

What Does it Mean to "Testify Under Oath?"

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If you have ever given a deposition, either as a witness or as a named party, in any type of legal proceeding, sworn to an affidavit, or testified at a trial or hearing, before you signed the document or before you spoke, you were sworn to "tell the truth, the whole truth, and nothing but the truth so help you God", or something to that effect. Although you might think such an oath is more "pro forma" than anything else, it is far from that.

The oath is a solemn declaration and, if not followed, can result in legal liability for the person testifying. (1) At a minimum, the legal liability that would occur is perjury, also known as false swearing. (2) In order for testimony to be considered perjury, the person testifying must intentionally make a statement (to another) about a material matter at issue that is to be taken as true. Depending on whether the legal proceedings are in a federal or state court (laws vary), the person testifying may be fined, imprisoned or both.

Despite this liability, legal authors have written that few courts charge and sentence an individual for perjured testimony. The more common charge courts utilize is that of contempt of court. (3) Contempt of court occurs when conduct occurs that defies the authority or dignity of the courts and interferes with the administration of justice. (4) Contempt can be *direct* (when it occurs in front of a judge), *indirect* (an out-of-court failure to follow a court order), *civil* (failure to follow an order that was issued for another person's benefit) or *criminal* (an act that obstructs justice or attacks the integrity of the court). (5) Contempt is punishable by fine and/or imprisonment as well.

An allegation against you of intentionally making a statement that is not true can be defended. For example, your testimony may have been mistaken, rather than knowingly false. Or, you may have answered a question that you misunderstood. Or, when you answered a question during a deposition or at a hearing, you may not have been "technically" under oath. Last, the false statement you made was not concerning a significant issue but rather concerned a minor issue in the case at hand. (6)

How can you avoid ever having to worry about whether you may be charged with perjury or contempt of court? Some guidelines to keep in mind are:

- Always answer truthfully any question or written document when you are under oath;
- If you don't understand a question asked of you, ask that the question be repeated, or ask that it be stated in a different way;
- Don't be tempted to "help" a colleague or a family member out by changing your true testimony to something that is untrue;
- Always conduct yourself with respect for the court and the judicial system when in court or during a deposition;

- Do not violate a court order issued against you;
- If you do not know the answer to a question being asked of you, do not guess at an answer; simply say “I don’t know”;
- Never assault or batter any person in the court room or attending a deposition at any time; and
- When ordered by a judge to answer a question, carefully consider a refusal to answer the question during court proceedings or in a deposition.

Your attorney will go over these guidelines with you prior to a deposition or a judicial proceeding and will be present during your testimony to assist you in complying with these, and other, protections against possible perjury or contempt of court.

Please note: *It is your duty as an insured to notify your professional liability insurance of any subpoenas, depositions or incidents that may result in a claim / suit against you. As a CPH & Associates policy holder, you may do so by logging into your CPH Customer Portal and selecting “Report a claim or incident” or “Report a subpoena or deposition” to fill out the appropriate form to notify CPH & Associates.*

FOOTNOTES

1. Bryan A. Garner, Editor In Chief (1999). Black's Law Dictionary. 8th Edition.

St. Paul, MN: Thomson West, 1101.

1. Id. at 1175.

2. Robert Dickerson and Aurora Marshall (2008), "Perjury In Our Family

Courts: Lawyers Beware!", Findlaw . Available
at <http://corporate.findlaw.com/litigation-disputes/perjury-in-our-family-courts-lawyers-beware.html> .
Accessed February 14, 2013.

1. Black's Law Dictionary, *supra* note 1, at 336-337.

2. Id.

3. Honorable John Shonkwiler (2003). Principles of Contempt. Available
at: <http://ija.org/bb/contempt.htm>. Accessed February 14, 2013.

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