

A **witness** is a person who gives testimony under oath about something they have seen, experienced, or know to be true. Sometimes a witness can provide testimony through a written affidavit, which you can provide to the court as evidence. Depending on your case, having a witness testify in court may be helpful or even necessary.

A witness can:

✓ Testify about something that you have no other proof of.

For example, a friend loaned you money, but you do not have a record or receipt of it. Your friend can testify about the loan in court. Another example may be if you paid someone for childcare but do not have a receipt. The childcare provider can be your witness.

✓ Support your own testimony or story.

For example, you had a bruise but did not take a photo of it. A family member who saw the bruise can testify about it (size, color, location, etc). Another example may be a friend who saw the other party driving an expensive car even though they say they cannot afford child support.

✓ Lay a foundation for certain evidence that you want the court to consider.

This means your witness must authenticate the evidence (show that it is what you say it is). To do this, the witness must be familiar with the evidence or able to authenticate it. For example, a witness can explain that a photo represents what they saw at the time. Or, hospital staff can say that a medical record is a “fair and accurate description of what it says it is.” To learn more, see our [“Evidence”](#) guide.

You may also want to use an **expert witness**. An expert witness is someone who can give a professional opinion, not just facts.

Examples may include a doctor to give a medical opinion or a therapist to talk about your mental health. Experts are mostly used in child custody cases.

Keep in mind that you may need to pay the expert witness to testify. This can be expensive. In addition, expert witnesses require different kinds of notice and rules. If you think you will need an expert witness, it may be best to hire a lawyer or ask the court to give you one (if you qualify) as early as possible.

Note

Your witness can voluntarily agree to testify. If not, you may need to subpoena the witness. See our guide on [“Subpoenas”](#) to learn more.

How do I choose a good witness?

When choosing a witness, it is important to remember the following:

✓ In general, a witness can only talk about things they *personally know*.

This means they must have seen, heard, or experienced it themselves. They cannot just say what someone else told them. This is called **hearsay**. Hearsay is usually not allowed, but there are exceptions. See our guide on [“Objections”](#) to learn more.

✓ The witness should be *credible*, or believable.

Some ways that a witness can be credible include speaking clearly, being consistent in their testimony, and giving details.

✓ The witness’s testimony must be *relevant* to the case.

✓ The witness does not need to speak English.

The court can give you a free interpreter. Just be sure to ask for one before the court date.

You should speak to a potential witness before trial so you know what they are willing to say under oath. You cannot tell them what to say, but this helps you avoid surprises in court and decide if you need more witnesses or evidence. It also lets you see how they might come across to the court.

i Tip

Remember that the other party can question your witness in cross examination. If your witness is a close friend or family member, the other party may try to show they are biased or just trying to protect you. If your witness testifies about specific facts and observations, this can help you overcome the bias.

Do I need a witness list?

Maybe. Check with the court to see if a witness list is required and when you must provide it. A witness list helps everyone prepare for trial. **If the court asks for a witness list, you should give it to:**

- The other party (or their lawyer);
- The attorney for the child (if there is one); and
- The court

The list should include each witness's name and who they are. For example:

- Mr. José Smith, Child's Teacher
- Ms. Juanita Jones, My Employer

Sometimes the jurist will also ask for a brief summary of what each witness would testify to. For example:

- "This witness will explain that the school records are fair and accurate. The records will show how many times our child was absent."
- "This witness works with the other party, even though they claim to not have a job."

Some jurists may ask you how much time each witness's testimony will take. You do not need to be exact. Just give your best guess.

If someone is not on the list, you may still be able to call them as a witness. But you probably will need to explain why they were not on the list. Some good reasons may include:

- You did not know a certain topic would come up;
- You need to respond to something that was said during trial; or
- Another witness said someone was present during an event, and you want that person to testify because you think there is a different or more compelling version of what happened.

Do I have to have a witness?

Remember that you are your own witness. You can testify about what you saw or heard, how you felt, and what you know personally to be true (not what someone else knows and told you). Be specific and include details, like how you know something. For example, you might say something like, "I saw the other party's pay stub. It said she makes \$5,000 per month." You can also present evidence to support your case. See our guide on "[Evidence](#)" to learn more.



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