

CHAPTER 6 - WITNESSES

601. GENERAL RULE OF COMPETENCY

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Every person is competent to be a witness except as otherwise provided in these rules.

602. LACK OF PERSONAL KNOWLEDGE

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A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

603. OATH OR AFFIRMATION

Rule 603. OATH OR AFFIRMATION

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

604. INTERPRETERS

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An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

605. COMPETENCY OF JUDGE AS WITNESS

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The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

606. COMPETENCY OF JUROR AS WITNESS

Rule 606. COMPETENCY OF JUROR AS WITNESS

- a. At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.
- b. Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

607. WHO MAY IMPEACH

Rule 607. WHO MAY IMPEACH

The credibility of a witness may be attacked by any party, including the party calling the witness.

608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

Rule 608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

- a. Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:
 1. the evidence may refer only to character for truthfulness or untruthfulness, and
 2. evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
- b. Specific instances of conduct. Specific instances of the conduct of a witness, for

the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

1. concerning the witness' character for truthfulness or untruthfulness, or
2. concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

Rule 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

- a. General rule. For the purpose of attacking the credibility of a witness,
 1. evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
 2. evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
- b. Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

- c. Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if:
 - 1. the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or
 - 2. the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
- d. Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.
- e. Pendency of appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

610. RELIGIOUS BELIEFS OR OPINIONS

Rule 610. RELIGIOUS BELIEFS OR OPINIONS

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

611. MODE AND ORDER OF INTERROGATION AND PRESENTATION

Rule 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION

- a. Control by court. 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.

- b. Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.
- c. Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

612. WRITING USED TO REFRESH MEMORY

Rule 612. WRITING USED TO REFRESH MEMORY

Except as otherwise provided in criminal proceedings by Rule 212(b) of the Rules of Criminal Procedures, if a witness uses a writing to refresh memory for the purpose of testifying, either--

1. while testifying, or
2. before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

613. PRIOR STATEMENTS OF WITNESSES

Rule 613. PRIOR STATEMENTS OF WITNESSES

- a. Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

- b. Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

614. CALLING AND INTERROGATION OF WITNESSES BY COURT

Rule 614. CALLING AND INTERROGATION OF WITNESSES BY COURT

- a. Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.
- b. Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party.
- c. Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

615. EXCLUSION OF WITNESSES

Rule 615. EXCLUSION OF WITNESSES

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.