

Suggestions for Witnesses

Witnesses are an essential part of the American system of justice. The Louisiana State Bar Association has prepared a pamphlet entitled "Preparing to Be a Witness," which contains information about testifying in a deposition and in court.

Conclusion

Remember that the success of the American legal system depends on many people fulfilling many roles. Parties, jurors, witnesses, lawyers and judges all work together to make our system work.

THE JUDICIAL SYSTEM

How it works



For further information, call or write to:

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Revised Jan. 1, 2010

This brochure, prepared by the Public Information Committee of the Louisiana State Bar Association, is issued to inform and provide general information, not to advise. If you have a specific legal problem, you should not try to apply or interpret the law without the aid of an attorney who knows the facts because the facts may change the application of the law.

The American Legal System

The American legal system, the finest legal system in the world, depends upon the active participation and integrity of ordinary citizens in the roles of parties, witnesses, jurors, lawyers and judges.

Criminal

In a criminal case, a determination of guilt of an accused is made by a judge, by a jury or through a plea agreement.

If you are the victim of, or witness to, a criminal act, your involvement with the justice system begins when you enter a written or oral complaint, under oath, before a judicial officer. The person who makes the complaint is called the complaining witness. If the evidence is sufficient to indicate that a crime has been committed, a charging document, in the form of a bill of information or indictment, is issued to bring the accused person before the court.

The case is then presented to the court by the prosecutor who acts on behalf of the governmental authority. The accused person, called the "defendant," is represented by defense counsel, either someone chosen and paid for by the defendant or by an attorney appointed by the court to represent a defendant who cannot afford to pay an attorney.

Witnesses may be called to testify on each side. In a criminal trial, the defendant is not required to testify, and his or her failure to do so cannot be used against the defendant in any way. This is because a defendant is presumed innocent until his or her guilt is established by the government beyond a reasonable doubt. The defendant does not have to prove he or she is innocent. Additionally, a defendant has the privilege against self-incrimination.

Suggestions for Crime Victims

If you think you have been victimized, call the police as soon as possible so a thorough investigation may be conducted. In making a decision whether to pursue the prosecution of someone who has victimized you, remember that justice does not just happen. Even though following through with charges may be inconvenient, your cooperation is essential if the prosecution is to be successful.

If you decide to press charges, you will be asked to put your complaint in writing. In some cases, you may be given guidance in writing your complaint. If not, a

general rule of thumb is to specify who, what, where and when. Include only relevant information. Your response to the "what" question should be especially clear because it is primarily this information that will determine probable cause, the facts which would make a reasonable person believe that the accused probably committed a crime.

If probable cause is found, the prosecution will go forward, and you will be summoned to testify in court. Failure to appear in court at the appointed time in violation of a subpoena may result in the case being dismissed.

Many parishes participate in a victim compensation program. Ask the prosecutor whether you are eligible to be compensated for damages you may have sustained. If not, you can bring a civil action against the accused to attempt to collect damages from him or her.

Civil

In civil litigation, disputes between private parties are brought before the court to determine fault or decide controversies. Examples of civil proceedings are actions seeking compensation for damages to person or property caused by the negligence or fault of another; a divorce and support and custody action arising therefrom; and resolution of a property or contract dispute. These are only some of many private controversies the courts may resolve in civil proceedings.

In a civil case, a plaintiff is the party who brings the lawsuit. A defendant is the one against whom a claim for damages or other relief has been made.

Suggestions for Parties in a Civil Proceeding

If you believe that you have a civil cause of action, consult with an attorney to help you better understand the consequences, expenses, time commitment and projected outcome of a lawsuit. Under the Louisiana Rules of Professional Conduct, an attorney:

- ▶ may not use means that have no substantial purpose other than to embarrass, delay or burden a third person;
- ▶ may not knowingly make a false statement of fact or law; and
- ▶ may not participate in a cause of action believed to be criminal or fraudulent.

After your lawsuit is filed, it will be served on the

defendant who will file an answer, usually through an attorney. Court dates will be set where you will appear to present your case to the court through your attorney. Settlement discussions will be encouraged.

Suggestions for Jurors

Along with the privileges of citizenship, you owe a reciprocal duty to participate in the judicial system as a juror. Your role as a juror is as important as that of a judge because you are called upon to render a verdict based upon the evidence you hear in court and the law as the judge instructs you. You are required to perform this service honestly and conscientiously, without prejudice or favoritism.

When you are summoned for jury duty, you should not try "to get out of it" but should try your best to be available. If you are unable to serve, contact the clerk of court who will consult with the judge, and the clerk will advise you whether you may be excused or may postpone your jury duty.

The length of time jurors serve varies widely. In Louisiana, jurors usually are allowed to return home at the close of the day's session of court. Cases may last from one day to several weeks. On the day you are summoned, the judge will predict the length of the trial.

When you are called for jury duty, you may not actually hear a case. Prospective jurors are carefully screened. The judge and the attorneys for both sides will select jurors they believe are most suited to serve in a particular case. You must truthfully answer the questions they ask to try to determine whether you will be selected.

When you serve as a juror, you must carefully consider the evidence presented, and you must base your decision solely on evidence presented in court. The judge will decide whether evidence is admissible, and you can only consider evidence that is admitted. You must keep an open mind until all evidence has been presented. After all the evidence has been presented, the lawyers will argue to you how they think the evidence should be interpreted in light of the law on which the court instructs you.

You will be paid a small fee for your service as a juror. In Louisiana, an employee called by subpoena to serve on a jury is usually granted a leave of absence by his employer without loss of wages or any other benefits. An employer may not legally discharge an employee for serving on a jury.