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| <b>NUMBER:</b>             | <b>3.17</b>                |
| <b>SUBJECT:</b>            | <b>COURTROOM TESTIMONY</b> |
| <b>CATEGORY:</b>           | <b>CAL-ID</b>              |
| <b>DATE:</b>               | <b>7/30/19</b>             |
| <b>DATE REVISED:</b>       |                            |
| <b>RELATED SECTIONS:</b>   |                            |
| <b>IN COMPLIANCE WITH:</b> |                            |

## **POLICY**

To establish Sheriff's Records & ID Division, Cal-ID Section procedures for providing courtroom testimony.

## **RESPONSIBILITY**

It is the responsibility of Cal-ID personnel to be aware of their subpoenas and be prepared for courtroom testimony they may have to provide.

## **PROCEDURE**

The mark of an effective expert in court is professionalism, which means being prepared, demonstrating impartiality, exercising restraint, and avoiding traps. The two things to remember are: "BE PREPARED" and "DON'T ARGUE."

### **A. SUBPOENA**

**The process for court testimony begins with the subpoena. You may receive a paper subpoena or an electronic posting.**

1. Electronic posting of subpoenas can be accessed several ways.
  - a. Check the electronic posting by typing DA18L (space) 0 \_ \_ \_ \_ (4 digit ARJIS number).
  - b. If the subpoena is in electronic form, you can access the case by typing DA10 (sp) and the case number assigned by the DA. This is also referred to as the prosecution number. Contact the subpoena clerk in Personnel to post the electronic served designation.
  - c. You can check SDLaw for an electronic posting by going to County Locals, selecting DA18, Police Officer, San Diego, and fill in the ARJIS number with the 0 (zero) in front of it in the Badge Number. Click on the Case Number to receive the DA history screen.

- d. If you are a supervisor you can retrieve electronic subpoenas by going to the County, selecting DA37 and clicking on 'Print Original Copies of Non-Retrieved'. The subpoenas will print to local designated printer.
2. If the subpoena is in paper form, you can access the court document by typing DA10 (sp) Q and the document number. The information on the subpoena will tell you who, what, where, and when.
3. Contact the DA's office for confirmation of appearance and court preparation. Most problems can be avoided by a pre-trial conference.

## **B. ACCEPTANCE OF A FAX SUBPOENA**

### **A subpoena will be accepted by fax when certain criterion is met.**

1. The subpoena is directed to an employee who is assigned to a work location which has received a faxed subpoena.
2. The subpoena is faxed no later than the close of business day (5:00 P.M.), five business days, before the appearance date listed on the subpoena.
3. The subpoena is issued by an attorney employed by the Public Defender's Office, the Alternate Public Defender's Office, or the Multiple Conflicts Office.
4. The subpoena seeks only the employee's appearance.
5. Staff at the location receiving a faxed subpoena must be reasonably certain of their ability to deliver a faxed subpoena to the employee.
6. The subpoena contains a telephone number where the attorney issuing the subpoena can be immediately reached.
7. The staff member responsible for accepting the subpoena will call the telephone number of the County defense agency making the request, and communicate (a) acceptance of the subpoena, or (b) explain why the subpoena cannot be accepted.
8. Accepted subpoenas will be recorded in the subpoena log and delivered to the employee(s) who is (are) to be served.
9. It is the responsibility of the facility commander of every station, substation, jail, and civil office to ensure identified staff will be available during normal business hours of operations to accept and process on an hourly basis subpoena(s) by fax.

## **C. COURT PREPARATION**

1. Pre-court preparation:

- a. Notes, Reports and Resume'
  - b. Do not volunteer to make a chart; only make a chart at the request of the DA.
  - c. If a chart is needed for court, the DA has resources at their disposal to make one.
  - d. No general court chart should be used in court.
  - e. Do not take jail jackets out of the building for court. Photo copy the things you need. The jail jackets can be subpoenaed as evidence and it can set a bad precedence.  
Note: Anything you carry into the courtroom can be subpoenaed into evidence.
  - f. Good report writing and paperwork are the keys to a successful, effective, expert witness.
  - g. You will want to take your notes or report to court with you for documentation of what you did or did not do. When you refer to your notes it will not give the appearance of having memorized the facts or give only "my best recollection."
2. If and when you go to a pre-trial conference, bring all necessary notes and materials, so there is no miscommunication with the prosecutor before going on the witness stand. Discuss and review qualifications and/or your background. Most problems can be avoided by pre-trial conferences.
  3. Your qualifications and education help establish your expertise. Prepare Curriculum Vitae (an expert's resume) of your qualifications including your education, training, years of on job experience and any professional affiliations you belong to.  
Note: Be prepared to recite those qualifications in court.
  4. Pull your paperwork from the files and review your comparison and notes. If the DA requests a chart for court have the DA's Office make a chart.  
Note: According to the FBI Law Enforcement Bulletin, 1993, "When making the exhibit all the ridge characteristics in the prints need not be charted. A sufficient number of characteristics should be charted to amply illustrate the identification." "All fingerprint identifications are made by noting that two impressions have ridge characteristics of similar shapes which occupy the same relative positions in the patterns." Make sure all points match. The prints should be enlarged and mounted on stiff cardboard. The characteristics of comparison can be labeled with numbers or letters on three sides of the prints. Label the top of the chart search print or submitted print and data base print etc. Neatness in the preparation of the charts and the explanation of the charts to the court are important aspects of an expert's testimony.

#### **D. PROPER ATTIRE AND NUTRITION**

1. You must look professional. Business-like, conservative attire that reflects well on you and your agency is appropriate for court.
  - a. Do not present any distractions such as excessive jewelry, extremely long hair, tattoos and dangling or long earrings. First impressions are very important in court.
2. Before testifying don't shock your system, eat light.
  - a. Bagels, plain or with cream cheese is recommended.

- b. To avoid sluggish feelings, avoid fried foods; concentrate on scrambled or poached eggs.
- c. Limit your intake of caffeine, avoid sugar, and don't chew gum.

## **E. COURTROOM**

1. There are several types of proceedings prior to a Bench or Jury Trial.
  - a. The Preliminary Hearing is to show the sufficiency of the evidence. The Motions are to show the preponderance of the evidence.  
Note: You may be called to testify in a preliminary hearing.
  - b. Evidentiary hearings are to show the preponderance of the evidence.
2. Never discuss your testimony with other witnesses while waiting outside the courtroom.
  - a. It may be prejudicial or just appear prejudicial. Even the appearance of impropriety should be avoided.
  - b. Avoid any contact with jury members, both before and after your testimony.
  - c. Only discuss your testimony with those who have a need to know.
3. Be ready when called and listen carefully to the Bailiff on where to stand.
4. Don't carry unnecessary materials to the stand.
5. Stand still while taking the oath and hold hand upright.
6. Listen carefully for the Court Clerk to direct you.
7. Walk to the stand with even steps. The clerk will either direct you to proceed to the stand and "state your name and spell it," or the clerk will direct you to state your name and spell it then take the stand.
  - a. Either way DO NOT proceed until you have heard the directions and never ever walk while stating your name and spelling it.
  - b. Do not walk through the "Well" (the area in front of the judge).
8. Once you take the stand don't lounge in the chair.
  - a. Sit straight or lean slightly forward.
  - b. Don't squirm or move around in your chair, this body language maybe distracting from your testimony.
  - c. Keep your fingers away from your face.

## **F. QUALIFYING AS AN EXPERT**

1. If you are testifying as a first time expert, do not be overly concerned, everyone has had to have a first testimony. Having qualified as an expert before is just one of your qualifications.

Note: Rule 702 of the Federal Rules of Evidence state that knowledge, skill, experience training and education has to be more than the common person. A judge is hesitant to deny someone from being an expert.

2. During Voir Dire (statement of your qualifications) be knowledgeable of your qualifications. You may need to refer to authoritative texts or articles gained during formal training such as:
  - a. Doctor William J. Babler, an expert in the field of prenatal development of human variation, particularly friction ridges and their configuration.
  - b. Doctor Bruce Budowle, an expert in the field of genetics, genetics population, embryological studies, statistics, quality assurance standards, and validation of scientific methods.
  - c. Donald Ziesig, an expert in Automated Fingerprint Identification Systems, an expert in pattern recognition, and former rocket scientist.
  - d. David R. Ashbaugh, Royal Canadian Mounted Police, fingerprint expert.
  - e. Special Agent Edward German, United States Army Crime Laboratory, fingerprint expert.

## **G. TESTIMONY**

1. Remember you are an advocate for the evidence, not for one attorney or the other.
2. Your testimony must be un-biased and scientific.
3. Just tell the truth.
4. Treat the DA and defense attorney alike.
  - a. If the DA misstates something, the witness should correct him just as he'd correct the defense attorney.
5. Tips for effective testimony are:
  - a. Listen to the question. Be sure you understand the question before answering it.
  - b. If you can answer a question with "yes" or "no" then answer it with "yes" or "no". It is permissible to answer a question "that is correct," but do not volunteer more information.
  - c. If you cannot answer a question "yes" or "no" address the judge, "Your honor, I can't answer the question with a yes or no." The judge may or may not allow you to continue.
  - d. Answer out loud. (Projection)
  - e. If you hear an "Objection," stop what you are doing. Wait for the direction from the judge. If you started answering the question, don't answer it.
  - f. Be neutral, professional, and patient. DON'T ARGUE OR LOOSE YOUR TEMPER.
  - g. Do not let anyone put words in your mouth. If you are not sure about a point, don't let an attorney make you say something that you would not otherwise say.
  - h. Use plain English.

- i. "Did you talk to the prosecutor?" Answer this question honestly. There is nothing wrong with the prosecutor talking to a witness about the facts of the case.
- j. Don't guess. If you don't know the answer to a question, say so. If you don't remember, say "I don't remember."
- k. Make eye contact with the DA or defense attorney when they are speaking to you.
- l. Include the jurors in your testimony. They are watching your body language, eye contact, and presence to measure your credibility.
- m. When talking to a jury:
  - (1) Look at them when answering a question.
  - (2) Remember the jury must understand what you do.
  - (3) If using an enlargement, study them closely and make sure all points match.
  - (4) If possible, always step down in front of the jury.
  - (5) Ask permission from the judge to approach the exhibit.
  - (6) Remind the jury of the characteristic definitions.
  - (7) Think before you speak.
  - (8) Refer to exhibit letters.
  - (9) Answer all questions in the same manner.
  - (10) Avoid mannerisms, i.e. "You Know," "Uhhhh," etc.

## **H. AVOIDING TRAPS**

1. There are various ways defense attorneys may try to reduce an expert's effectiveness as a witness.
  - a. The Defense Attorney will ask you questions in reference to your procedures and comparison. Doing the same procedure the same way will establish a standard and make your testimony easier.
  - b. Be sure your written conclusions are consistent with your testimony. If there are inconsistencies a defense attorney will commonly point it out to create doubt about an expert's testimony. If this happens, do not become defensive. If there was an error simply acknowledge it. Everyone makes mistakes it's only human.
  - c. When asked how many comparisons you have done, use "thousands" of comparisons, do not get trapped into specific amounts.
  - d. Use features and details, not characteristics and points when describing a comparison.
  - e. What constitutes "sufficient" level of details in a friction ridge exam are:
    - (1) Level 1: ridge flow, classification (arch, loop, whorl), scars, ridge count, focal area (core & delta). Individualization cannot occur at this level.
    - (2) Level 2: ridge path, ending ridges, bifurcation, dots, and the relationship. Individualization can occur at this level taken in to account these 4 elements: location, type, position and relationship together.
    - (3) Level 3: ridge detail, pores, edge shapes or contours, width, form in agreement, incipient ridges, creases, all dimensional attributes of a ridge, scars & ridge breaks (other than permanent). Individualization can occur at this level.

- f. Refer to ACE/V as the process commonly used by fingerprint examiners.
- g. Don't worry when you can't figure out what the defense attorney is trying to accomplish on cross-examination. Sometimes attorneys are asking meaningless questions and don't know how to cross-examine a witness.
- h. Give the facts that caused you to reach this conclusion.
- i. It is okay to be nervous. It gives you a competitive edge. It gets the adrenaline going.
- j. There's nothing wrong with having a sense of humor in court. This lets the jury know you're human. It's okay to laugh at yourself, but don't crack jokes.
- k. An attorney may try to cause an expert witness to give an inconsistent answer by asking the same question three or four times. They're trying to get a "yes" answer to a question which was previously answered 'no,' you've got to pay attention.
- l. Be alert when a defense attorney asks a question in which he or she summarizes the expert's previous testimony. The danger is the attorney may deliberately or negligently misstate your testimony. So listen carefully and if he misstates it say, "That's not what I said." Don't think "Well that's close enough."
- m. Speak plain English. There is nothing that turns off a judge or jury as much as hearing an expert speak in stuffy, military-type of style. Don't use unnatural or overly formal words and phrases. Use phrases that are simple and direct.
- n. It helps when testifying if you are relaxed on the stand, and talk to the jurors like a human being.
- o. Appear interested in the questions. Make your testimony alive for the jury.