

Tips for witnesses in regulatory proceedings¹

General Strategy

1. Respect the process and all participants for the roles they play; respecting the process demonstrates appropriate demeanor, reflects well on you, and upholds the integrity of the process.
2. Understand that the representation of diverse views can enrich the record and the regulatory process.
3. Appreciate the fact that the stakes can be high and all parties have a vested interest in the outcome.
4. Use available resources on witness preparation, particularly those specific to your professional field.
5. Let your attorney guide and advise you about the process and what to expect.
6. Work with your attorney to understand your position and that of the other parties.
7. Familiarize yourself with particular participants in your case and their litigation styles.
8. Do not feel overwhelmed by the process; every witness has to start somewhere.
9. View testifying as a learning experience and professional opportunity.
10. Know throughout the process that you win some and you lose some.
11. Be open to stipulations and settlements; use pre-hearing conferences.
12. Use exit conferences with parties in the case as appropriate.

Written Testimony

13. Know your subject matter and materials, including underlying theories and assumptions; be prepared to fully defend your findings and recommendations.
14. Consult with colleagues, including experienced witnesses and experts who can play “devil’s advocate.”
15. Read testimony by experienced witnesses whose positions prevailed.
16. Familiarize yourself with appropriate policies and precedents related to your issues.
17. Check and double-check (and triple check) your calculations; have someone else check for you.
18. Proof your testimony, schedules, and exhibits.
19. Organize and index your work papers and reference materials.
20. Testify only within the scope of your expertise.
21. Do not testify in favor of a position with which you do not agree professionally.
22. Make your case on the merits; do not try to rely only on cross-examination of other party’s witnesses.
23. Review your resume; padding your credentials puts you at risk of losing credibility.

¹ This list was informed by “Tips for Witnesses” by Mr. Ronald Kozoman as well as input from Dr. Ross Hemphill.

Oral Testimony

24. Work with experienced counsel and staff on how to answer different types of questions.
25. Practice cross-examination with skilled and experienced counsel; stage mock hearings.
26. Consider video taping a practice exercise.
27. Use the hearing process to make your case by emphasizing and summarizing your key points.
28. Remember that the hearing officers, judge, or commissioner is usually not a technical expert; do not “talk down” but seek to communicate technical material effectively.
29. Meet with your attorney directly prior to the hearing to review procedures and strategies.
30. Revisit your analysis in detail prior to cross-examination to ensure familiarity and build confidence.
31. Be prepared mentally and physically (eat, exercise, and rest) before cross-examination.
32. Nervousness is normal but try to relax, stay calm and maintain your focus.
33. Address all participants with appropriate titles at all time (“Judge,” “Commissioner,” Mr./Ms.).
34. Maintain a professional manner and never lost your composure or temper.
35. Make eye contact with decision-makers in the room.
36. Tell the truth and provide answers that are appropriately concise but complete.
37. Answer in a manner that will create a good written record that will support the ultimate decision.
38. Pause before answering in case an objection by your attorney is necessary.
39. If you do not understand a question, request that it be repeated; if you still do not understand it, you should say so or try to rephrase the question in a way that you can answer.
40. Be cautious about compound questions; identify and separate responses
41. Know the scope of testimony by other colleagues so that you can indicate when a question might be appropriately directed to them.
42. Take the time necessary to provide your answer and speak clearly and concisely.
43. Know the value of a simple “yes” or “no” answer.
44. Avoid embellishing or rambling that can open witnesses up to further cross-examination, sometimes in extraneous areas.
45. Try to avoid performing calculations on the witness stand; ask to submit supplemental testimony.
46. Prepare and submit corrections in written form; avoid making corrections through oral testimony.
47. If an error becomes apparent during testimony, acknowledge it without defensiveness.
48. Avoid gestures, facial expressions, emotion, and sarcasm; keep it “clinical.”
49. Watch your posture and body language; keep your feet on the floor, keep your hands folded, and avoid fidgeting or touching your face.
50. Do not take the process personally or become disillusioned or embittered; it is your job and others in the process are simply doing their jobs.