

www.kmksc.com

Washington Building
Barnabas Business Center
4650 N. Port Washington Road
Milwaukee, WI 53212
Telephone: 414-962-5110
Facsimile: 414-962-8725

POINTERS FOR A WINNING WITNESS

By Jordan Reich and Steve Kailas of Kohner, Mann & Kailas, S.C.

Testifying as a witness in a contested civil trial is a serious endeavor. It can be very intimidating, even for experienced litigators. However, by going into the trial or deposition with some good and practical pointers, the witness will be prepared to be effective and free of most concerns.

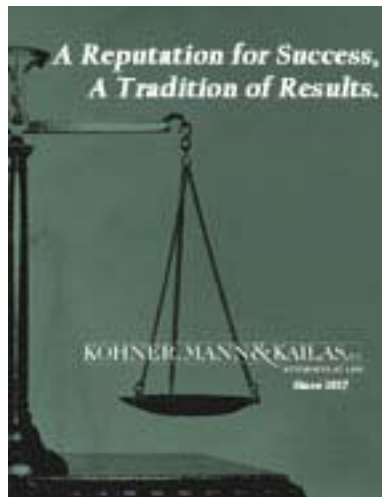
Following are some time tested pointers to consider, should you ever be thrust into service as a witness in a contested commercial lawsuit.

- **Tell the truth.** A lie may lose the case. In a lawsuit, as in all other matters, honesty is the best policy. Telling the truth, however, means more than refraining from telling a deliberate falsehood. Telling the truth requires that a witness testify accurately about what he or she knows. If you tell the truth and tell it accurately, nobody can cross you up.
- **Don't guess.** If you don't know, say you don't know.
- **Be sure that you understand the question** before you attempt to give an answer. You can't possibly give a truthful and accurate answer unless you understand the question. If you don't understand the question, ask the lawyer to repeat it. He will probably ask the court reporter to read it back.
- **Take your time.** Give the question whatever thought is required to understand it. Then formulate your answer and give it.
- Answer the question that is asked and then stop. **Don't volunteer any information.**
- **Talk loud enough** so that everybody can hear you. Don't chew gum and keep your hands away from your mouth. You can't speak distinctly while chewing gum or with your hand over your mouth.
- **Give an audible answer** so that the court reporter can get it. Don't nod your head "yes" or "no"; when required, verbally state "yes" or "no".
- **Don't look at the lawyer for help** when you're on the stand. You are on your own. You won't get any help from the judge either. If you look at the lawyer for your side when a question is asked on cross-examination or for his approval after answering a question, the judge and any jury is bound to notice it and it will create a bad impression.
- **Beware of questions involving distances and time.** If you make an estimate, make sure that everyone understands that you are estimating.
- **Be prepared to respond to general questions about yourself**, such as your name, where you live, how old you are and when you were married, etc.
- **Don't fence or argue with the lawyer on the other side.** Lawyers have a right to question you, and if you give them some smart talk or evasive answers, the judge may jump down your throat.

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- **Don't lose your temper**, no matter how hard you are pressed. Lose your temper and you may lose the case. If you lose your temper, you have played right into the hands of the other side.
- **Be courteous.** Being courteous is one of the best ways to make a good impression on the court and jury. Be sure to answer "Yes, Sir" and "No, Sir" and to address the judge as "Your Honor".
- If asked whether you have talked to the lawyer on your side, or to an investigator, **admit freely that you have talked to the lawyer on your side.**
- **Avoid joking and making wise cracks.** A lawsuit is a serious matter.
- Don't be afraid to **look the judge and jury in the eye** and tell the story. The judge and any jury are naturally sympathetic to the witness and want to hear what he or she has to say.
- **Give a positive answer when you can.** Don't let the lawyer on the other side catch you by asking you whether you are willing to swear to your version of what you know by reason of seeing or hearing. If you were there and know what happened or didn't happen, don't be afraid to "swear" to it. You were "sworn" to tell the truth when you took the stand.



About Kohner, Mann & Kailas, S.C.

Founded in 1937, KMKSC is a business and commercial law firm listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers. KMKSC provides quality legal expertise across the areas of law encountered by businesses in the normal course of their operations and growth. Our services range from high-profile appellate representation and international business issues to ensuring that critical everyday needs, such as debt recovery, are fulfilled efficiently and expertly. Our purpose is to deliver excellent results for our clients, whether the issue is advice on the avoidance of legal disputes, closing a deal, protecting assets or winning in court. KMKSC is continually advancing the interests of its clients in negotiations, transactions, litigation and alternative dispute forums across North American and beyond. We help U.S. companies address the legal issues raised by trading across international borders and provide legal support and advice to foreign companies operating in American markets.

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