

Chapter 45

1979 REPLACEMENT PART

Taking Testimony of Witnesses

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CROSS REFERENCES

Compelling witness to testify in criminal proceeding, immunity, 136 617, 136 619	45.510
Evidence of communication unlawfully obtained not admissible, 41 910	Right to public trial in criminal cases, Const. Art. I, §11
Juvenile court proceeding, testimony, 419 498	45.520
Rights, competency and privileges of witnesses, Ch 44	Interpreter, when required, 44 095
Tax court proceedings, testimony and depositions, 305.420	45.610
Uniform Recognition of Acknowledgments Act, 194.500 to 194 580	Impeachment by transcript of first trial during new trial, 138 670
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EVIDENCE AND WITNESSES

MODES OF TAKING TESTIMONY

45.010 Testimony taken in three modes. The testimony of a witness is taken by three modes:

- (1) Affidavit.
- (2) Deposition.
- (3) Oral examination.

45.020 Affidavit defined. An affidavit is a written declaration under oath, made without notice to the adverse party.

45.030 [Repealed by 1979 c.284 §199]

45.040 Oral examination defined. An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact, or act upon it, the testimony being heard by the jury or tribunal from the mouth of the witness.

45.050 Referral to referee to take testimony and make report. Whenever an action tried without a jury is at issue upon a question of fact, the court may refer it to a referee to take the testimony in the case and report it to the court within such time as the court or judge thereof may order; provided, that in judicial districts composed of one county only and having more than one judge of the circuit court, no action shall be referred to a referee without the written and filed consent of all the parties, except in actions involving the examination of long and complicated accounts. The court or judge may revoke a reference or change the referee. Special reference may be made to a special referee for taking the testimony of witnesses residing more than 250 miles from the place of holding the court or without the state, and the testimony so taken shall be returned to the court. When an action has gone to final judgment, the judge rendering the judgment shall, within 10 days after its entry, by proper certificate, identify all the evidence adduced before the referee, whatever its nature. The referee may require the attendance of witnesses and issue subpoenas therefor. The testimony so taken shall be reduced to writing; provided, that if it is taken by a stenographer, the stenographer shall make a transcript of the notes thereof, and certify to its being true and correct. All documentary evidence or other material object offered shall be preserved and incorporated in the report of the evidence by the referee. If evidence is offered by any party

to the action and excluded by ruling of the referee, the party offering it may require that it be transcribed or preserved and incorporated in like manner as the evidence received. The party offering any testimony so rejected shall pay for the taking and transcribing thereof, unless the court holds it competent.

[Amended by 1961 c.461 §1; 1979 c.284 §82]

AFFIDAVITS AND DEPOSITIONS GENERALLY

45.110 [Repealed by 1979 c.284 §199]

45.120 [Repealed by 1979 c.284 §199]

45.125 [Formerly 45.180; repealed by 1977 c.404 §2 (194.500 to 194.580 enacted in lieu of 45.125)]

45.130 Production of affiant for cross-examination. Whenever a provisional remedy has been allowed upon affidavit, the party against whom it is allowed may serve upon the party by whom it was obtained a notice, requiring the affiant to be produced for cross-examination before a named officer authorized to administer oaths. Thereupon the party to whom the remedy was allowed shall lose the benefit of the affidavit and all proceedings founded thereon, unless within eight days, or such other time as the court or judge may direct, upon a previous notice to his adversary of at least three days, he produces the affiant for examination before the officer mentioned in the notice, or some other of like authority, provided for in the order of the court or judge. Upon production, the affiant may be examined by either party; but a party is not obliged to make this production of a witness except within the county where the provisional remedy was allowed.

45.140 [Repealed by 1979 c.284 §199]

45.150 [Repealed by 1955 c.611 §13]

45.151 [1955 c.611 §1; repealed by 1979 c.284 §199]

45.160 [Repealed by 1955 c.611 §13]

45.161 [1955 c.611 §2; repealed by 1979 c.284 §199]

45.170 [Repealed by 1955 c.611 §13]

45.171 [1955 c.611 §3; repealed by 1979 c.284 §199]

45.180 [Renumbered 45.125]

45.181 [1955 c 611 §5; repealed by 1977 c.358 §12]

45.185 [1959 c.354 §1; 1977 c.358 §6; repealed by 1979 c.284 §199]

45.190 [1955 c.611 §6; 1977 c.358 §7; repealed by 1979 c.284 §199]

45.200 [1955 c.611 §7; repealed by 1979 c 284 §199]

45.210 [Repealed by 1955 c 611 §13]

45.220 [Repealed by 1955 c 611 §13]

45.230 [Repealed by 1979 c.284 §199]

45.240 [Repealed by 1979 c.284 §199]

45.250 Use of deposition. (1) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions of this subsection:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(b) The deposition of a party, or of anyone who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership or association which is a party, may be used by an adverse party for any purpose.

(2) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party for any purpose, if the party was present or represented at the taking of the deposition or had due notice thereof, and if the court finds that:

(a) The witness is dead; or

(b) The witness's residence or present location is such that the witness is not obliged to attend in obedience to a subpoena as provided in ORCP 55 E.(1), unless it appears that the absence of the witness was procured by the party offering the deposition; or

(c) The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or

(d) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(e) Upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used. [1955 c 611 §§8, 9; 1979 c.284 §83]

45.260 Introduction, or exclusion, of part of deposition. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced and any party may introduce any other parts, so far as admissible under the rules of evidence. When any portion of a deposition is excluded from a case, so much of the adverse examination as relates thereto is excluded also. [1955 c.611 §10]

45.270 Use of deposition in same or other proceedings. Substitution of parties shall not affect the right to use the depositions previously taken; and when an action, suit or proceeding has been dismissed and another action, suit or proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, any deposition lawfully taken and duly filed in the former action, suit or proceeding may be used in the latter as if originally taken therefor, and is then to be deemed the evidence of the party reading it. [1955 c 611 §11]

45.280 [1955 c.611 §12; repealed by 1979 c.284 §199]

45.310 [Repealed by 1955 c.611 §13]

45.320 [Repealed by 1979 c.284 §199]

45.325 [1955 c.611 §4; repealed by 1979 c 284 §199]

45.330 [Repealed by 1979 c.284 §199]

45.340 [Amended by 1959 c 96 §1; repealed by 1979 c.284 §199]

45.350 [Repealed by 1979 c.284 §199]

45.360 [Repealed by 1979 c.284 §199]

45.370 [Repealed by 1979 c.284 §199]

45.380 [Repealed by 1955 c.611 §13]

45.410 [Repealed by 1979 c 284 §199]

45.420 [Repealed by 1979 c.284 §199]

45.430 [Repealed by 1979 c 284 §199]

45.440 [Repealed by 1979 c.284 §199]

45.450 [Repealed by 1979 c.284 §199]

45.460 [Repealed by 1979 c.284 §199]

45.470 [Repealed by 1979 c.284 §199]

**GENERAL RULES OF
EXAMINATION AND
IMPEACHMENT**

45.510 Exclusion of witnesses from courtroom. If either party requires it, the judge may exclude from the courtroom any witness of the adverse party not at the time under examination, so that he may not hear the testimony of other witnesses.

45.520 Interpreters. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

45.530 Court control over interrogation and production of evidence. The court may exercise a reasonable control over the mode of interrogation, so as to make it as rapid, as distinct, as little annoying to the witness and as effective for the extraction of the truth as may be; but subject to this rule, the parties may put such legal and pertinent questions as they see fit. The court, however, may stop the production of further evidence, upon any particular point, when the evidence upon it is already so full as to preclude reasonable doubt.

45.540 Direct examination and cross-examination defined. The examination of a witness by the party producing him is denominated the direct examination. The examination of that witness upon the same matter, by the adverse party, the cross-examination. The direct examination must be completed before the cross-examination begins unless the court otherwise directs.

45.550 Reexamination of witness; recall. A witness once examined shall not be reexamined as to the same matter without leave of the court; but he may be reexamined as to any new matter upon which he has been examined by the adverse party. After the examinations on both sides are concluded, the witness shall not be recalled without leave of the court. Leave is granted or withheld in the exercise of a sound discretion.

45.560 Leading questions. A question which suggests to the witness the answer which the examining party desires is denominated a leading or suggestive question. On a direct examination, leading questions are not allowed, unless merely formal or preliminary, except in the sound discretion of the court,

under special circumstances making it appear that the interests of justice require it.

45.570 Extent of cross-examination; leading questions. The adverse party may cross-examine the witness as to any matter stated in his direct examination, or connected therewith, and in so doing may put leading questions; but if he examines him as to other matters, the examination is subject to the same rules as a direct examination.

45.580 Refreshing memory. A witness is allowed to refresh his memory respecting a fact by anything written by himself, or under his direction, at the time when the fact occurred or immediately thereafter or at any other time when the fact was fresh in his memory and he knew that it was correctly stated in the writing; but in either case the writing must be produced, and may be inspected by the adverse party, who may, if he chooses, cross-examine the witness upon it, and read it to the jury. The witness may testify from that writing, though he retains no recollection of the particular facts; but the evidence shall be received with caution.

45.590 Impeachment of own witness. The party producing a witness is not allowed to impeach his credit by evidence of bad character, but he may contradict him by other evidence, and may also show that he has made at other times statements inconsistent with his present testimony, as provided in ORS 45.610. However, when a party calls as a witness either an adverse party or the assignor, agent, officer or employe of an adverse party, he shall not be deemed to have vouched for the credit of that witness and he may impeach the credit of that witness in the same manner as in the case of a witness produced by an adverse party.

45.600 Impeachment of adverse witness. A witness may be impeached by the party against whom he was called, by contradictory evidence or by evidence that his general reputation for truth is bad or that his moral character is such as to render him unworthy of belief; but he may not be impeached by evidence of particular wrongful acts, except that it may be shown by his examination or by the record of the judgment, that he has been convicted of a crime.

45.610 Impeachment by evidence of inconsistent statements. A witness may be impeached by evidence that he has made, at

other times, statements inconsistent with his present testimony; but before this can be done, the statements must be related to him, with the circumstances of times, places and persons present, and he shall be asked whether he made the statements, and if so, allowed to explain them. If the statements be in writing, they shall be shown to the witness before any question is put to him concerning them.

45.620 Evidence of good character.

Evidence of the good character of a party is not admissible in a civil action, suit or pro-

ceeding, unless the issue involves his character, nor of a witness until the character of the witness has been impeached.

45.630 Inspection of writing shown witness; reading to jury. Whenever a writing is shown to a witness it may be inspected by the adverse party, and if proved by the witness shall be read to the jury before his testimony is closed, or it shall not be read except on recalling the witness.

45.910 [1959 c.523 §§1, 2, 3; repealed by 1979 c.284 §199]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1979

Thomas G. Clifford
Legislative Counsel