

# KEYS TO SUCCESS IN CROSS EXAMINATION

1. Preparation—Know your facts, your witnesses, as well as the adverse witnesses. Prior inconsistent statements as impeachment, rap sheets for credibility, habits, behavior etc. Plan sequence of questions. Study expert witnesses articles as well as prior testimony. Discuss your case with your peers as well as friends and family. Think like a juror and not an advocate. Ask if this story were true and/or accurate what facts would we expect to see. Do we see them here? With defendants ask what an innocent person would do. Are actions and choices inconsistent with truth or innocence?
2. Lock the witness in—This is a big part of preparation but may arise without opportunity to prepare. Do not allow witness the opportunity to weasel out of a difficult question.
3. Timing—Save best for last
4. Demeanor—Know when to be nice, when to be aggressive, what will jury allow you to do without turning on you. Can get defendants true colors out.
5. Be yourself
6. Know when not to cross examine—there can be benefits to asking few if any questions. Has the witness really hurt your case? Is the witness right?
7. Never look like you are losing
8. Know when to quit—Save it for argument. Do not allow witness explanation to undermine your argument.
9. Listen to answers—Very important and one of the most ignored principles of successful cross-examination. Catch where witness is evasive and re-ask question until you get an answer. Use non-responsive objection where appropriate.
10. Don't interrupt—Wait for the answer-it might be very helpful but if you interrupt it may never come out. Don't be too quick to jump in. Calm down and relax to avoid frequent interruptions. Interruptions are normally caused by frustration over witness perjury or evasion

11. Know when to ask questions that you don't know the answer to. On direct should not have to do this but on cross you may need to.
12. Know when to ask the why question—Only when mitigating answers have been anticipated and closed off through careful preparation or analysis. Anticipate possible answers to decide whether to ask the why question. Use when there is no reasonable explanation to defendants or witnesses behavior except that which supports your theory of the case.
13. Ask mostly leading questions. Sometimes you will want to ask the open ended or why question but be sure as you can that the answer won't hurt.
14. Use defense witness to your advantage—If you are well prepared this can be very effective. It often works with expert witnesses. Why didn't other side cover this subject?
15. Develop a theme—example: Ask yourself what would an innocent person do and then look for things that are inconsistent with innocence. Same with a witness who claims to know of defendant's innocence. This works with alibi witnesses as well as witnesses who testify to collateral fact or observations that are consistent with defense theory of the case.
16. Experts—Avoid battling them on their own ground unless you have thoroughly researched the issue and can narrow the focus. Get prior transcripts when possible. Don't forget the obvious such as pay, bias etc.

## CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

### *Top portion of form to be completed by the MCLE Provider*

Provider Name: Ventura County District Attorney's Office

Provider Number: 1130

Title of Activity: Cross Examination

Date(s) of Activity: September 20, 2016

Time of Activity: 9:00 - 11:00 am

Location of Activity (City, State): HOJ: MDB Conference Room Ventura, CA

Total California MCLE Credit Hours for the above activity are 1.75, including the following sub-field credits:

- Legal Ethics \_\_\_\_\_
- Elimination of Bias in the Legal Profession \_\_\_\_\_
- Prevention, Detection and Treatment of Substance Abuse/Mental Illness that Impairs Professional Competence \_\_\_\_\_

### *Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity*

By signing below, I certify that I participated in all, or some\*, of the activity described above and am therefore entitled to the following MCLE credit hours -

Total California MCLE Credit Hours 1.75, including the following sub-field credits

Legal Ethics \_\_\_\_\_

Elimination of Bias in the Legal Profession \_\_\_\_\_

Prevention, Detection and Treatment of Substance Abuse / Mental Illness that Impairs Professional Competence \_\_\_\_\_

(You may not claim credit for sub-fields unless the Provider is granting credit in those areas and you participated in those portions of the activity)

Print Your Name \_\_\_\_\_

Your California State Bar Number \_\_\_\_\_

Signature \_\_\_\_\_

\* partial participation hours must be pro-rated

## ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

**Please complete and return to Provider (Please Print)**

Provider Name: Ventura County District Attorney's Office Provider Number: 1130

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**Please indicate your evaluation of this course by completing the table below**

Question	Yes	No	Comments
Did this program meet your educational objectives?	<input type="checkbox"/>	<input type="checkbox"/>	
Were you provided with substantive written materials?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the course update or keep you informed of your legal responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the activity contain significant professional content?	<input type="checkbox"/>	<input type="checkbox"/>	
Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	

**Please rate the instructor(s) of the course below**

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
Richard Simon, Senior DDA	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—