knowledge,” or “I believe.”
- Don’t look to the attorney that subpoenaed you when answering questions;
- Simple "yes" or "no" answers should be directed to the person who asked the question.
- Longer, narrative answers, however, should be directed to the judge (or the jury if present).
- Judges and jurors use your demeanor when deciding the credibility of witnesses.

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Tips for Testifying in Court:

Your Testimony

- Use terms that the judge and attorneys will understand; explain them if necessary;
- If you state a conclusion, explain how it was reached, the factors considered and the meaning;
- Understand the purpose of the evaluation;
- Base your testimony on the information you were provided or you developed;
- Don't speculate using other facts; "But what if..."
- If asked about other conflicting reports: not right or wrong, up to the judge to decide; point out different facts that may have been used;

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From "Disorder in the Court." Things people actually said in court:

Q: Doctor, how many autopsies have you performed on dead people?

A: All my autopsies are performed on dead people.

Q: Do you recall the time that you examined the body?

A: The autopsy started around 8:30 p.m.

Q: And Mr. Dennington was dead at the time?

A: No, he was sitting on the table wondering why I was doing an autopsy.

Q: Doctor, before you performed the autopsy, did you check for a pulse? A: No.

Q: Did you check for blood pressure? A: No.

Q: Did you check for breathing? A: No.

Q: So, then it is possible that the patient was alive when you began the autopsy? A: No.

Q: How can you be so sure, Doctor?

A: Because his brain was sitting on my desk in a jar.

Q: But could the patient have still been alive nevertheless?

A: Yes, it is possible that he could have been alive and practicing law somewhere.

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Tips for Testifying in Court:

Handling the Aggressive Attorney

- Avoid getting into a debate or confrontation with either lawyer;
 - If the lawyer is being a jerk, the judge will see that.
 - You should remain calm and professional at all times.
- Don't try to out smart the attorney to make yourself look better. You will look either unsure or as if you are lying.
- The attorney may be intentionally trying to confuse or agitate you in an effort to discredit you to the judge or jury.

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Tips for Testifying in Court:

Handling the Aggressive Attorney

Do:

- remain professional and composed,
- remain objective,
- use volume and tone to deflect hostility,
- explain answers, if necessary.

Don't:

- become agitated or argumentative,
- permit the attorney to put words into your mouth,
- become personally invested in the case or its outcome.

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A police officer was being cross-examined by a defense attorney during a felony trial. The lawyer was trying to undermine the officer's credibility....

Q: "Officer -- did you see my client fleeing the scene?"

A: "No sir. But I subsequently observed a person matching the description of the offender, running several blocks away."

Q: "Officer -- who provided this description?"

A: "The officer who responded to the scene."

Q: "A fellow officer provided the description of this so-called offender. Do you trust your fellow officers?"

A: "Yes, sir. With my life."

Q: "With your life? Let me ask you this then officer. Do you have a room where you change your clothes in preparation for your daily duties?"

A: "Yes sir, we do!"

Q: "And do you have a locker in the room?"

A: "Yes sir, I do."

Q: "And do you have a lock on your locker?"

A: "Yes sir."

Q: "Now why is it, officer, if you trust your fellow officers with your life, you find it necessary to lock your locker in a room you share with these same officers?"

A: "You see, sir -- we share the building with the court complex, and sometimes lawyers have been known to walk through that room."



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Tips for Testifying in Court:

Objections

- Immediately stop speaking if someone says "objection"; The judge will rule on the objection and instruct you to answer if permissible.
 - if "sustained" - the question is not answered;
 - if "overruled" - the question is answered
- If overruled, don't hesitate to ask for the question to be repeated. After a long argument, even the judge and lawyers may have forgotten it.
- If the other side asks a question that you think is objectionable, pause before answering and give the other attorney a chance to object.

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Tips for Testifying in Court:

Expert Witnesses

- The attorney who called the witness has the duty to establish certain criteria before the witness is recognized as an expert and able to render an opinion in court.
- An expert witness (e.g., a DNA, firearms, accident reconstruction expert) is entitled to express an opinion in the areas of his/her expertise.
- Prior to giving any testimony the expert should thoroughly review the entire case file along with any source or reference material contained in the case.

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Tips for Testifying in Court:

Expert Witnesses

- Experts should be prepared to answer questions about their education, SOP, publications, prior testimony as a witness and any literature in the field that directly relates to the issue in the case.
- When confronted with an unfamiliar piece of scientific literature or a conflicting evaluation, a possible response could be “I am not certain about the item that you are referring to. However, if you have a copy, I would be happy to take a look at it.”

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Tips for Testifying in Court:

Expert Witnesses

- Attorneys may attempt to elicit opinion testimony outside the range of your particular expertise. the appropriate response would be: “I am unable to render an opinion in that field as I am not qualified as an expert in that particular area.”
- Do not expect the attorney to be fully versed in your field of expertise or know what questions he or she should ask.

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Tips for Testifying in Court:

Expert Witnesses

- The expert should assist the attorney in the preparation of any exhibits or demonstrative aids that the witness expects to use and make sure that the content is accurate. If using electronic methods such as PowerPoint, slides, videos, images, etc., you should practice and be prepared to use the media during trial.
- Witnesses must also be prepared for the worst case scenario during trial. Have a backup method ready in the event of an unexpected technical problem.

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Tips for Testifying in Court:

Generally

- Never speak to the judge during a recess;
- If asked, you may admit that you discussed the case with other officers or the prosecutor; Such discussion is normal preparation as long as it doesn't influence your testimony.
- If asked about any "advice" or "instructions" given by the prosecutor relating to your testimony – you were told to tell the truth.
- Recite only the facts and your observations and don't emphasize or diminish any aspects of your testimony; Let the judge decide what weight to give to the various aspects of your testimony.

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Tips for Testifying in Court:

Generally

- If asked about your report, remember that it was written to summarize the incident and the actions taken and is being used at trial to refresh your recollection.

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Tips for Testifying in Court:

Things to watch out for:

- Compound questions
- Repetitive questions
- Leading questions
- Confusing questions
- Misstating your prior testimony
- Misstating the testimony of others
- Misinterpreting the evidence
- Assuming facts not in evidence
- Diverting attention from guilt of defendant to you or anyone else
- Be aware of your non-verbal communications – body language, facial expressions, fidgeting, etc.

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Remember

Professionalism, competency, objectivity, and integrity are the concepts that should come to mind when considering the appropriate demeanor to exhibit in court proceedings.

Maintaining the integrity of the individual as well as the justice system is critical. “Yes, sir,” “no, sir,” “yes, Your Honor,” “no, Your Honor,” and the like are entirely appropriate.

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Presented by:

Francis J. Carino
Supervisory Assistant State's Attorney
Office of the Chief State's Attorney
300 Corporate Place
Rocky Hill, CT 06067
Tel.: (860) 258-5826
Fax: (860) 258-5858
Voice Pager: (860) 490-0647
E-mail: francis.carino@ct.gov
CT Juvenile Law website: www.francarino.com