

### **Rule 43. Evidence**

(a) IN GENERAL. The admissibility of evidence and the competency and privileges of witnesses are governed by the principles of the common law as they may be interpreted by the courts in the light of reason and experience, except when a statute or these rules otherwise provide.

(b) IN OPEN COURT. At trial, the witnesses' testimony must be taken in open court unless otherwise provided by these rules. 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.

(c) MODE AND ORDER OF EXAMINING WITNESSES AND PRESENTING EVIDENCE. *Federal Rule of Evidence 611* is incorporated herein.

(d) RULINGS ON EVIDENCE. *Federal Rule of Evidence 103* is incorporated herein.

(e) AFFIRMATION INSTEAD OF AN OATH. When these rules require an oath, a solemn affirmation suffices.

(f) 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.

### **COMMENT TO 2017 AMENDMENTS**

Rule 43 differs substantially from *Federal Rule of Civil Procedure 43*, as amended in 2007, and from the prior rule. Section (a) is taken from Criminal Rule 26. Sections (c) and (d) incorporate by reference *Federal Rules of Evidence 611* and *103*, respectively. Sections (b), (e), and (f) are substantially identical to sections (a), (b), and (c) of the federal rule. The section regarding interpreters has been deleted. The subject of interpreters is addressed in statutes, administrative orders, and Department of Justice guidance.