

FORM OF THE QUESTION

Rule 403—Cumulative / Asked and Answered

- The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 403—Argumentative

- The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 403—Compound Questions

- The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 403—Interrupting Witness – Not Allowing Answer

- The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 611—Leading

- **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:
 - o on cross-examination; and
 - o when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

Rule 611—Outside the Scope of Direct / Cross

- **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - o make those procedures effective for determining the truth;
 - o avoid wasting time; and
 - o protect witnesses from harassment or undue embarrassment
- **Scope of Cross-Examination.** Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

CONTENT-BASED

Rule 401—Relevance

- Evidence is relevant if:
 - a. It has any tendency to make a fact more or less probable than it would be without the evidence; and
 - b. The fact is of consequence in determining the action

Rule 602—Lacks Personal Knowledge

- A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Rule 701—Calls for Speculation

- If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
 - o Rationally based on the witness's perception;
 - o Helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
 - o Not based on scientific, technical, or other specialized knowledge within the scope of Rule 702 (expert witness)

Rule 703—Calls for Legal Conclusion (Expert / Non-Expert Rule)

- An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 801—Hearsay

- "Hearsay" means a statement that:
 - o the declarant does not make while testifying at the current trial or hearing; and
 - o a party offers in evidence to prove the truth of the matter asserted in the statement.

Rule 609—Improper Impeachment

- **In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
 - o for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
 - must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

- must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
 - o for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness’s admitting — a dishonest act or false statement.
- **Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness’s conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:
 - o its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
 - o the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.
- **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:
 - o the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
 - o the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
- **Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:
 - o it is offered in a criminal case;
 - o the adjudication was of a witness other than the defendant;
 - o an adult’s conviction for that offense would be admissible to attack the adult’s credibility; and
 - o admitting the evidence is necessary to fairly determine guilt or innocence.
- **Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Rule 106—Incomplete Evidence / Out of Context

- If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

Rule 901—Lack of Foundation

- **In general.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.
- **Examples.** The following are examples only—not a complete list—of evidence that satisfies the requirement:
 - o **Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.

GENERAL PROCEEDINGS

FRE 611—Judge has Ultimate Control

- **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - make those procedures effective for determining the truth;
 - avoid wasting time; and
 - protect witnesses from harassment or undue embarrassment.

Rule of Professional Conduct 3.4(e)—Counsel is Testifying (Improper Commentary by Counsel)

- A LAWYER SHALL NOT in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused