DOWNLOAD PDF CALLING AND INTERROGATION OF WITNESSES BY COURT: RULE 614

Chapter 1 : I.R.E. Calling and Interrogation of Witnesses by Court. | Supreme Court

Rule 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.

The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: The court may allow inquiry into additional matters as if on direct examination. Ordinarily, the court should allow leading questions: Spelling out detailed rules to govern the mode and order of interrogating witnesses presenting evidence is neither desirable nor feasible. The ultimate responsibility for the effective working of the adversary system rests with the judge. The rule sets forth the objectives which he should seek to attain. Item 1 restates in broad terms the power and obligation of the judge as developed under common law principles. Item 2 is addressed to avoidance of needless consumption of time, a matter of daily concern in the disposition of cases. A companion piece is found in the discretion vested in the judge to exclude evidence as a waste of time in Rule b. Item 3 calls for a judgement under the particular circumstances whether interrogation tactics entail harassment or undue embarrassment. Pertinent circumstances include the importance of the testimony, the nature of the inquiry, its relevance to credibility, waste of time, and confusion. United States, U. The inquiry into specific instances of conduct of a witness allowed under Rule b is, of course, subject to this rule. The tradition in the federal courts and in numerous state courts has been to limit the scope of cross-examination to matters testified to on direct, plus matters bearing upon the credibility of the witness. Various reasons have been advanced to justify the rule of limited cross-examination. Resurrection Gold Mining Co. Fortune Gold Mining Co. But the concept of vouching is discredited, and Rule rejects it. This is a problem properly solved in terms of what is necessary for a proper development of the testimony rather than by a mechanistic formula similar to the vouching concept. See discussion under subdivision c. While this latter reason has merit, the matter is essentially one of the order of presentation and not one in which involvement at the appellate level is likely to prove fruitful. See for example, Moyer v. New York Central R. In evaluating these considerations, McCormick says: There is another factor, however, which seems to swing the balance overwhelmingly in favor of the wide-open rule. This is the consideration of economy of time and energy. Obviously, the wide-open rule presents little or no opportunity for dispute in its application. These controversies are often reventilated on appeal, and reversals for error in their determination are frequent. Observance of these vague and ambiguous restrictions is a matter of constant and hampering concern to the cross-examiner. If these efforts, delays and misprisions were the necessary incidents to the guarding of substantive rights or the fundamentals of fair trial, they might be worth the cost. As the price of the choice of an obviously debatable regulation of the order of evidence, the sacrifice seems misguided. Some of the instances in which Supreme Courts have ordered new trials for the mere transgression of this rule about the order of evidence have been astounding. The provision of the second sentence, that the judge may in the interests of justice limit inquiry into new matters on cross-examination, is designed for those situations in which the result otherwise would be confusion, complication, or protraction of the case, not as a matter of rule but as demonstrable in the actual development of the particular case. The rule does not purport to determine the extent to which an accused who elects to testify thereby waives his privilege against self-incrimination. The question is a constitutional one, rather than a mere matter of administering the trial. Rule d , supra. When he testifies on the merits, however, can he foreclose inquiry into an aspect or element of the crime by avoiding it on direct? The affirmative answer given in Tucker v. United States, 5 F. See also Brown v. The situation of an accused who desires to testify on some but not all counts of a multiple-count indictment is one to be approached, in the first instance at least, as a problem of severance under Rule 14 of the Federal Rules of Criminal Procedure. In all events, the extent of the waiver of the privilege against self-incrimination ought not to be determined as a by-product of a rule on scope of cross-examination. The rule continues the traditional view that the suggestive powers of the leading question are as a general proposition undesirable. Within this

tradition, however, numerous exceptions have achieved recognition: The witness who is hostile, unwilling, or biased; the child witness or the adult with communication problems; the witness whose recollection is exhausted; and undisputed preliminary matters. An almost total unwillingness to reverse for infractions has been manifested by appellate courts. The matter clearly falls within the area of control by the judge over the mode and order of interrogation and presentation and accordingly is phrased in words of suggestion rather than command. The rule also conforms to tradition in making the use of leading questions on cross-examination a matter of right. The final sentence deals with categories of witnesses automatically regarded and treated as hostile. See, for example, Maryland Casualty Co. Fidelity and Casualty Co. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. In the interests of justice, the judge may limit cross-examination with respect to matters not testified to on direct examination. The Committee amended this provision to return to the rule which prevails in the federal courts and thirty-nine State jurisdictions. As amended, the Rule is in the text of the Advisory Committee draft. It limits cross-examination to credibility and to matters testified to on direct examination, unless the judge permits more, in which event the cross-examiner must proceed as if on direct examination. This traditional rule facilitates orderly presentation by each party at trial. Further, in light of existing discovery procedures, there appears to be no need to abandon the traditional rule. The third sentence of Rule c as submitted by the Court provided that: In civil cases, a party is entitled to call an adverse party or witness identified with him and interrogate by leading questions. The Committee amended this Rule to permit leading questions to be used with respect to any hostile witness, not only an adverse party or person identified with such adverse party. The House narrowed the Rule to the more traditional practice of limiting cross-examination to the subject matter of direct examination and credibility , but with discretion in the judge to permit inquiry into additional matters in situations where that would aid in the development of the evidence or otherwise facilitate the conduct of the trial. The committee agrees with the House amendment. Although there are good arguments in support of broad cross-examination from perspectives of developing all relevant evidence, we believe the factors of insuring an orderly and predictable development of the evidence weigh in favor of the narrower rule, especially when discretion is given to the trial judge to permit inquiry into additional matters. The committee expressly approves this discretion and believes it will permit sufficient flexibility allowing a broader scope of cross-examination whenever appropriate. The House amendment providing broader discretionary cross-examination permitted inquiry into additional matters only as if on direct examination. Further, the committee has received correspondence from Federal judges commenting on the applicability of this rule to section of title As submitted by the Supreme Court, the rule provided: The rule as submitted by the Supreme Court declared certain witnesses hostile as a matter of law and thus subject to interrogation by leading questions without any showing of hostility in fact. These were adverse parties or witnesses identified with adverse parties. Thus, we question whether the House amendment was necessary. However, concluding that it was not intended to affect the meaning of the first sentence of the subsection and was intended solely to clarify the fact that leading questions are permissible in the interrogation of a witness, who is hostile in fact, the committee accepts that House amendment. The final sentence of this subsection was also amended by the House to cover criminal as well as civil cases. No substantive change is intended. Committee Notes on Rulesâ€" Amendment The language of Rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

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Chapter 2 : Federal Rules of Evidence/Witnesses - Wikibooks, open books for an open world

Rule Calling and Interrogation of Witness by Court. (a) Calling by court - The court may not call witnesses except in extraordinary circumstances or except as provided for court-appointed experts in Rule , and all parties are entitled to cross-examine witnesses thus called.

Scope and applicability of rules. Remainder of or related writings or recorded statements. Judicial notice of adjudicative facts. Presumption and inference defined. Presumptions in civil proceedings. Presumption affecting the burden of producing evidence in civil cases defined. Effect of presumption affecting burden of producing evidence in civil cases. Presumption affecting the burden of persuasion in civil cases defined. Effect of presumption affecting burden of persuasion in civil cases. Presumptions in criminal cases. Relevant evidence generally admissible; irrelevant evidence inadmissible. Character evidence not admissible to prove conduct; exceptions; other crimes. Methods of proving character. Compromise and offers to compromise. Payment of medical and similar expenses. Inadmissibility of pleas, plea discussions and related statements. General rule of competency. Lack of personal knowledge. Competency of judge as witness. Competency of juror as witness. Evidence of character and conduct of witness. Impeachment by evidence of conviction of crime. Religious beliefs or opinions. Mode and order of interrogation and presentation. Writing used to refresh memory. Prior statements of witnesses. Calling and interrogation of witnesses by the court. Opinion testimony by lay witnesses. Bases of opinion testimony by experts. Opinion on ultimate issue. Disclosure of facts or data underlying expert opinion.

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Chapter 3 : Michigan Rules of Evidence â€“ Civil Procedure

Rule Court's Calling or Examininga Witness (a) Calling. The court may call a witness on itsown or at a party's request. Each party is entitled to cross-examine thewitness.

Exclusion of Witnesses Rule General Rule of Competency[edit] Every person is competent to be a witness except as otherwise provided in these rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law. The second sentence of Rule is another reference to diversity jurisdiction, or the application of state law in federal court. These are sometimes identical to the federal standards and usually not significantly different, although there are some exceptions. Lack of Personal Knowledge[edit] 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. This rule is subject to the provisions of rule , relating to opinion testimony by expert witnesses. The most important prerequisites to be a witness are memory and perception. To be a witness, a person must have perceived the matter in question, and they must remember it. If they do not remember, or did not perceive, the matter, then their testimony is speculation and it is inadmissible. The requirement of an "oath" or "affirmation" is misleading, because a formal oath or affirmation is not strictly necessary. Some witnesses, like small children and the mentally disabled, may not understand the meaning of an oath or affirmation. In these cases, it is enough to demonstrate, through testimony, that the witness understands the concept of truth, and the penalties for not telling the truth on the witness stand. Interpreters[edit] 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. Competency of Judge as Witness[edit] 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. Competency of Juror as Witness[edit] 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. Who May Impeach[edit] The credibility of a witness may be attacked by any party, including the party calling the witness. Evidence of Character and Conduct of Witness[edit] 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: Impeachment by Evidence of Conviction of Crime[edit] Rule is the second rule that deals with the admissibility of prior convictions. Because of the limited purpose for which the conviction is offered under this rule, only two types of convictions fall under its scope. 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 , 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. A a 1 conviction is relevant because of its severity, and is presumptively admissible unless it fails the Rule balancing test for unfair prejudice. The key term is "punishable"â€”a conviction can be admitted under Rule a even if it was not punished at all, so long as there was a prospect of the death penalty or an extended prison sentence. If a criminal defendant is being attacked with a a 1 conviction, a "reverse " balancing test applies. Note that the balancing test weighs toward inadmissibility. Convictions that might be admissible under this rule include fraud, theft, perjury and insider trading. But many crimesâ€”even heinous crimes like murder, assault and kidnappingâ€”are not necessarily dishonest or untruthful. While a conviction itself might be admissible under Rule , its details are not. Evidence under Rule is usually limited to 1 the offense, 2 the conviction, 3 the date of the conviction, and 4 the sentence. A conviction admitted under Rule b

may be fleshed out in much more detail. 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. Although the "ten-year rule" appears to be quite bendable, it is usually a complete bar to the admissibility of convictions. Some judges will, however, allow convictions beyond the ten-year rule if they pass the balancing test within the rule, and these decisions are usually not overturned on appeal. Note that "confinement" does not include parole or probation: 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. 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. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible. Mode and Order of Interrogation and Presentation[edit] 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. 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. Examination of witnesses is often said to follow an "inverted funnel" pattern. On direct examination, any relevant matter can be brought up in questioning. The cross-examiner is limited to the scope of the direct examination and to credibility issues. On re-direct, the examiner is limited to the scope of the cross-examination. If the cross-examiner wishes to re-cross, they will be limited to the scope of the re-direct. When a lawyer crosses outside the permitted subject matter under Rule b , it is called "exceeding the scope," and is objectionable. 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. Leading questions are banned on direct examination to keep lawyers from "feeding" their witnesses the answers to each question. The orthodoxy among courtroom lawyers today is that only leading questions should be used on cross-examination, because the witness can be counted on to give an unfavorable answer if they are given any room to respond. This principle is also why lawyers are allowed to lead hostile or adverse witnesses. An example of "a witness identified with an adverse party" is a police officer from the perspective of a criminal defendant. In some cases, the direct examiner may need to lead the witness for reasons unrelated to hostility. Small children, for instance, are often confused by open-ended questions. In such situations, the examiner will usually ask the judge for permission to lead. Writing Used to Refresh Memory[edit] Except as otherwise provided in criminal proceedings by section of title 18, United States Code, if a witness uses a writing to refresh memory for the purpose of testifying, either: 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. In some situations, a witness has first-hand knowledge of relevant facts, but cannot recall them when questioned in court. If this happens, the lawyer questioning the witness can use Rule to "jog their memory" by showing them a record of their prior statement. The witness cannot get their testimony from the record itself: The questioning might go like this: Do you remember the license plate number? Now turn it over and set it aside. Do you remember the plate number? In the above example, the witness has to remember the plate number, not just repeat what is on the paper in front of them. However, if they cannot remember independently, the exhibit can be offered into evidence under Rule 5 , discussed in the chapter on hearsay. Prior Statements of Witnesses[edit] 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. 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 d 2. Rule is about prior inconsistent statements. When a witness says one thing out of the courtroom and then says something else on the witness stand, the opposing party can use their inconsistency to attack their credibility. Rule b forces the lawyer to ambush the witness on cross-examination, not later when they are unable to respond. Prior inconsistent statements given under oath are also admissible as substantive evidence under Rule d 1 A. The key difference between the two rules is that statements are only useful for impeaching a witness, while statements can be used for any relevant purpose. Although Rule a does not specifically apply to "inconsistent" statements, prior consistent statements are irrelevant for the purposes of impeachment: Calling and Interrogation of Witnesses by Court[edit] 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. The court may interrogate witnesses, whether called by itself or by a party. 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. Exclusion of Witnesses[edit] 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.

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Chapter 4 : Rhode Island Rules of Evidence â€“ Civil Procedure

Alabama Rules of Evidence. Article VI. Witnesses. Rule 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.

Rule Rulings on Evidence. Rule Preliminary Questions. Rule Judicial Notice of Adjudicative Facts. Rule Judicial Notice of Law. Rule Presumptions in Civil Actions and Proceedings. Rule Presumptions in Criminal Cases. Rule Methods of Proving Character. Rule Habit; Routine Practice. Rule Subsequent Remedial Measures. Rule Compromise and Offers To Compromise. Rule Payment of Medical and Similar Expenses. Rule Liability Insurance. Rule Privilege; General Rule. Rule Witnesses; General Rule of Competency. Rule Lack of Personal Knowledge. Rule Oath or Affirmation. Rule Competency of Judge as Witness. Rule Competency of Juror as Witness. Rule Who May Impeach. Rule Evidence of Character and Conduct of Witness. Rule Impeachment by Evidence of Conviction of Crime. Rule Religious Beliefs or Opinions. Rule Mode and Order of Interrogation and Presentation. Rule Prior Statements of Witnesses. Rule Calling and Interrogation of Witnesses by Court. Rule Exclusion of Witnesses. Rule Opinion Testimony by Lay Witnesses. Rule Testimony by Experts. Rule Bases of Opinion Testimony by Experts. Rule Opinion on Ultimate Issue. Rule Court-Appointed Experts. Rule Use of Learned Treatises for Impeachment. Rule Hearsay; Definitions. Rule Hearsay Exceptions; Declarant Unavailable. Rule Hearsay Within Hearsay. Rule Attacking and Supporting Credibility of Declarant. Rule Requirement of Authentication or Identification. Rule Requirement of Original. Rule Admissibility of Duplicates. Rule Admissibility of Other Evidence of Contents. Rule Public Records. Rule Testimony or Written Admission of a Party. Rule Functions of Court and Jury.

Chapter 5 : Rule Calling And Interrogation Of Witnesses By Court. | Arkansas Judiciary

The court may interrogate witnesses, whether called by itself or by a party. (c) Objections. Objections to the calling of witnesses by court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Chapter 6 : ARE Rule Calling and interrogation of witnesses by court

G.S. 8c Page 1 Rule 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.

Chapter 7 : Rule Court | Federal Rules of Evidence | LII / Legal Information Institute

The amendments made by supreme court order dated April 20, , effective July 1, , made stylistic and substantive changes. The language of New Hampshire Rule of Evidence is now identical to Federal Rule of Evidence Former New Hampshire Rule of Evidence stated that a judge may not ordinarily interrogate a witness.

Chapter 8 : View Document - Maryland Code and Court Rules

Idaho Rules of Evidence Rule Court's Calling or Examining of Witnesses. (a) Calling. When the court is the trier of fact, it may call a witness on its own or at a party's request.

Chapter 9 : Rule Calling and interrogation of witnesses by court, MCA

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