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CC:

From: Robert A. Beattey

Date:

Re: Testimony Preparation

Your testimony is scheduled for _____ in the _____ County Superior Court.

Below is a list of considerations for your testimony. It **IS NOT** a list to be memorized and followed rigidly during your testimony; rather it is a list of things for you to consider as you develop your approach to testifying in the hope it will give you a feel for the general way to approach answering questions. Trying to memorize and follow each of these points is likely to harm your testimony, so don't do it!

1. Listen to the question. If you didn't hear it, ask that it be repeated.
2. Understand exactly what the question is. If you don't understand, ask that the question be rephrased.
3. Think about the question. Pause before you answer.
4. Answer only the question and answer concisely—don't volunteer. Your role is to answer only the question asked, not to volunteer what you think the examiner wants to know.
5. Don't guess or speculate. If you do not know the answer, the only truthful answer is "I do not know."
6. Answer only as to facts of which you have personal knowledge, unless asked for information given to you by other persons.
7. If necessary, qualify your answer ("I am not totally certain.").
8. Ask for documents, if it would make testimony more accurate.
9. Read carefully all documents given to you. Take your time.

10. Do not get angry. Some lawyers try to cause you to lose your temper in the hope that you will not think clearly and will make incorrect statements.
11. Do not feel you need to memorize any facts.
12. Do not take any notes or documents to the deposition. Anything you take may be subject to discovery.
13. Set your own pace—don't let the speed of the examiner's questions dictate the speed of your answers.
14. Listen to objections—they may tell you why the question is tricky.
15. Make each question and answer stand alone. If read out of context at trial, it should convey accurately your intended testimony.
16. Do not testify as to what you assume occurred—only what you know occurred.
17. Do not be reluctant to admit that you have discussed your deposition with a lawyer—there is nothing improper about that.
18. Don't try to hide embarrassing facts. If asked if you were fired, and you were, answer yes.
19. A document says what it says—not what the examiner says that it says.
20. Answer audibly, and not with nods or shakes of your head.
21. Straighten out confusion if it arises.
22. Give accurate estimates (time, speed, distance).
23. Clarify multiple meanings. Beware of a question that assumes a fact. Watch out for alternative questions (i.e., questions that try to force you to choose one of two alternatives when neither of the alternatives is accurate).
24. Don't chew gum.
25. Don't be defensive.
26. Don't lose your temper.
27. Be courteous.
28. Avoid wisecracking and joking.

29. Don't be reluctant to admit to discussions with your lawyer, other lawyers.
30. Don't answer questions about managing the lawsuit.
31. Beware of the "have you told me everything" question. We cannot tell opposing counsel everything in such a short time. All you've done is answer the questions posed to you.
32. If you're testifying as an expert, beware the "and there's nothing in the records" and "is there anything else you considered in reaching your opinion" questions.
33. Tell the truth.