

# DIRECT EXAMINATION OF CLIENT

- **Direct examination of client is the first and best opportunity to tell the client's story**
- **It is considered the most overlooked aspect of trial**

# DIRECT EXAMINATION OF CLIENT

## 1. Know what evidence you need

- Facts sufficient to satisfy burden of proof
- Testimony that corroborates your witnesses, especially your client.
- Information about the witness's background that makes their evidence more credible
- Testimony that is necessary to lay a foundation for other evidence
- Testimony that provides continuity and makes the story understandable
- Admit exhibits

# DIRECT EXAMINATION OF CLIENT

## 2. Organization of a Direct Examination

### Background information

- Put witness at ease with readily known information
- Enables the jury to learn about witness before having to trust
- Want to keep it short to keep jury focused

# DIRECT EXAMINATION OF CLIENT

## 2. Organization of a Direct Examination

### Telling the story

- Witness tells the story
- Story should be conversational
- Examiner should utilize simple, open-ended questions
- Convey confidence in client's case
- Allow emotion into the examination where appropriate
- Observe the judge and jury for visible negative reactions/attentiveness
- Do not turn your back on a witness
- Do not position yourself such that you come between the jury and a witness/exhibit
- You direct the content
- Be open about weaknesses, but address at opportune times



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## 2. Organization of a Direct Examination

### Conclusion

- End on a high point that you want jury to readily recall

# DIRECT EXAMINATION OF CLIENT

## 3. Keys to a successful Direct Examination

- Testimony must be clear
- Testimony must be credible
- Testimony must be memorable
- Testimony should be immune from attack on cross examination

# PREPARE YOUR WITNESS FOR CROSS-EXAMINATION

- Truthful testimony
- Admit weaknesses
- Give yes/no responses
- Don't volunteer information.
- Request documents to refresh recollection
- Don't guess
- Don't be argumentative
- Remain calm
- Understand the question/ask for clarification
- Beware of leading questions
- Avoid concrete responses such as "never" and "always"
- Stop testimony if an objection is made
- Maintain eye contact with lawyer asking questions/look at jury when giving answer
- Anticipate cross-examination and have witness prepared to answer
- Use strategically and intentionally

# REDIRECT EXAMINATION

- Affords the opportunity to rehabilitate poor testimony
- Affords the opportunity to rehabilitate impeached testimony
- Permitted to clarify matters made confusing by cross-examination
- Permitted to respond to new matters brought out during the cross-examination
- Permitted to correct confusion or misunderstanding so that witness testimony clear and complete
- Redirect is permitted at the judge's discretion
- Consider as part of overall trial strategy

# ROLE OF LAWYER

- The lawyer controls the pace of the examination
- The lawyer controls the emphasis of the examination
- The Lawyer chooses the argument
- The witness answers the questions
- Most bad witnesses are bad because the direct examiner left them exposed

# KEYS TO REMEMBER

- Primacy – jurors recall what they hear first
- Recency – jurors remember and focus on what is presented last
- Frequency – Jurors recall things that are repeated
- Vividness – Jurors understand best that which is vividly portrayed



