

Top 10 Tips for Direct and Cross-Examination

By Hon. David J. Issenman (Ret.)

- 1. Be thoroughly prepared.** Preparation is the key to success. There is no substitute. Being thoroughly prepared allows you to project confidence to the court and to your client.
- 2. Write your questions out in advance.** Doing this helps you prepare and makes you think your case through. It will give you confidence. You don't necessarily have to use them, but it is your security blanket.
- 3. Make the direct examination of your client interesting.** Make your client likable. Judges and juries want to help people they like.
- 4. Don't be redundant.** You don't need to ask the same thing three or four times.
- 5. Every document you intend to use should be at hand.** Do not "pump" around looking all over the place for a document.
- 6. You are permitted to ask leading questions on direct examination in certain circumstances such as:**
 - To avoid confusion;
 - To clarify testimony;
 - To otherwise bring out the truth in serving the cause of justice;¹
 - Call attention to a topic or subject about which testimony is desired.²
- 7. When you object, state the basis of your objection.** The purpose of an objection is to make your position known so that "the trial court may consciously rule upon it."³ You should always stand when making an objection; it catches the court's attention. (Actually, you should never address the court while seated.)
- 8. On cross-examination, always have a purpose for each question.** Know where you are going. Don't grind it out; make a few points and get out. And perhaps this is elemental but ask only leading questions. You need to control the examination.
- 9. On cross-examination, always have your impeachment material readily at hand,** i.e., page 10 lines 4-12 of husband's deposition.
- 10. The law assumes that in a divorce the adverse party witness is "hostile per se"** and the court will allow you to "examine the witness through the use of cross examination."⁴

Bonus tip: It would not hurt your case if you brought your evidence rule book to the trial. Certainly, the Judge will have one. Also, I suggest you memorize Evidence Rule 401. "Relevant evidence" means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action. ■

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Endnotes

1. *Nobero Co. v. Ferro Trucking Inc.*, 107 N.J. Super. 394, 404 (App. Div. 1969)
2. *Rider v. Lynch*, 42 N.J. 465, 471 (1964)
3. *State v. Abbott*, 36 N.J. 63, 76 (1962).
4. *Lerman v. Lerman*, 245 N.J. Super. 312, 318 (Law Div. 1990)