

## **RULE 43. TAKING OF TESTIMONY**

(a) Form. In every trial, the testimony of witnesses shall be taken in open court, unless a statute, these rules or the Rules of Evidence provide otherwise. The court may, on its own motion or for good cause shown upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location. All evidence shall be admitted which is admissible under the statutes of this state, or under the rules of evidence applied in the courts of this state.

(b) Scope of Examination and Cross-Examination [Abrogated].

(c) Record of Excluded Evidence [Abrogated].

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Copies of Deeds [Abrogated].

(g) Copies of Corporate Records. Copies of any votes or other records upon the books of a corporation or of any papers in its files may, when attested by its clerk, be received in evidence unless it appears that the adverse party has been denied access to the originals at reasonable hours.

(h) Notice to Produce. No evidence of the contents of a writing in the hands of an adverse party will be admitted unless previous notice to produce the writing at trial has been given, nor shall counsel be allowed to comment upon a refusal to produce it without first proving such notice.

(i) Examination of Witnesses. The examination and cross-examination of each witness shall be conducted by one counsel only on each side, except by special leave of court, and counsel shall stand while so examining or cross-examining unless the court otherwise permits. Any re-examination of a witness shall be limited to matters brought out in the last examination by the adverse party except by special leave of court.

(j) Order of Evidence. A party who has rested cannot thereafter introduce further evidence except in rebuttal unless by leave of court.

(k) Attorneys as Bail or Witnesses [Abrogated].

(l) Interpreters. The court may appoint a disinterested interpreter of its own selection, including an interpreter for the deaf, and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court. Interpreters shall be appropriately sworn.

### **Advisory Notes 2004**

Rule 43(a) is amended to allow the court upon its own motion or upon a motion of a party, on a showing of good cause, to order that testimony in a hearing be presented by an appropriate method of transmission from a remote location. To make this option more available the "in compelling circumstances" language is deleted from the present rule. The "appropriate safeguards" would include assurances that the testimony is properly sworn; the identity of the individual testifying is confirmed; the witness is subject to the authority of counsel and the court; and the presence of others at the remote location and other environmental factors which could affect the testimony are recognized and, if necessary, controlled.

### **Advisory Committee's Notes July 1, 2001**

Rule 43(a) was originally based on F.R.Civ.P. 43(a). In 1996, F.R.Civ.P. 43(a) was amended. F.R.Civ.P. 43(a) now reads as follows:

(a) Form. In every trial, the testimony of witnesses shall be taken in open court, unless a federal law, these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court provide otherwise. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

The significant changes in F.R.Civ.P. 43(a), according to the Federal Advisory Committee Notes:

1. Removed the oral testimony requirement to recognize and accommodate the fact that some individuals are not able to present themselves orally; and
2. Modified the open court requirement to permit taking live testimony from remote locations in appropriate circumstances.

M.R. Civ. P. 43(a) is amended to conform to the present Federal Rule to reflect both modern telecommunication capabilities and increased recognition of the need to accommodate witnesses who may have particular challenges in appearing and testifying live.

**Advisory Committee's Note**  
**February 2, 1976**

Rule 43 is amended because the title and many of its provisions are no longer appropriate with the adoption of the Evidence Rules.

Subdivision (a). The provision for taking testimony in open court is not duplicated in the Evidence Rules and is retained. The very general statement about admissibility of evidence is superseded by the detailed provisions of the Evidence Rules.

Subdivision (b) is abrogated. The subdivision is no longer needed or appropriate since the matters with which it deals are treated in the Evidence Rules. The use of leading questions, both generally and in the interrogation of an adverse party or witness identified with him, is the subject of Evidence Rule 611(c). Who may impeach is treated in Evidence Rule 607, and scope of cross-examination is covered in Evidence Rule 611(b).

Subdivision (c) is no longer needed or appropriate and is abrogated. Offers of proof and making a record of excluded evidence is treated in Evidence Rule 103.

Subdivision (f) is abrogated. It was based on 16 M.R.S.A. § 452. Evidence Rule 803(14) broadens that statute. The statute allows in evidence an attested copy from the Registry without proof of execution of a deed when the party offering it is

not the grantee in the deed, nor claiming as his heir, nor justifying as his agent. The Evidence Rule makes such a record admissible without limitation.

**Advisory Committee's Note  
December 1, 1975**

The specific reference to an interpreter for the deaf is added in order to eliminate any doubt that the interpreter who may be appointed under this rule may be an aid wherever there is difficulty of communication for any reason. The rule does not spell out, and it would seem unnecessary to spell out, the form of communication that may be used with the deaf person. The interpreter may be interpreting sign language, lip reading or written characters.

**Explanation of Amendment  
November 1, 1966**

This amendment was taken principally from a 1966 federal amendment adding F.R. 43(f). It authorizes the court to appoint interpreters (including ones for the deaf), to provide for their compensation, and to tax their compensation as costs in the discretion of the court. Use of interpreters has of course been common in Maine courts, but a variety of practice has prevailed as to their selection and compensation. In Cumberland County interpreters have, at least at times, been compensated by the County and it would seem that the new rule does not foreclose that possibility hereafter.

The express requirements that the interpreter be disinterested and that he be sworn do not appear in F.R. 43(f). They were added to conform with Maine Criminal Rule 28(b).

**Reporter's Notes  
December 1, 1959**

Rule 43(a) to (e), inclusive, is the same as Federal Rule 43.\* It is generally declaratory of present Maine law. The second sentence of Rule 43(b) permits a party to call an adverse party and ask leading questions, contradict, and impeach him. R.S.1954, Chap. 113, Sec. 118 [now 16 M.R.S.A. § 154], declares the same policy and in practice has been applied to permit an adverse party to be

---

\* [As Field, McKusick & Wroth note the statement is incorrect. See 1 Field McKusick & Wroth, *Maine Civil Practice* at § 43.13.]

interrogated with leading questions. The rule is believed to be sound in extending the existing statute and practice to apply to officers of a corporate adverse party. The limitation of cross-examination of a witness thus called is consistent with the general federal practice of limiting the scope of cross-examination to the subject matter of the direct, a limitation which does not prevail in Maine. Even so, there is sound justification for the limitation as applied to the cross-examination of a party or agent of a party called by his adversary.

The last sentence of Rule 43(b) is taken from Revised Rules of Court 10.

Rule 43(f) to (k), inclusive, is drawn from the present Revised Rules of Court. Rule 43(f) is derived from Revised Rules of Court 26, Rule 43(g) from Equity Rule 25, Rule 43(h) from Revised Rules of Court 27, Rule 43(i) from Revised Rules of Court 35, Rule 43(j) from Revised Rules of Court 36, and Rule 43(k) from Revised Rules of Court 38. There are a few verbal differences, but the substance of the present rules is left unchanged.