

Subpoenas - Tips for Witnesses

WHAT DOES A WITNESS DO WHEN RECEIVING A SUBPOENA?

Please call the District Attorney's Office the day prior to the court appearance indicated on the subpoena to confirm the date and time you are to appear. If calling after 5:00 p.m., there will be a recorded message indicating which Court proceedings are on the Court Calendar for the next day. Cases are sometimes set over, so this information may be helpful.

If for any reason you absolutely cannot appear, notify the District Attorney's Office as soon as possible. If you arrive late, make your presence known to the District Attorney's front office window.

DOES THE STATE PAY WITNESSES?

Yes. Witnesses are compensated for mileage and given a fixed witness fee. The fee is set by law and is designed to lessen the inconvenience of testifying, although it is a minimal amount. The state is not allowed to reimburse witnesses for lost wages or other expenses. A witness often will have to make some sacrifice in time and expense, but the criminal justice system could not operate without the cooperation of those who are called to testify.

ARE YOU REQUIRED TO TALK TO EITHER A DEFENSE ATTORNEY OR INVESTIGATOR?

No. You have the right to either discuss or not discuss the case with any representative of the defendant. If you decide to discuss the case, you should determine precisely whom the attorney or investigator represents. To avoid any confusion, ask the person the name of their client. You may take notes of the conversation or have it recorded. If you have any questions or would like to have a representative of the District Attorney's Office present for the interview, please contact the Deputy District Attorney listed on your subpoena for assistance.

HOW DOES A WITNESS TESTIFY?

When the Clerk of the Court calls your name, you will be asked to step forward, take an oath to tell the truth, and be seated on the witness stand.

If you have been called by the State, the Deputy District Attorney will first ask you questions concerning the case.

Witnesses must remember to tell the truth when testifying, by telling the court or the jury quite accurately what you know. Don't guess or speculate.

If you don't understand the question, ask the attorney who asked it to either repeat or clarify it for you. Answer only the question asked and do not embellish or wander in your answer.

If there is a jury, address your testimony to the jurors, rather than the attorney asking the question. Following the prosecutor's questions, the Defense Attorney will conduct his or her cross-examination.

Remember that the purpose of cross-examination is to test your perception, recollection, and credibility. Tell the truth as you remember it, not what other people may have told you.

You should remain seated until excused from the stand by the Judge, since further questions may follow direct and cross-examination. If you wish to be excused from further attendance after you have testified, you must obtain permission from the Judge.

MAY WITNESSES BE IN THE COURT ROOM BEFORE AND AFTER TESTIFYING?

The Judge may, and frequently does, exclude witnesses from the courtroom while they are not testifying. The victim of the crime, however, may not be excluded and has the right to be present throughout the proceeding. In any event, witnesses should not discuss their testimony among themselves until after all the testimony is completed.

CONCLUSION

The criminal justice system is far from perfect. It works best when witnesses on both sides of the case are willing and prepared to testify to the facts surrounding the incident at issue. It is the prosecutor's job to seek justice, not necessarily get a conviction. If you have specific questions about the witness process not answered above, please write or call the Deputy District Attorney listed on your subpoena. Our Victims Assistance Unit is also available to help with problems related to your case. They can be reached at 503-325-8581. Transportation for special cases, elderly and disabled, can be arranged through this office.

RULES FOR WITNESSES WHEN TESTIFYING

1. Listen to the question and ask for clarification if you don't understand.
2. Give a full answer to the question, but don't volunteer information – you may not have to answer with just a “yes” or “no”.
3. Say “Yes ma'am/sir” or “No ma'am/sir”.
4. Don't guess.
5. It's okay to say you don't know or don't remember when appropriate.
6. Try to stay calm and take your time.
7. Only look at the defendant if you are comfortable doing so.
8. FOR CHILDREN: It's okay to look at your parent/relative, or one of your friends if you want to. You should look at the jury if you feel comfortable doing so.
9. Call for a recess if you have to, but it is okay to cry and continue to testify.

10. TELL THE TRUTH.