



WITNESS & COMPETENCY

Irma Yasmin Rodriguez

COMMON LAW RULES OF COMPETENCY

- ❖ **COMPETENT** – legally qualified to give testimony

WHO IS COMPETENT TO TESTIFY UNDER FRE 601?

RULE 601. COMPETENCY TO TESTIFY IN GENERAL

“Every person is competent to testify unless subject to an exception under the rules.”

- ❖ Under FRE 601, the exceptions are truly rare, and almost all witnesses are competent to testify.
- ❖ In Federal Courts, the Federal Rules of Evidence apply.
- ❖ In civil actions and proceedings, the competency of a witness is determined according to the state law.

WHO IS UNABLE TO TESTIFY?

- ❖ People suffering from mental illness, children under certain ages, or other classes of people may be deemed incompetent to testify pursuant to various state rules.
- ❖ Judges who preside over the proceeding and jurors who deliberate in the proceedings are legally incompetent to testify.
- ❖ A juror who brings information into the deliberations may be unlawfully giving testimony, thereby causing a mistrial.

6.5 TREATING PHYSICIAN

Martha Hiller is suing Thomas Randolph for personal injuries suffered in an auto accident on February 10, 2016. Her suit asks for substantial damages. Her claim is based primarily on the pain and suffering she says have resulted from the accident.

The case is now on trial. Hiller will testify that her neck and head pains are as severe today as they were when she saw Dr. Flanagan. She will say she stopped going to the doctor because he was not helping her and she did not want to incur additional expense.

Hiller was not employed at the time of the accident, having retired one year earlier after 30 years of employment at Western Electric.

Aside from Dr. Flanagan's bill, her actual expenses were:

- | | |
|---|----------|
| ○ St. Joseph's Hospital emergency treatment | \$250.00 |
| ○ X-rays | \$200.00 |
| ○ Prescriptions | \$200.00 |

Dr. Flanagan is now called as a witness for the plaintiff. His report and the hospital x-rays are attached. Assume there is a stipulation that Dr. Flanagan is a qualified physician, specializing in the field of orthopedics.

DIRECT EXAMINATION OF DR. FLANAGAN

Direct examination is the first questioning of a witness by the party calling the witness. The questions generally do not suggest an answer.

- ❖ FRE 602 provides that in general, a witness can testify only as to his or her personal knowledge of the matter.
- ❖ However, FRE 602 requires a witness to testify only as to what he or she knows and not what he or she has been told by others.

Clearly, Dr. Flanagan has personal knowledge of the auto accident Martha Hiller suffered, as he personally attended Miss Hiller not only in the St. Joseph's hospital emergency room, but four times after that at his office. It was then that Dr. Flanagan concluded that Miss Hiller's condition was caused by the accident of February 10, 2016. He classified her condition as cervical sprain.

PERSONAL KNOWLEDGE OF THE WITNESS

- ❖ Although personal knowledge is required under FRE 602, a witness who has had the opportunity to observe and form a belief is considered to have personal knowledge.
- ❖ A person need not be absolutely sure. Testimony that begins with words such as “I think” or “I believe” is not inadmissible as long as the belief is well founded in personal observation.

Example: Dr. Flanagan’s medical report states, “I believe the pain is real and that she (referring to Martha Hiller) is not malingering.” Although Mr. Flanagan is not entirely sure of Miss Hiller’s pain, this does not make the testimony inadmissible.