**Tips in effective courtroom testimony as a CASA advocate.**

By Scott and Ashley McKee

As a CASA volunteer, you will more than likely be presented with numerous opportunities to testify in court about your conclusions regarding the best interest of the child and the facts that support your conclusions.

Most courts in our state appoint the CASA volunteer as the Guardian Ad Litem “GAL” for the child. As a Guardian ad litem, you are the eyes and ears of the judge, who will inform the Court as to what you believe is in the “best interest” of the child.

The Texas Family Code provides a detailed list of the powers and duties of the GAL. These duties include conducting an investigation to determine the best interests of the child, interview persons who have significant knowledge or contact with the child, receive and review medical and school records, consider the child’s expressed objectives, encourage settlement of the case, attend hearings, participate in case staffings with CPS, and many other duties.

Your conclusions and the facts and evidence that support your conclusions are communicated to the court in the form of testimony. Most of this testimony will take place under oath as a witness. Your testimony can be in the form of narrative testimony which is basically telling the judge in your own words your conclusions and why you have those conclusions. However, many times you may be required to testify in the typical question and answer format.

Although most attorneys spend time preparing to question a witness, in my experience, many witnesses don’t spend time preparing to answer questions. The most important thing you can do to prepare for testifying is to review your file prior to the hearing. Some important tips in preparing to testify are as follows:

* Work out the narrative with the lawyer who plans to call you as a witness if possible.
  + Some lawyers like to have specific questions and seldom vary from script on direct examination.
  + Others prefer to work with an outline of major events.
  + And others, shoot from the hip.
* Think of your testimony as if it would be a narrative; generally the best approach is to “begin at the beginning, continue until you reach the end, then stop.”

The way in which you are asked questions will depend upon who is calling you as a witness. There are two ways in which you can testify during question and answer testimony. The first is direct examination, the second is cross examination.

* The lawyer that calls you as his witness - direct examination.
  + Cannot ask you leading questions.
  + A leading question is a question that directs or suggests the answer.
    - For example- “Isn’t it true……”
* The lawyer(s) that didn’t call you as a witness will most likely also ask you questions – this is cross examination.
  + The lawyer cross-examining you will want to bring out testimony favorable to his client and cast doubt on statements that are unfavorable to his client.
  + The lawyer that plans to call you as his witness can help you anticipate what questions others may ask. (woodshedding)
* BUT, a lawyer can call you as a “hostile” witness and cross-examine—CPS attorneys frequently do this to parents.

Whether your conclusions support the parents position or the position of CPS, or whether on direct or cross examination, it is important to understand that each of the lawyers in the case will have a strategy in eliciting information from you in a form or fashion that best suits their goals. When preparing to testify:

* Do not try to over-anticipate where the lawyer is “going” with a question. If you attempt to shape your testimony based on how you think the questioning is going or will go, you may damage your own credibility.
  + Answer the question that has been asked, not the question you think the lawyer should have asked.
  + Give yourself time to really understand the question; this is not a race. A pause may also allow one of the lawyers to object—sometimes they can protect you from badgering or trickery.
* **Be prepared.**
  + Don't try to memorize what you are going to say, but do try to refresh your mind on those matters upon which you will be examined. Try to relive the scene in your mind and communicate it to the judge or jury.
* **Present a proper appearance.**
  + Dress neatly.
  + When taking the oath, stand upright, pay attention, and say "I do" clearly.
  + While testifying, avoid nervous mannerisms that distract the judge or jury.
* **Always face the lawyer questioning you.**
  + Speak up clearly and loudly enough so that the farthest juror can easily hear you. Don't nod or shake your head for a "yes" or "no."
  + **But**, face the judge or jury when answering.
* **Listen carefully to the questions asked of you.**
  + No matter how nice the attorney may seem on cross-examination, they may be trying to discredit you.
  + Understand the question, have it repeated if necessary, and then give a thoughtful, considered answer.
* **Explain your answer, if necessary.**
  + Give the answer in your own words, and if a question can't be truthfully answered with "yes" or "no," you have the right to explain your answer.
* **Answer only the question asked of you.**
  + Do not volunteer information. If your answer was not correctly stated, correct or clarify it immediately.
* **Don't say, "that's all of the conversation" or "nothing else happened."**
  + Instead say, "that's all I recall" or "that's all I remember happening." It may be that after more thought or another question, you may remember something important.

* **Don't get angry. Keep calm.**
  + Be courteous, even if the attorney questioning you may appear discourteous. Don't appear to be a cocky witness.
* **Give positive, definite answers when at all possible.**
  + Every material truth should be readily admitted. Do not stop to figure out whether your answer will help or hurt your side. Just answer the questions to the best of your memory without exaggerations.
* **If you don't want to answer a question, do not ask the judge whether you must answer it.**
  + If the question is improper, another attorney may object. Don't look at the lawyer on your side or at the judge for help in answering a question. You are on your own.
* **Be yourself.**
  + If you try to imagine that you are talking to friends or neighbors on the jury, you will be more convincing and will do a fine job.
* Finally, things I have learned as a trial attorney in questioning witnesses:
  + Never agree with a statement from a lawyer that you really don’t agree with.
  + Never argue with the lawyer or talk over them- even if they are badgering you.
  + The lawyer asking you the question doesn’t know as much as you know about what you know.
    - You are the best and only expert about your own conclusions- that is why the judge appointed you.
  + There are questions that require more than a simple “yes” or no”.
    - Always ask to explain your answer

Most CASA advocates would agree that testifying in court is the least rewarding part of the job. However, in order for the system to work, courtroom testimony is an extremely important part of the process.

Our system of justice is designed to give parents, the Department and the children effective legal representation. Many children are abused and neglected at the hands of parents who have committed terrible acts or crimes. It is very easy for advocates, attorneys and the Department to want to punish the parents for what they have done to the child.

Our Family Code is not designed to “punish” parents. Punishment is the role of the criminal justice system if appropriate. The Family Code is designed to determine the best interests of the child and facilitate placing the children in a situation where they can thrive and grow.

Your testimony in most cases is the most influential and effective in helping the judge or the jury in making the most important decisions that occur in the justice system.

**Scott McKee** is the Henderson County District Attorney and is currently in the last year of his second term. As District Attorney he is responsible for all Felony and CPS cases in Henderson County. Scott has tried numerous cases to a jury as a prosecutor and as a defense attorney. He was recently elected Judge of the 392nd District Court in Henderson County and will assume office in January of 2017. He is also an Army Reserve Infantry Major.

**Ashley McKee** is a solo practitioner with her primary office in Athens. Ashley handles family, probate and real estate law. She has tried numerous cases to a jury to include CPS termination cases. She practices in counties in and around East Texas. She is the Vice President of the Eustace Independent School District and has served on numerous boards and committees in the community.

Scott and Ashley met in Law School and live on Cedar Creek Lake with their children, Stuart, Ryan and Ranger. When not working, Scott and Ashley follow their children around to their numerous sporting events.