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A Client's Guide to the Courtroom

Going before a judge in a contested matter can be an intimidating and altogether frustrating experience for clients who are unfamiliar or inexperienced with the decorum and procedure of the courtroom. While it is important to keep in mind that the courtroom is a more formal environment than what you are accustomed to in your personal and work lives, a great deal of frustration and embarrassment can be avoided if you have a basic understanding of the rules of evidence and procedure. These guidelines should familiarize you with the most important rules and give you a better understanding of the trial process.

- I. **Docket Call-** in Travis County the first step upon arrival at the courthouse is to determine what courtroom has been designated for the “duty judge,” or the judge who is responsible for assigning your case to a judge. There will be a sign posted near the elevators showing which courtroom has been assigned to this purpose. You will not need to actually be present during this process, as it is likely that your attorney will advise you to wait outside the courtroom as he awaits the assignment.

- II. **Structure of the Hearing-** much of the procedure of the trial itself is determined by how the parties are designated, e.g. Petitioner or Respondent. In general, the Petitioner, the party who initiated the suit, or the Movant, the party who filed a motion, will speak first. In most cases, the Petitioner/Movant bears the burden of persuading the judge to grant a judgment in their favor.
 - A. **Ready Announcements-** the first step in the hearing will be for the judge to announce the case and ask the parties to make announce ready. The attorneys will then take turns standing and announcing that they are ready.

 - B. **Opening Statements-** next, the Petitioner/Movant’s attorney will stand and make a brief statement establishing a timeline, outlining their case and anticipating the other party’s arguments. The other party then does the same.

 - C. **Witnesses-** the Petitioner/Movant will then call their first witness.
 1. **Direct-** the Petitioner will question the witness. Direct examination helps the judge understand what the case is about.
 2. **Cross-Examination-** next, the other party will be allowed to question the witness. The idea behind cross-examination is to discredit the witness or to get them to admit facts in the other parties’ favor.
 3. After the Petitioner/Movant has finished calling all of their witnesses, the Respondent will call their witnesses and the process of direct/cross-examination is repeated.
 4. **Exhibits-** during the process of examining the witnesses, the attorneys may offer exhibits (documents, photos, etc.) into evidence.
 5. **Participation by the Judge-** the judge may ask questions of the parties or witnesses at anytime during the proceedings.

 - D. **Closing Statements-** in the same order, the attorneys will summarize the evidence they have put on and explain why the burden of proof has or has not been met.

- E. **Ruling**- the judge then issues an order, which may grant all of what the Petitioner or Respondent are asking for or the judge may issue a different ruling altogether.
- F. **Order**- one of the parties is then designated to draft the actual order. The amount of time this take varies depending on the attorney's priorities. Once both parties and their attorneys have agreed on the form and substance of the order, then the order will be brought by one of the attorneys before the judge to be signed.

III. When You are Called to Testify

- A. **Swearing In**- when you are called to testify, you must first approach the judge, the judge will then ask you to raise your right hand and swear "to tell the whole truth and nothing but the truth."
- B. **When called by opposing counsel or under cross-examination**- be prepared to be asked questions that seek to undermine your credibility and portray you in a bad light. At this time it is crucial that you remain calm and remember these tips:
 - 1. **Always give a direct answer**. Do not turn your answer to the question into a narrative. Give as brief and concise a response as possible without admitting more than necessary to answer the question.
 - 2. **Remember you audience**- look at the attorney or judge, who is asking the question.
 - 3. **Do not confront the opposing counsel**- the opposing counsel may seek to elicit a negative emotional reaction from you; do not fall for this trap by being confrontational or belligerent.
 - 4. **Be prepared for the judge to ask you questions**- the judge may decide to interject and ask you questions. Be as curious and polite to the judge as possible.
 - 5. **Be prepared for either attorney to make objections**- See below
- C. **Common Objections**
 - 1. **Irrelevant Evidence**- the testimony is not relevant to the facts of the case
 - 2. **Leading Question**- (only applies on direct examination) a question that suggests the answer. Example on direct: "When you spoke with your wife last week about custody of the child, she said that she only wanted weekend visitation, isn't that correct?"
 - 3. **Improper Character Testimony**- when an attorney seeks to illicit testimony about a witness's character and the witness's character or reputation has not been put in issue.
 - 4. **Non-Responsive**- when the witness does not answer the question that was asked.
 - 5. **Compound Question**- the question being asked is really asking for more than one question. Example: "Did you see her there and did she speak to you at that time about the incident and what did she say?"
 - 6. **Speculation**- questions about what someone else was thinking or feeling or asking the witness to imagine or guess what the other person was thinking.
 - 7. **Narrative**- question calls for a long-winded response that rambles on and on.
 - 8. **Argumentative**- a.k.a. "badgering the witness"
 - 9. **Asked and Answered**- going over the same matter again and again.
 - 10. **Hearsay**- evidence is normally excluded from a trial because it is deemed untrustworthy. "Hearsay" is a statement other than one made by the witness testifying at the trial and offered in evidence to prove the matter asserted in the statement is true.
 - a. Example: a witness testifying that he/she heard another person saying something about the facts in the case.
 - b. The reason hearsay is untrustworthy is because the opposing side has no way of testing the credibility of the out-of-court statement or the person who supposedly made the statement.

- c. However, it is important to remember that there are certain out-of-court statements that ARE allowed as exceptions or are not considered hearsay. The most important out-of-court statements that are not considered hearsay are:
 - i. Prior statements made by the witness him/herself,
 - ii. Admissions made by the other party.

- IV. **Basic Decorum-** some final rules of the courtroom to keep in mind
 - A. Always stand when the judge enters or leaves the courtroom.
 - B. Always address the judge as “Your Honor.”
 - C. Dress business or business casual. No shorts, t-shirts or caps.