

Court Testimony: Demystifying the Experience

The Kempe Center
FOR THE PREVENTION AND TREATMENT
OF CHILD ABUSE AND NEGLECT



University of Colorado
Anschutz Medical Campus



Children's Hospital Color

The subpoena

The subpoena will include a telephone number to contact

Usually easiest to contact the Victim/Witness coordinator rather than the DA. They can help facilitate a meeting with DA later

Will have the defendant's name but rarely the victim/child/your patient's name

Call and confirm you were actually involved in the case

Types of hearings

Preliminary hearing

- Usually 3-10 days after arrest
- Must show at prima facia level that crime has been committed
- Determines the temporary plans pending formal hearing

Trial

- Makes a determination regarding guilt/innocence

Appeals

- Review hearing and decision

Bench vs. Jury

- Only in adult criminal cases, not juvenile

Type of court

Family/Juvenile/Probate

- Lower level of certainty/proof required

Criminal/District/Circuit

- Higher level of certainty/proof

When

Date and time on subpoena is when trial starts not when you will be needed, despite how the subpoena is worded

“On-call” - must be arranged in advance and ALWAYS appropriate for you to ask

Many never go to court

Many cases continued...repeatedly!

Why Me?

Witness of fact - You observed something and will report what you saw/heard

- Physical findings
- History from child/victim
- Demeanor and observation of the child
- Very rare circumstance will this apply

Expert Witness Testimony - Your opinion based on the facts

- You can draw conclusions
- *Medical hearsay* is allowed
- Attorney will need your CV
- May be asked to summarize your opinion in advance
- Qualified at the beginning of your testimony – voir dire
 - Expert in “pediatrics”, “child abuse”, “nursing”, “behavioral health”
 - Can be challenged

Preparing for Court

Identify patient and review the records

Contact the attorney

Determine the expectations

Ensure that proper releases have been obtained

Always expect to have a pre-trial meeting

Review the logistics

- Location – court room or some other office
- Parking
- timing, including security

Pre-trial Meeting

Review your CV/Qualifications

Review important points

Educate the lawyer about the medical aspects

Review any potential barriers

Anticipate alternative theories

Review other arguments

Know your limits and make sure the lawyer knows

Objectivity

This is not your trial to win or lose

You testify to your opinion, not for one side or the other

Your opinion should be the same whether you speak with the defense or the prosecution.

- May be asked to meet in advance with either

You are reimbursed for your time, not paid for your opinion

Let the Show Begin

What's the story that's getting told?

Dress for the Part:

- Professional, business attire, not ostentatious

The characters:

- Prosecutor/Assistant Attorney General
- Defense Attorney (ies)
- Guardian ad litem (GAL)
- Judge/Jury

The Plot – sometimes the line of questioning may seem incongruent

- The attorney is trying to tell a certain version of the story
- You won't always be aware of that story

PUT ON YOUR TEACHER'S HAT!!!

Permission to release privileged information

Turn and look at the jury

Pretend you are teaching a 1st year professional learner

Educate the jury with explanations of terms

Use lay terms

Explain your reasoning and how you came to your conclusion

Acknowledge what you can not say

Do's

DO review your qualifications, graduation dates, years of experience, pertinent conferences attended, etc.

DO speak clearly

DO maintain good posture and poise

DO listen carefully to the question.

- Ask the attorney to repeat it or clarify if the question is not clear or you are still formulating your response.

DO stick to the facts

DO refer to your notes, especially if you are quoting the victim's statements

Do's

DO remain objective; the trial is a search for the truth and you should not take sides

DO present your information during direct examination without qualifications. It is up to the cross-examiner to come up the questions that will clarify or qualify your testimony.

DO look at the jury or judge as you respond. It is for their benefit that you are answering these questions.

DO remain alert to tricky questions where an attorney may misquote you

Do's

DO answer questions that call for a yes or no answer with a simple 'yes' or 'no'

- You will lose your audience by rambling.

DO turn to the judge if the defense tries to corner you into a 'yes' or 'no' answer when there is not a clear 'yes' or 'no' answer.

- Simply state, "Judge, I cannot answer that question as a yes or no. Would you allow me to explain?"
- Another strategy is to explain first, before the yes or no response.

DO correct an attorney who rephrases your response since it may change the meaning of what you meant to say

Don'ts

DON'T be disturbed if the defense belittles your experience or expertise.

- You usually have a lot more education and medical knowledge than anyone else does in the courtroom.

DON'T mumble or nod in response to a question

DON'T get rattled, upset, angry, or nasty, even when a defense attorney is challenging you

DON'T be afraid to be assertive and, if necessary, politely intimidating.

DON'T be afraid to say "I don't know" since every question does not have an answer

Don'ts

DON'T refer to a specific article in the literature if the attorneys have not had a chance to review it. Simply state that, "It is generally held....." or "Studies have shown...."

DON'T be afraid to say you don't remember something

DON'T be afraid to explain that you have taken oath to tell truth and need to expand on an answer

DON'T continue talking once an objection has been voiced.

- Politely wait for the judge to make a decision as to whether or not you can proceed

Don'ts

DON'T use a lot of phrases like, “I think”, “I guess”, “maybe” or “sort of”

DON'T be afraid to ask for additional permission to share confidential information

DON'T be afraid to offer your opinion if asked. “In your opinion, is this fracture consistent with child abuse?”

- Do not offer any opinions unless asked

After the Show

Obtain honest feedback

Establishing collegial relationships with legal colleagues is helpful

Bill for your time away from work

- https://www.courts.state.co.us/Courts/Supreme_Court/Directives/12-03_Amended%202016%20Jul1%20&%20Attach%20A%20Web.pdf
- Includes time for testimony, case review, pre-trial meetings, travel and wait time.

QUESTIONS?

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