



Using a Courthouse Dog in the Courtroom

What type of dog should be used in the courtroom?

Only dogs professionally trained by organizations accredited by Assistance Dogs International (ADI) should accompany a witness into the courtroom. Most of these dogs have been in training since they were young puppies and are placed with a handler when they are about two years old. Only extremely well-trained dogs are selected to be assistance dogs. These ADI accredited organizations also provide extensive training and ongoing support for the dog's handler so that the quality of the dog's performance remains high.

Assistance dogs accompanying a witness in the courtroom should have the following characteristics:

- They must be quiet, unobtrusive, and emotionally available for the witness when the need arises
- The dogs should be able to sit or lie down beside the witness for an extended period of time
- The dogs should not engage in any behavior that would distract the witness or other people in the courtroom
- The dogs should be able to assist the witness for as long as necessary.

Therapy dogs and volunteer handlers should not be used in the courtroom for several reasons

- Volunteer therapy dog handlers are usually required to be connected to their dog by a leash at all times. This would mean that the volunteer handler would have to accompany the witness and the dog up to the witness stand. This situation could be very distracting for people in the courtroom. It could make the handler very uncomfortable, or a prosecutor may not want the jury looking at a dog handler who has to provide guidance or correct a dog while the witness is testifying.
- Dogs working as therapy dogs are usually successful because they actively engage with people. However, a dog engaging with the witness during courtroom proceedings could interfere with questioning and testifying. The lawyers and the witness could lose their train of thought while the dog seeks attention from the witness.
- Delta Society (and other national therapy dog registration bodies) recommends that therapy teams work for only a few hours a week. However, an assistance dog may be needed for an entire day outside and inside the courtroom.
- Pet dogs and their volunteer handlers have varying degrees of training. For liability reasons, Delta Society and Therapy dogs international do not test these dogs to determine if they behave appropriately around children before they are registered as therapy dogs. Children who are asked to testify in a trial often behave inappropriately, cry, or get up suddenly from their seats. A dog unused to this behavior could growl, bite, or bark at the child making the situation even more stressful.
- If a dog misbehaves in a courtroom it could result in a mistrial, raise an issue on appeal, or make judges reluctant to take this risk to accommodate the needs of future nervous witnesses.

When should a dog accompany a witness to the stand?

Using a dog to provide emotional support to a witness should be reserved for only those witnesses that truly require this assistance. Make this assessment while preparing the witness for the trial. In one instance, the prosecutor asked the judge to allow a facility dog to assist seven-year-old girls in an incest case, after the girls cried and absolutely refused to sit in the witness chair. In another case, the judge permitted a facility dog to assist an adult rape victim when the victim exhibited physical symptoms of stress and told the judge she needed the dog to get through the ordeal of seeing the defendant and his defiant family in the courtroom while she testified.

For the dog to be most successful in supporting the witness, the dog and witness should have had an opportunity to bond and interact with one another during pre-trial interviews. This will give the dog an opportunity to “read” the emotional state of the witness and make them more comfortable being in one another’s presence during this stressful time.

Presenting the motion to the judge

Review the sample brief in support of the dog accompanying the witness to the stand and advise defense counsel of the motion. It is recommended that the dog accompany you to court for the motion so the judge can observe firsthand how well-behaved the dog is. Make a record of the dog’s experience and training and provide documentation of the dog’s training from the certifying agency and liability insurance policy. Also explain the witness’s need of the dog’s assistance and make the witness available for questioning from the court regarding this issue.

Argue that ER 611 (a) provides: “The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.” The standard of review for alleged violations of ER 611 is manifest abuse of discretion. There is case law that supports your position as well.

Avoid using the term “therapy dog” because the use of this term may create grounds for a mistrial or raise an issue on appeal. This term originated in the medical and psychiatric fields and connotes that the recipient of the dog’s attention is in need of physical or psychiatric therapy. A defense attorney could argue that the use of the term “therapy dog” by the judge or the prosecutor implies to the jury that the witness is in fact a victim in need of therapy and could be construed as a comment on the evidence. It is up to the jury to decide if the witness was victimized by the defendant. You don’t want to retry a case and put the witness/victim through this ordeal a second time.

Defense counsel may also object to the dog accompanying the witness to the stand arguing that the appealing nature of the dog in support of a State’s witness is unfair to the defendant. While presenting this motion be sure to inform the court of the Courthouse Dog philosophy, that the dog provides emotional assistance to everyone involved in the criminal justice system. Hopefully you can document instances in which your dog has also provided comfort to defendants and their families while in public areas of the courthouse, in Drug Courts or visiting juveniles in detention facilities. It may be easier for the judge to grant the State’s motion if the dog is not perceived as a tool of the State, but is there to help everyone. You could also offer to have the dog accompany the defendant to the stand should he or she decide to testify and can document that emotional support is needed.

If the court grants the State’s motion, determine if the presence of the dog with the witness is something that should be addressed in voir dire, if the judge should give the jury a special instruction about the dog or if the dog’s presence should not be mentioned at all. It is very important that the defense attorney be given deference regarding if or how this issue should be addressed before a jury. Trial consultant Deborah Starr, PhD, of DecisionQuest, recommends that the issue of the dog accompanying the witness should not be addressed in front

of the jury during voir dire or in an instruction because it draws more attention to why the witness would need the dog's presence in the courtroom. ([Listen to Legal Talk NetWork podcast.](#))

Read [Trial Notes](#) by Deputy Prosecuting Attorney Valerie Shapiro for an example of such a hearing.

Review http://www.vachss.com/dogs/vachss_transcript.html for the transcript of this motion regarding Vachss, one of the original courthouse dogs.

A courthouse dog helps defense counsel too

A defense attorney that is comfortable with dogs can use the dog to her or his benefit during cross-examination. In one trial, defense counsel questioned the child about her abuse with the facility dog seated between her and the child. During questioning both petted the dog and rather than appearing to be grilling the child it sounded as though they were having a quiet conversation. Jurors thought defense counsel was quite gentle with the child. Although the case ended in a mistrial the child did not appear to have been stressed by the cross-examination. The defendant eventually entered a guilty plea to a similar but less serious offense and the child did not have to have to make any more court appearances.

The Jury's Response to the Dog

The juries that we have spoken to have not found the dog's presence beside the witness to be distracting or inappropriate. They understand that some witnesses, especially children, require additional support during a trial.

Read an article in the ABA Animal Law Newsletter - "[Courthouse Dogs - A Case Study](#)" to get a prosecutor's perspective of how Ellie assisted a young child during a defense interview, a competency hearing, and a trial.