

# TESTIFYING IN COURT: TIPS FROM THE PROSECUTOR'S TABLE

Candace Heisler, JD

# Acknowledgements

- Some of the content presented here is drawn from the curricula “Investigating APS Criminal Cases: An Advanced Course” and “Working with the Criminal Justice System” written for Adult Protective Services Workforce Innovations (APSWI), a program of the Academy for Professional Excellence, a project of the San Diego State University School of Social Work.
- They are available at <https://theacademy.sdsu.edu/programs/apswi/advanced-training/investigating-aps-criminal-cases-ilt/>; <https://theacademy.sdsu.edu/programs/apswi/core-competency-areas/working-with-the-criminal-justice-system-instructor-led-training/>
- Ms. Heisler wrote both curricula.

# Poll Question #1

- Who Is Here
- APS
- Criminal Justice System Professional
- Advocates
- Other

# Poll Question #2

## Testifying Experience

How many times have you testified in a court case, deposition, or hearing?

- Never
- 1-5 times
- 6-15 times
- More than 16 times

# Testifying in Court

- APS professionals may be called to testify in a variety of tribunals such as criminal, civil, and probate courts, a grand jury, or an administrative hearing
- No matter what the court setting or type of case, the rules for testifying are largely the same
- Content applicable to criminal and other court settings



# Write in Chat Box

- What is your greatest fear or concern about testifying?

# Testifying: Your Fears and Concerns

- Normal to be nervous and uncertain
- Unfamiliar with courtroom rules
- You are not in control of what you will be asked
  - *You will feel more confident when you are thoroughly prepared and have documented fully*



# The Effective APS Witness Is...

- Truthful
- Prepared
- Careful listener—answers question actually asked not the one you wished was asked
- Professional
- Not an advocate
- Not argumentative
- Sticks to what you know—never guess or speculate
  - *I do not know. I do not recall.*



# Importance of Complete Documentation

- **Complete** and well written documentation will make the court experience easier
  - *Better document to refresh your memory—will I recall information in 6 months, longer*
  - *Raises fewer areas for other side to attack*
  - *Clearly demonstrates your credibility and professionalism*
  - *May result in fewer and shorter court appearances*

# What This Means...



“If it wasn’t written down, it didn’t happen.”

...and you won’t be credible.

# The Report Said...

**“The victim was hit on the  
arm.”**

# The Photo Reflects...



# The Report Said...

**“The victim suffered swelling  
and discoloration to her  
face.”**

# The Photo Reflects...



# Your Role as an APS Witness



- The APS witness is a source of neutral and objective information
- NOT an advocate for the prosecution
- Should testify the same no matter who asks the questions
  - *Same tone of voice*
  - *Same type and length of answers*
  - *Same demeanor*
- You may appear less credible and less convincing if you come across as favoring one side over the other

# Court Process

- Process is governed by rules intended to assure the defendant receives a fair trial.
- There is an order to the trial
  - *Selection of jury (if a jury trial)*
  - *Opening statement—roadmap of what the sides expect to prove*
  - *Testimony of Prosecution/Plaintiff Witnesses*
  - *If one is presented, the defense case*
- Closing Arguments
- Court instructing jury (if a jury trial)



# Testifying: What Can You Talk About

- **Lay Witness:** what you know personally as perceived through your senses.
  - *Usually cannot testify to what someone else told you (hearsay)*
- **Expert witness:** subject beyond common experience that will assist the judge or jury (trier of fact) in arriving at a verdict and expertise from training, education, experience, skill, or knowledge
  - *Does not require an advanced degree*
- APS is most often called as a lay witness. But there are times when APS professionals testify as expert witnesses
- Separate session on Testifying as an Expert Witness

# Plan To Meet With Counsel Prior to Trial

- Topics to be covered, issues, nature of proceeding
- Likely challenges or defenses and areas of cross examination
- Any areas the court has excluded from your testimony, “out of bounds”
- Whether you are a fact or expert witness or both
- Review any exhibits to be used during your testimony
- If you should bring your APS file to court
- If you can bring notes to the witness stand
- Make sure that attorney has everything from your case they are authorized to have
- Does attorney have or need to have your CV
- Prepare, prepare, prepare. **YOU MUST KNOW YOUR CASE**

# Can APS Read the Prosecution/Plaintiff's File?

Probably not because:

- *Your testimony should be the result of your actions and your recollections*
- *If you read the file you will obtain information from others which can cloud your independent memory*
- *Your testimony will be challenged as not your independent memory but that of others*
- *Your testimony can even be excluded*

# What If...You No Longer Work at APS

You should receive a subpoena in advance of the trial date.

- *A court order commanding you to appear in court.*
  - You should contact the attorney who subpoenaed you and advise on your changed employment and determine if you are still needed
  - Depending on circumstances you may also want to contact your former employer to learn if you can review your file or if someone else will be testifying for you.
  - Prosecutor may have to call an additional APS witness in addition to you to be the file custodian

Helpful to confirm receipt with the attorney who sent subpoena

# Tips When Testifying



- Listen carefully and only answer the question you were asked
  - *More questions and clarifications can be handled in more questions or during redirect or recross*
- Answer briefly, not a narrative
  - *Especially on cross, you may be expected to answer yes or no*
- Do not make jokes or use humor
- OK to ask for a question to be rephrased or repeated
  - *OK to say “I do not understand the question”*

# Objections

- Challenges to questions based on legal grounds
- Many objections - you do not need to understand them but need to know what to do

# Objections

- “I object. The question is.../calls for...” STOP SPEAKING and listen for court’s ruling
  - *Overruled—the objections is without merit*  
**ANSWER THE QUESTION** once you are to do so by judge.
    - If you do not recall the question you can ask for it to be repeated
  - *Sustained—the objection is proper,*  
**DO NOT ANSWER THE QUESTION**
    - Wait for a new question



# The Fears--What If I...

## ■ Forget

- *Not unusual to have memory lapses. Court can be stressful and we may momentarily forget something we really know.*
- *When that happens in court there are procedures to help.*
- *Refresh memory*
- *Past recollection recorded*

## ■ Misspeak

- *Acknowledge the error*
- *Indicate you know the correct answer*
- *Ask to correct the answer*
- *If ok, provide the correct answer*





# Direct Examination: Provide Information In Way That It Is Convincing And Will Be Recalled

- Open-ended questions
- Be able to talk about yourself and your work
  - *Your education and training*
  - *Job, how long, duties*
  - *What is APS*
  - *What you do*
  - *What you do not/cannot do*
  - *Education and training*
  - *Work experience*

# Cross Examination

- Listen carefully
- First questions are often matters that help the other side's theory of the case
- Later questions will attempt to undermine strength of other side's case, may attack your credibility, or challenge the thoroughness of your work
  - *Stay calm and professional*
  - *Do not take questions personally*
- Answer only what you know, not what you think you know.

# Common Areas of Cross Examination

- ❑ Bias, interest, motive
- ❑ Prior inconsistent statements
- ❑ Contradictory facts or interpretations of the facts
- ❑ *Could you really perceive what you said you did?*
- ❑ Weaknesses in Your Training, experience
- ❑ Investigative lapses
  - ❑ *What not documented*
  - ❑ *Witnesses not interviewed*
  - ❑ *“Rush to judgment”*

# For More Information About Testifying

- MDT cross trainings on testifying
- Inviting attorneys to offer training on testifying to APS staff
- Going to court and observing other APS professionals testifying



# Questions and Final Comments



- Thank You!
- Candace Heisler  
[cjheisler@aol.com](mailto:cjheisler@aol.com)