

## **How to Conduct Cross Examination**

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Conducting cross examination in a professional standards case is a lot like being a contestant on *Jeopardy*: everything you say has to be in the form of a question. On the most basic level, when you are cross examining the other party or his witness, you must ask questions rather than state facts or argue your case. (Don't worry, there will time for that later.) Cross examination can be an important part of your case. An effective cross examination can show that the complainant has failed to prove their case or that the respondent's witness is not credible. A poorly done cross examination, however, can end up hurting your case more than helping it.

There are two basic types of cross examination: constructive and destructive. Each helps your case. The first type elicits favorable testimony from the witness by getting the witness to agree with those facts that support your case. The second type discredits the witness so that the hearing panel minimizes or even disregards the witness. Do not ask any questions unless they fall into one of these categories.

Preparation is key to conducting an effective cross examination. You will be notified in advance of any witnesses that the opposing party may call at the hearing. Use that information to determine how that witness (or the party himself) fits into your case, and how he or she can help or hurt your case. In a procuring cause case, it is helpful to be aware of the factors the hearing panel will consider and use cross examination to prove or disprove those factors; a copy of the factors will be included in the hearing packet. The determination of an ethics case will focus on how the facts fit in to the Articles of the Code of Ethics alleged in the complaint, so cross examination could focus on those.

Do not feel compelled to cross examine every witness. After you have heard the witness's testimony at the hearing, consider these factors to help you decide whether you should ask that witness any cross examination questions:

- Has the witness hurt your case?
- Is the witness important?
- Was the witness' testimony credible?
- Did the witness give less than expected on direct?

Let the answers guide your choice to cross examine the witness. If the witness has not said anything damaging to your case then there is no point to get them to say anything further. However, if the witness is important or crucial to your case it is a good idea to conduct some sort of cross examination. If the witness did not come off as truthful or credible then the damage to his testimony has already been done and there is nothing you can add; in fact, asking any further questions may give the witness an opportunity to redeem himself.

When you are preparing for your cross examination it is always a good idea to keep a basic structure. First, have your cross examination establish as few basic points as possible. Second, make your strongest points as the beginning and end of your cross examination. Finally,

do not repeat what was already said on direct examination, but rather clarify those points that are helpful to your position. Here are some rules to keep in mind when you are preparing and conducting your cross examination:

- Know the probable answer to your questions before you ask the questions
- Listen to the witness' answer
- Don't argue with the witness
- Don't let the witness explain
- Keep control over the witness
- Don't ask the one-question-too-many
- Stop when finished

A cross examination that is short and to the point can be very effective. A respondent broker in a procuring cause case might ask:

- Q. When did you show the property in question?*  
*A. I don't remember exactly.*  
*Q. Do you have an MLS print out from when you showed it to the buyer?*  
*A. No.*  
*Q. Do you have a key activity report showing what lock boxes you accessed at that time?*  
*A. No.*  
*Q. Did you contact the listing agent for a print out of his lock box report?*  
*A. No.*  
*Q. Do you have any documented proof that you introduced the buyer to this property?*  
*A. No, but when I saw the house after this case was filed, it looked familiar. I'm sure I showed it.*

This broker was clearly acquainted with the factors that determine procuring cause, and used cross examination to get several admissions from the complainant.

The hearing panel does not expect you to be Perry Mason or Clarence Darrow, and the panel will draw no inference if you choose not to ask a party or a witness any cross examination questions. If you do choose to ask questions, keep in mind the simple rules discussed above and use cross examination to your benefit.

*This article is of a general nature and is not intended to address any specific legal or ethical situation.*