

GIVING EVIDENCE IN COURT – A GUIDE FOR STAFF IN THE HEALTH FIELD

You may be called to give evidence in court as an employee of RHB for a number of different purposes including:

- to state what you know about a certain event or series of events
- to be questioned about your professional actions
- as an expert in your field.

The court hearing may be about a claim against the Government for alleged medical negligence or personal injuries, a work health dispute, a dispute between private individuals or organisations, an alleged criminal offence or a coronial inquiry.

Giving evidence in court can be stressful and these guidelines have been produced to help reduce any anxiety by familiarising you with court procedures and your rights and responsibilities as a witness.

1. Which Court?

Make sure you are aware of the location of the court in which you are required to give evidence. This will be stated in the subpoena, but where you are attending court as an expert witness you may not be subpoenaed, so check with the solicitor who is calling you to give evidence. The time you are required to attend the court can sometimes be negotiated with the solicitor who is calling you, so don't hesitate to ask.

Darwin:	Local Court	Nicholls Place, Cavenagh Street
	Supreme Court	State Square, Mitchell St
	Family Court	Federal Courts Building, Mitchell Street
Katherine:	Local Court	First Street
Tennant Creek:	Local Court	Patterson Street
Alice Springs:	Local Court & Supreme Court	Laws Courts Building, Parsons Street
Nhulunbuy:	Local Court	Endeavour Square

There will also be occasional court sittings at other centres, eg Jabiru and Groote Eylandt.

2. Dress Standards

Dress comfortably, but conservatively, for court. Uniforms are quite acceptable. Initial impressions count, and judges and magistrates have little time to make an assessment of you as an individual. Flamboyant or inappropriate dress can unfairly prejudice your professional credibility.

3. Prior to Being Called

A daily list of cases being heard should be displayed near the entrance to the court, showing the number of the courtroom in which your matter will be heard.

You should wait outside the relevant courtroom until called by the court orderly. The court's permission is required for you to sit in on the hearing prior to giving your own evidence, as usually this would be inappropriate.

Developed by: Professional Practice Group based on information provided by Legal Services Branch	Page 1	Reviewed: November 2008
Release Date: March 2008		Next Review: November 2011

4. Entering / Leaving a Court

On entering and leaving a courtroom, it is customary to bow to the judge or magistrate if he / she is sitting at the Bench.

5. Taking the Stand

When you are to give evidence, you will be ushered to the witness box by the court orderly that will ask you to indicate whether you prefer to swear an oath on the Bible **or** make an affirmation that the information you will give to the Court is, to the best of your knowledge, true and correct.

The orderly will then say the words of the oath or affirmation and you will be required to say, "so help me God" for an oath, or "I do" in the case of an affirmation.

It is most important that you do not depart from your undertaking to tell the truth. Such action could result in a criminal charge being brought against you.

The first questions asked of you will usually be concerned with ascertaining your full name, address and occupation, and, if appropriate, professional qualifications and employment history.

6. How to Address the Bench

When in the witness box, you should look at the person who is speaking to you, but address your comments to the judge or magistrate (to the Bench). However, the judge or magistrate may be taking notes, and eye contact from them is not expected or demanded.

In addressing the Bench, the following terms are the correct forms of address:

- Magistrates: Your Honour
- Coroners: Your Worship
- Judges: Your Honour.

If in doubt 'Sir' or 'Madam' is appropriate to all. Most members of the Bench do not take exception when addressed incorrectly.

7. Conduct of the Case

Usually there will be two solicitors or barristers at the bar table in court, but occasionally there will be more. Depending on the type of case, each solicitor / barrister will have the opportunity to examine you (ask questions) and the barrister who leads the questioning will have an opportunity to re-examine you following questions by the others.

What other questions can you expect? You may be asked to identify a medical record or other document. If so, look at the document and answer "Yes" only if you are sure it has been accurately described.

It is permissible to take notes, which you have made beforehand, or a copy of the relevant client record if you have one, into the court to assist you with details of the incident or case. As a courtesy, if you need to refer to your notes or a file, you should ask the permission of the judge or magistrate first. Alternatively, if the medical record has already been tendered in court, you may ask to look at it to assist you with your answers to questions.

8. Giving Your Evidence

Evidence should be presented with objectivity and a degree of detachment. Keep the following points in mind:

- Listen to the question and be sure you understand it before answering
- Answer the question fully
- If you do not know the answer to a question, say so
- Decline to answer a question outside the scope of your expertise

Developed by: Professional Practice Group based on information provided by Legal Services Branch	Page 2	Reviewed: November 2008
Release Date: March 2008		Next Review: November 2011

- Be firm but polite - remain calm
- You are called to assist the Court and you should not advocate or endeavour to anticipate where a question is leading. Answer the question asked of you, not the question you think you ought to have been asked.
- Generally, you should endeavour to use simple language when giving your evidence. Where medical terms are unavoidable, explain them clearly.
- If you consider you are being unfairly treated, harassed or badgered, ask the judge or magistrate for assistance
- Above all, think about the question asked, take your time, and answer honestly in a clear and audible voice. If you are confronted with a personal failing, do not attempt to bluff your way out of the situation - answer honestly and with a clear explanation.

9. Being Cross-examined

If you are being vigorously cross-examined, you should at all times remember that the cross-examiner is acting upon instructions from his / her client. Aggressive questioning is not intended as a personal attack on you but is a method developed by legal practitioners to bring out evidence that may strengthen their case. The solicitor may be attempting to discredit your professional opinion but not you as an individual. It is important to remember this, as it will help you to remain calm and keep your concentration while you are being examined. Keep an open mind. It is not a sign of weakness to concede that an alternative view is possible.

10. Finally...

Many people become anxious before they give evidence, but later find that their fears were not well founded.

The most that anyone can ask you to do when giving your evidence is to listen to the questions, to tell the truth and to do your best. Each time you give evidence, your skills in this area will increase and your confidence in being able to cope will improve.

If you have found your time on the stand stressful, it may be helpful to debrief and go over your experiences with your supervisor or a colleague.

If you have any doubts or questions at any stage, consult Legal Services: Send an e-mail to DHFLegalServicesEnquiries@nt.gov.au, or refer to the [Legal Services](#) webpage (*scroll down to contacts*) for further details.

Developed by: Professional Practice Group based on information provided by Legal Services Branch	Page 3	Reviewed: November 2008
Release Date: March 2008		Next Review: November 2011