

## **Preparation for Temporary Orders Hearing, Depositions and Trial**

Everyone is nervous before testifying at a hearing. Never, however, “fortify” yourself for testimony by taking tranquilizers, drinking alcohol or having anything else which will either slow down or speed up your nervous system.

### Always Tell the Truth

Always tell the truth when testifying. Failure to tell the truth constitutes perjury, a crime under the Texas Penal Code. Tell the truth to the best of your ability. Do not exaggerate or try to make anything seem better or worse than it really is.

I hope that you have not held anything back.....

### Notes to Me.

This applies only to clients, while others are testifying. During the testimony of someone else, I prefer for you to refrain from tugging at my sleeve, whispering in my ear, or giving me a nudge. I am trying to concentrate on the testimony and I cannot listen to that testimony and listen to you at the same time. Simply make a write down a note of what you want to tell me and I will review the note either at a break in the testimony or at the beginning or end of my questioning that witness.

### Talking About Our Preparation.

You should never be embarrassed about admitting that you have met with and consulted with me prior to your deposition or your trial testimony. If asked what you talked about, simply say that I instructed you to be truthful and honest. The other lawyer may simply ask you "who have you talked to about case?" What the other lawyer may try to suggest is that some person has prepared you for your testimony and sometimes he goes even further and suggests someone has told you what answers to give. There is nothing wrong with having spoken to me about your testimony. If you have talked with members of your family, your doctor, your pastor, your counselor, or anyone else, do not be afraid to say so. There is absolutely nothing wrong with talking about your case with other persons as long as you do not violate the witness rule discussed later in this memorandum. People who say they have never talked to anybody about their case, or their testimony, usually will not be believed.

The important point here is that no one should ever be allowed to tell you what your testimony should be. I will never tell you what evidence to give. I will never tell you to cover the facts in a certain way, or to lie, or to distort the truth. What you and I will discuss before you testify is simply the most effective way in which to tell the truth.

### Don't Converse With the Opponent.

After a deposition, or testimony at trial, for the day is over, do not chat with the other side or their lawyer.

### Don't Speculate.

Do not try to figure out before you answer whether a truthful answer will help or hinder our case. Answer truthfully. I can deal with the truth effectively, but I am handicapped when you answer any other way.

### The Witness Rule.

As witnesses are sworn in at the beginning of a trial, one of the lawyers will usually "invoke the rule." The rule is also sometimes called the witness rule. The most important thing you need to remember about the rule is that the testimony must be your own. Your testimony must not be affected by the testimony of others. If you are not a party, you must not see or hear the testimony of others. Neither a party nor witnesses may discuss their own testimony or the testimony of others. If the rule has been invoked, the judge will place you under oath and explain the meaning of the rule to you. From that point forward, until the case is over, you may not discuss any facts of the case with any person but me. *Only* The lawyers in the case will be able to discuss the case with you.

### Be Careful.

Even though the judge may not formally "place you under the rule" and explain it to you, do not assume that the rule has not been invoked. Always assume that you are under the rule unless I tell you otherwise. In order to comply with the rule, once the case has begun, do not discuss the facts of the case with anyone but me. Do not discuss the facts of the case with your spouse or any member of your family or with anyone that you work with or with anyone who will or may be a witness in the case. If you are my client, do not discuss the facts with any witness whom we have asked here on your behalf, and do not discuss the facts with any witness who may be appearing for the other side. If you are a witness and have been asked to appear, either by my client or by me, do not discuss the facts with my client. If you are a witness, and the lawyer on the other side asks to speak with you about the facts of this case, the best thing to do from my client's point of view is to decline to speak with him or her unless I am there. You can say, for example, "I will be glad to speak with you if D'Ann is present when we talk."

Unfortunately, some people do not follow the rule. If you see or overhear anyone else discuss the facts of the case in disobedience of the judge's order, you need to let me know right away.

If a witness violates the rule, there can be very serious consequences. The judge, for example, may order the testimony of the defending witness to be "stricken from the record" which means it would be just as though the witness had never testified. Additionally, since it is an order of the court given to you personally, if you disobey that order, the judge can hold you in contempt of court and punish you.

### Depositions--Reading and Signing

After your deposition is concluded, a court reporter will transcribe the record into a typed written deposition. You will then be given an opportunity to read the deposition and made corrections, either in misspellings, mistaken dates or other changes. You will also need to give a reason for each such change.