

Rule 43. Taking Testimony*

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

(b) Affirmation Instead of an Oath. When these rules require an oath, a solemn affirmation suffices.

(c) Evidence on a Motion. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) Interpreter. The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

(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, who cannot reasonably attend a court proceeding, may be admitted in evidence, as provided for in 28 U.S.C. § 2639(c), when served on the opposing party in accordance with this rule.

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

(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; Nov. 25, 2009; eff. Jan. 1, 2010.)