

Proposed Amendments to Rule 43

Rule 43 is amended as follows:

Rule 43. Taking of Testimony*

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

(b) ~~Affirmation in Lieu~~ **Instead of an Oath.** Whenever ~~under~~ these rules **require** an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof. **suffices.**

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

(d) ~~Interpreters~~ **Interpreter.** The court may appoint an interpreter of its own selection and ~~may~~ **choosing;** fix the interpreter's reasonable compensation. ~~The compensation shall~~ **to** be paid out of ~~of~~ **from** funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately **;** **and tax the compensation** as costs, in the discretion of the court.

(e) Documents Specially Admissible.

(1) Reports--Depositions--Affidavits. In addition to other admissible evidence, when the value of merchandise or any of its components is in issue, reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons ~~whose attendance,~~ **who** cannot reasonably ~~be had~~ **attend a court proceeding**, may be admitted in evidence, as provided **for** in 28 U.S.C. § 2639(c), when served ~~upon~~ **on** the opposing party in accordance with this rule.

(2) Service. A copy of any report, deposition or affidavit described in paragraph (1) ~~of this subdivision (e), which~~ **that** is intended to be offered in evidence, ~~shall~~ **must** be served on the opposing party with the request for trial. A party other than the party serving the request for trial ~~shall~~ **must** serve a copy of any report, deposition or affidavit ~~which~~ **that** **the** party intends to offer in evidence ~~upon~~ **on** the opposing party within 15 days after service of the request for trial. ~~Timely~~ **On consent or by order of the court for good cause, timely** service of ~~copies of such~~ **the** documents may be waived or the time extended ~~upon consent,~~ or ~~by order of the court for good cause shown.~~

(3) Objections. Objections to the admission of such documents in evidence may be made at the trial.

(4) Pricelists--Catalogs. When the value of merchandise is in issue, pricelists and catalogs may be admitted into evidence when duly authenticated, relevant, and material.

*As provided in 28 U.S.C. § 2641(a), the Federal Rules of Evidence apply to all actions in this court, except as provided in 28 U.S.C. § 2639 and 2641(b), or the rules of the court.

PRACTICE COMMENT: The availability of contemporaneous transmission per Rule 43(a) is in addition to other provisions of law and rules regarding the receipt of testimony and evidence in the court. See, e.g. 28 U.S.C. §§ 256 (trials outside New York), 2639(c) (special evidence rules), and 2641 (confrontation of witnesses, inspection of evidence). These provisions may be factors in determining whether the court will permit the reception of testimony from a different location.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 14, 1997, eff. Jan. 1, 1998; _____, 2009, eff. _____, 2010.)

Advisory Committee Note

The language of Rule 43 has been amended as part of the general restyling of these 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.