

Rule 28. Court-Appointed Expert Witnesses and Interpreters

(a) Expert Witnesses.

(1) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, if any; the witness's deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(2) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law.

(3) Disclosure of Appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(4) Parties' Experts of Own Selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

(b) Interpreters. The court may select, appoint, and set the reasonable compensation for an interpreter. The compensation must be paid from funds provided by law.

2023 COMMENT

The comment to the 2016 amendments erroneously cited to *Ko v. United States*, 694 A.2d 73 (D.C. 1997). That opinion was vacated when the Court of Appeals voted to rehear the case en banc. The comment should have cited to the en banc decision that followed: *Ko v. United States*, 722 A.2d 830, 835-36 (D.C. 1998) (en banc).

COMMENT TO 2016 AMENDMENTS

This rule differs from the federal rule in two respects.

Paragraph (a) has no counterpart in the federal rule. Like the former Superior Court rule, this paragraph is substantially identical to *Federal Rule of Evidence 706*.

Paragraph (b) has been redrafted to conform to the general restyling of the federal rules in 2002. In addition, it now omits the provision that interpreters' compensation may also be paid "by the government, as the court may direct." The phrase conflicts with D.C. Code §§ 2-1911 and -1912 (2012 Repl.), which provide that all interpreters shall be paid by the Office of Interpreter Services. See *Ko v. United States*, 694 A.2d 73 (D.C. 1997) (en banc).

The title of the rule has been changed to reflect more accurately the scope of the rule.