

HOW TO PREPARE FOR A HEARING OR A TRIAL

Hearings versus Trials

Hearings are used to determine temporary orders and some procedural matters. The trial is where both parties present evidence and arguments for the judge to use in making a final decision. The court generally does not allow witnesses until the trial. At hearings, the court relies on affidavits and your arguments.

How do you find out whom the other party will use as witnesses?

Unless your county has a case schedule, the best way to find out what witnesses the other side will call is to ask the other attorney or party. In some counties, both parties are required to follow a case schedule. The case schedule sets a date for the parties to exchange witness and exhibit lists with each other. If your court does not require a schedule, then a local court rule will probably say when Witness and Exhibit Lists must be exchanged. Ten days before trial is a common period.

If you have given your list at the appropriate time but have not received a witness list from the other side, you should write the other party a letter requesting the witness list. If he or she does not give you a witness list, then at the time of trial you can ask the judge to forbid the other side from calling any witnesses at all. Show your copy of the letter requesting a witness list.

Who should you use as your witnesses?

You will usually be the first witness for your side of the case.

You will need at least one person to tell what he or she saw or heard about each important matter that is in dispute. But don't overdo it. Many judges grow weary of hearing the same thing witness after witness, case after case.

If, for example, the issue is child custody and visitation, useful witnesses are people who are familiar with your care of the children and, if possible, the other parent's care of the children. These people might be school teachers, child care workers, or neighbors.

Friends and relatives can be good witnesses, but keep in mind that the court might expect your friends and relatives to support your story.

You should only call witnesses after you have talked to them and you feel comfortable that they will tell the court what is helpful to your case.

How do you get witnesses to appear at trial?

To be sure that your witnesses appear at trial, you should give them as much advance notice as possible of the trial date. Then you should serve subpoenas on witnesses that you are not positive will attend. A subpoena allows the court to require a witness' attendance. If a person has been served with a subpoena and then does not show up for court, the court can order a warrant for their arrest. You need to file a copy of the subpoena with the court, and ask the judge to look at the court file in case the witness does not show up.

What documents are required by the court?

There may be a few forms that you will need to fill out before your trial. In some counties, you can give them to the judge and a copy to the other side when you arrive for trial. In others, local rules require them to be distributed a few days before trial.

In a divorce case, if there are any issues regarding child support, alimony, or property distribution, fill out Financial Declarations. On the form you will state information about your income and expenses, assets and liabilities. To support your cause, you may need tax forms and pay stubs, check registers and bank statements.

If child support or custody is an issue, you will also need to prepare and bring a proposed Permanent Parenting Plan.

Whenever you file a document with the court, you must give a copy to the opposing party.

How do you learn what the other side's case will be before the trial?

Ask them. Try Discovery Requests, one of the forms you may use.

How should you handle yourself in court and in questioning witnesses?

The main thing is to do your best to stay calm. Frequently, the judges give people representing themselves a couple of choices as to how to present their own testimony. You can either ask yourself questions and then answer them or you can tell a story about your side of the case. Whichever you choose to do, spend some time planning ahead. Write out notes for yourself about the important points in your case. Judges do not like long testimony, especially if it is not on track with what the case is about. If you can give a brief clear statement of what you want and why you think you should have it, the judge will appreciate your presentation. You should summarize your main points and then give more explanation.

You will also need to ask *your* witnesses questions. (You will also have the opportunity to ask the *other side's* witnesses some questions.) Again, planning ahead is the key to success. Think about what is the most valuable thing each witness could say on

your behalf. Then think of a few questions that will help the witness get the idea across. It's all right to practice with your witnesses ahead of time, always stressing to them the importance of telling the truth. You will always start by asking the witness his or her name and address.

With the other side's witnesses, the other side will question them first. The judge will give you an opportunity to "cross examine" them, that is, to ask them your own questions. *You should never ask a question when you do not know what the answer will be.* This is because sometimes the answer will hurt your case more than help you. There is nothing wrong with choosing not to cross-examine witnesses if you think they will merely repeat their direct testimony. Sometimes it is better to just wait and contradict their testimony either with your own testimony or with the testimony of one of your witnesses.

Courtroom Behavior

1. Be on time for your hearing, but plan to be in court all morning or afternoon; your case might not be the first one called.
2. Dress neatly, as if you were going to a religious service or a job interview.
3. No food or drinks are allowed in the courtroom.
4. Do not bring your children; arrange for someone to watch them for you. If your children will be speaking to the judge, have them wait outside the courtroom during the trial. Someone should wait with them.
5. Check in at the clerk's office to find out which courtroom to go to. Go into the courtroom and sit quietly to wait for your case to be called.
6. Review your paperwork before the hearing. Be familiar with your papers. If you filed an affidavit or gave a deposition in the case, be sure your testimony is the same as what you said in it. You may use written notes or an outline during the hearing. Stick to the FACTS -- don't ramble when giving evidence to support your side of the story. In some counties, the time you have to speak may be limited; look at the local court rules or call the court clerk to find out the time limits for your county before you prepare what you want to say.
7. When it is time for your hearing, the clerk or judge will probably read all the cases scheduled for hearing at that time. When your name is called, answer and, if asked, tell the judge whether your case is agreed, a default, or if there will be argument.
8. When your case is called, walk to the table or podium for lawyers in front of the judge, and stand facing the judge. The judge will instruct the parties when to speak. Remember to speak only to the judge and only when it is your turn. Do not interrupt or speak to the other party, even if he or she interrupts or speaks to you. You want to appear polite and reasonable. Staying calm even when the other party is rude or lies will impress the judge. You will get your turn to calmly prove the other party wrong.

9. During the hearing:

- The Judge will ask you questions. *If you don't understand the question, say so.* Don't answer until you fully understand the question.
- Be direct. *If you don't know an answer, say so.* Do not be afraid to admit that you don't know something.
- Take your time when answering questions. Give the question as much thought as you need to understand it and come up with your answer.
- *Start with "yes" or "no" when answering.* Then explain your answer if needed.
- Be respectful and courteous. Always address the judge as "Your Honor."
- *Do not interrupt.* If something needs to be explained, wait until it is your turn to speak or ask to speak again.
- Be sincere. *Don't be sarcastic or argue* with the judge or the other side. Stay calm.
- If you are stating dates, times and places, etc., *be exact.* If you cannot be exact, say that you are only estimating.
- Speak clearly and distinctly, using words, phrases and terms that you understand. Keep your hands away from your mouth and speak loud enough so the judge can easily hear you.

10. Remain courteous to the judge after the ruling. Ask the judge whether you or the other side should write the court order. The judge will *not* write the order. The judge must sign the order before it becomes effective.

11. You may bring a friend for moral support. That person must remain silent.

12. Do not laugh or talk about the case in the hallway or restrooms of the courthouse. The judge, other party or his or her attorney or witnesses may see or hear you.