

A plaintiff sued a defendant for personal injuries arising out of an automobile accident.

Which of the following would be error?

- A. The judge allows cross-examination about the credibility of a witness even though no question relating to credibility has been asked on direct examination.
- B. The judge allows the defendant's attorney to ask the defendant questions on cross-examination that go well beyond the scope of direct examination by the plaintiff, who has called the defendant as an adverse witness.
- C. The judge, despite the defendant's request for exclusion of witnesses, allows the plaintiff's eyewitness to remain in the courtroom after testifying, even though the eyewitness is expected to be recalled for further cross-examination.
- D. The judge refuses to allow the defendant's attorney to cross-examine the defendant by leading questions.

Explanation:

Exclusion of witnesses

(FRE 615)

Court must exclude witness upon party's request—and may do so on court's own initiative—so that they cannot hear other witnesses' testimony unless witness is:

party who is a natural person

officer or employee of party that is not a natural person after individual has been designated as party's representative by its attorney

person whose presence is essential to party's presentation of its case (e.g., expert witness)

person whose presence is permitted by statute (e.g., victim)

FRE = Federal Rule of Evidence.

Upon a **party's request**, the **court must exclude witnesses** from the courtroom so that they cannot hear—or be influenced by—other witnesses' testimony. The court may sequester witnesses on its own initiative as well. However, Federal Rule of Evidence 615 provides that **some witnesses cannot be excluded**:

parties or their designated representatives

persons whose **presence is essential** to a party's presentation of its case (eg, expert witness) *and*

persons **authorized by statute** to be present.

Here, the defendant requested the exclusion of witnesses. And the plaintiff's eyewitness is not a type of witness who is immune from exclusion. Therefore, it would be error for the judge to allow the eyewitness to remain in the courtroom even though the eyewitness is expected to be recalled for further cross-examination.

(Choice A) A witness can always be **cross-examined** about matters affecting his/her credibility—even when no questions relating to the witness's credibility were asked on direct examination.

(Choice B) Cross-examination is generally limited to the scope of direct examination and matters impacting the witness's credibility. But a court has broad discretion to allow questions that go beyond that scope.

(Choice D) **Leading questions** are generally permitted on cross-examination.* However, the judge has discretion to limit leading questions when the witness is friendly to the examining party. Therefore, the judge's refusal to allow the defendant's attorney to cross-examine the defendant by leading questions would not be error.

*In contrast, questions that assume facts not in evidence, call for a conclusion, or are compound, argumentative, or repetitious are never permitted.

Educational objective:

A court must exclude witnesses from the courtroom so that they do not hear other witnesses' testimony if a party so requests (or on the court's initiative). But the court cannot exclude certain witnesses: parties or their designated representatives, persons whose presence is essential to the case, and persons authorized by statute to be present.

References

Fed. R. Evid. 615 (excluding witnesses).

Fed. R. Evid. 611 (examining witnesses and presenting evidence).

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