

Giving evidence in Court

As a medical practitioner you will sometimes be asked to attend Court and give evidence regarding patients. The following list is intended to be a helpful guide for the giving of such evidence.

DON'T CANCEL APPOINTMENTS YET

Some legal cases run for days, but many settle before getting into the Court room.

Although you will be told the date the case is due to start and may even be subpoenaed to give evidence, you may not actually have to give evidence until days later. If the case settles, you may not have to give evidence at all.

Ask the solicitor to give you a few hours notice before you are needed to attend Court, so you have enough time to cancel patients without too much inconvenience to them or you.

UNDERSTAND THE SUBPOENA

There are different types of subpoenas and some require you to hand over your file without you having to physically attend and give evidence.

Read the subpoena carefully. If in doubt, contact the solicitor. You must comply with a subpoena.

If sending in your original file in accordance with a subpoena, it is wise to keep a copy first. The records may be at the Court for some time (delays in cases are common yet unavoidable) and it is hard to treat a patient with no file. Also, if the case proceeds to hearing and you have to give evidence then you can review your copy records before giving evidence.

The \$5 sent with the subpoena is a standard yet very modest fee given to cover the anticipated costs of you or your records getting to Court!

QUESTIONING FROM BOTH SIDES

The party calling you as a witness will ask you questions first. If you have previously provided a medical report for that party, the questioning by that party's barrister will usually be relatively short.

The opposing barrister then gets to cross examine you by asking questions aimed to help its party. If you are not sure of what the barrister is asking, say so!

If you are uncertain about what has been asked, request it to be re-phrased or repeated.

SWEAR OR AFFIRM – YOU CHOOSE!

As a witness you can elect to either swear on the bible (or another holy book – but if you want to do this, best to bring your own), or affirm and declare to tell the truth. Both are acceptable to the Court.

REFRESH YOUR MEMORY

It is permissible for you to refresh your memory by reviewing your records prior to getting into the witness box. If you do this, the barristers in the case can then call for your records to inspect them.

Having refreshed your memory with the records, you are not expected to have rote learned them. If in the witness box you need to refer back to them, ask the Judge and you will be permitted to do so.

TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH

The golden rule of giving evidence! If in doubt, say so. To do otherwise will get you in trouble and it's hard to back peddle once you have made an unsupported assertion. If you make a statement that you realise to be incorrect, simply acknowledge this as soon as possible.

Don't get into an argument with barristers. If you need to concede a point, do so. However, be firm in your own evidence and don't be bullied by a barrister to change your opinion.

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KNOWING “WHO’S WHO”

Although it will depend on which court you are in, the general rules on “who is who” is as follows: -

The Judge and Magistrate is normally the easiest to identify and will usually answer to Your Honour. For respect, the Court audience normally stands when the Judge enters and leaves the court and often a quick head bow is given to the Judge as a sign of respect. The Judge may then have one or two Court officials which assist in the court’s functioning, including swearing you in as a witness.

Barristers are the advocates and do the talking and questioning of witnesses. The barristers sit on the table facing towards the judge and often wear a wig and gown. The instructing solicitors prepare the case for hearing (including requesting your attendance and medical reports), and sit on the other side of the table, often facing away from the Judge or Magistrate.

GET COMFORTABLE

You can sit or stand in the witness box – depending on what you prefer. You can ask for water if needed and if you require a rest (or toilet stop) after a long time in the witness box, ask for that too. The Court is normally happy to oblige.

DRESS TO BE YOURSELF

A full suit is not necessary - wear the clothes you would ordinarily wear to work.

IF IN DOUBT, CALL THE SOLICITOR AND ASK WHAT IS REQUIRED

The solicitor who has requested you attend Court will be happy to assist you and answer any queries you have. So if in doubt call them up and find out what you want to know.