

Trial Day Reminders

- 1. Enjoy yourself – we have worked for this day – it will pass quickly**
- 2. *Jury is watching everything you do – work together and show good teamwork.***
- 3. Always address the judge – “Your honor”**
- 4. Listen to all testimony and the judge’s ruling – stay focused and adapt**
- 5. Witness – always speak to the jury and maintain consistent eye contact – you are telling a story**
- 6. Witness – as much as possible explain answers on cross**
- 7. Attorneys – protect witness, object to questions not in witness statement (3.4)**
- 8. Improvise when necessary – no one knows your questions/answers**
- 9. Check gender of opposing witnesses as soon as you get in courtroom**
- 10. Attorneys arrange materials so you can reach them easily – exhibits and witness statements**
- 11. Do not concede an argument until judge makes a ruling**
- 12. Know stipulations**
- 13. Monitor your time – last attorney for direct/cross ask for time**
- 14. If time runs out for opposing team – object politely/immediately**
- 15. Introduce team members to judge before starting case**
- 16. Prosecution closing reserve time for rebuttal.**
- 17. If your time is running out, ask for more time before the time ends.**
- 18. Attorneys – even if you lose an objection ruling, stay confident in your case.**
- 19. Try to attack the other side’s theme as often as possible. Listen for it in the opening. Write it down.**

Trial Day Reminders

Objections/Reponses –

- A. Improper Witness Characterization – 3.4**
- B. Violation – Witness limited to testimony in affidavit = 3.4**
- C. Outside the scope of Cross/Re-Direct – Rule 611**
- D. Witness not limited to/or required to follow testimony of other witnesses**
- E. Not relevant to material issue in case – Rule 401**
- F. Improper opinion testimony- Person not an expert – Rule 702 – all four requirements not met; or improper lay witness opinion - Rule 701 – all three requirements not met**
- G. Lack of personal knowledge**
- H. Prejudicial or confusing to jury – Rule 403**
- I. Assuming facts not in evidence**
- J. Speculation**
- K. Leading question**
- L. No exception under unavailable witness rule (804)**
- M. Calls for a hypothetical**
- N. Hearsay – Rule 801- No Exception – Rule 803/804**
- O. Improper Character Evidence – Rule 404**

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1. Rule 401 – Relevant Evidence – make a fact more or less probable - admissible
2. Rule 402 – Irrelevant evidence is NOT admissible
3. Rule 403 – Prejudicial – probative value outweighed by concern for unfair prejudice, confusing the jury, misleading the jury...
4. Rule 404 – Character evidence is not admissible to prove character in conformity – Part (b) – can be used to prove motive, opportunity, intent, preparation, plan, absence of mistake.
5. Rule 405 – Character evidence allowed if part of cause action
6. Rule 411 – Evidence of insurance not admissible, except to show bias, prejudice, agency
7. Rule 602 – Witness must have personal knowledge to testify – unless an expert
8. Rule 607 – Any party may impeach a witness
9. Rule 608 – Character evidence is admissible to prove the truthfulness of a witness
10. Rule 611 – Rules for Direct – no leading (What, Why, Where, How, When) - Cross – leading allowed - not limited to direct - Re-direct, Re-cross – limited to information covered by other side. – Evidence may be entered on cross- examination (4.10.e)
11. Rule 613 – You can ask a witness about a prior statement without showing the statement to the witness – BUT – the opposing counsel may ask to see the statement
12. Rule 701 – Opinion by lay witness – rationally based on perception – not an expert – helpful to understanding case – GENERALLY OPINION TESTIMONY NOT ALLOWED
13. Rule 702 – Testimony by an expert – all 4 parts – may testify in the form of an opinion
14. Rule 703 – Expert may rely on inadmissible evidence to form an opinion; evidence not admitted unless probative value substantially outweighs prejudicial effect.
15. Rule 704 – Expert may testify as to the ultimate issue - Exception for mental state in criminal cases – Lay Witness can't
16. Rule 705 – Expert may testify without detailing facts underlying opinion – underlying facts may be questioned on cross-examination
17. Rule 801 – Hearsay definition - 801(d) (2) – Party admissions (Considered not hearsay) – Must be offered against the party making the statement
18. Rule 802 – Hearsay – NOT Admissible
19. Rule 803 – Exceptions to the hearsay rule
 - (1) Present Sense Impression
 - (2) Excited Utterance
 - (3) Then Existing State of Mind
 - (4) Statement Made Medical Diagnosis or Treatment – Made by patient
 - (5) Recorded Recollection
 - (6) Records of Regularly Conducted Activity
 - (7) Public records
 - (8) Statements made in a Learned Treatise, Periodical or Pamphlet
 - (9) Reputation concerning a person's character

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20. Rule 3.4 – Witness bound by statements – use to protect witness if asked about things not in the witness statement.
21. Rule 3.4a – Witness characterization – must be consistent with Rules of case – neutral – and not include material facts
22. Rule 2.4 – Attorney who performs direct is only one who may object on cross. Also, attorneys may only give one opening/closing and do one direct and cross. Violation means automatic “0” on scoresheet.
23. Rule 4.6 – Time – 20 minutes for direct, 18 for cross, 5 for opening, 5 for closing, plaintiff may reserve no more than 2.5 minutes for rebuttal – rebuttal limited to scope of defendant’s closing.
24. Rule 4.7d - Time stops for oath, calling and dismissing witnesses, objections and questions by the judge, BUT NOT exhibits.
25. Rule 4.7bc – Time Discrepancy objection if more than 15 seconds difference; re-sync times
26. Rule 4.11 – Motion to strike permitted
27. Rule 4.1 – No costumes, illustrative aids or supplemental materials; accents allowed
29. Rule 4.8 a – Attorneys must remain seated for direct and cross examination unless permitted to approach witness by judge for exhibit or objections. EXCEPT at STATE
30. Rule 4.9 c – You may object to something in the closing/opening. Use phrase in the rule.
31. Rule 4.10 e – Procedure for admitting evidence on Direct AND Cross
32. Rule 4.10.a – Attorneys can use notes, Witnesses can’t use notes
33. Rule 4.9.c – Closing limited to evidence admitted at trial, Rebuttal limited to Defense closing
34. Rule 4.13 (a) - No communication with anyone outside the bar including alternates
35. Rule 4.13 (d) – Electronics permitted for limited uses - (a) reference case materials and rules; (b) communicate with trial co-counsel; and (c) take and refer to notes
36. Rule 5.3 a – How witnesses and attorneys are scored.
37. Rule 6.1 – Reporting Rules Violation inside the bar

For all witness impeachment, remember to use unmarked affidavit:

- 1) You were told to include all relevant testimony.
- 2) You followed the instructions.
- 3) You told the truth.
- 4) You understood you could update the affidavit at any time before trial

Trial Day Reminders

Gender of Witness – Pronouns (Circle)

Stark _____ **He** **She** **They**

Hill _____ **He** **She** **They**

Barton _____ **He** **She** **They**

Wilson _____ **He** **She** **They**

Banner _____ **He** **She** **They**

Parker _____ **He** **She** **They**