

A woman bought a homeowner's insurance policy from an insurance company through one of its agents. One year later, a fire completely destroyed the woman's house and its contents, and she learned that the policy covered the cost of rebuilding the house but not the cost of replacing the contents.

The woman sued the insurance company for breach of contract, claiming that when the agent sold her the policy, he did not notify her, as was legally required, that she would have to purchase a supplemental policy to cover the house's contents. At trial, the woman testified that the agent had not provided the required notice. The agent's supervisor plans to testify that the company issues thousands of policies through its agents each year and that it is the routine practice of those agents to discuss supplemental policy options with each customer. The woman's attorney has objected to this proffered testimony.

Should the court allow the supervisor's testimony?

- A. No, because evidence of routine practice is not admissible when an eyewitness denies that the practice was followed.
- B. No, because issuing insurance policies to individuals is not sufficiently automatic to constitute a routine practice.
- C. Yes, as character evidence that the agent acted in a thorough manner when dealing with customers.
- D. Yes, as evidence of the company's routine practice.

Correct

Collecting Statistics

01 min, 26 secsTime Spent

2023Version

Explanation:

Under Federal Rule of Evidence (FRE) 406, evidence of an **organization's routine practice** is **admissible to prove** that the organization **acted in accordance** with that practice on a particular occasion. Any witness who is familiar with the organization (eg, the agent's supervisor) can testify regarding the existence of a routine practice (eg, discussing supplemental policy options with each customer). Therefore, the court should allow the supervisor's testimony.

(Choice A) The fact that the woman, an eyewitness, denies that the company's routine practice was followed in her case does not affect the admissibility of evidence regarding that practice. Instead, the woman's testimony creates a factual issue for the jury.

(Choice B) An organization's practice need only be *routine* (ie, regularly done) to be admitted under FRE 406. As a result, there is no need for testimony that the practice is *automatic*.

(Choice C) Evidence of the insurance agent's general character for thoroughness is *not* admissible in this civil case to prove that the agent acted in accordance with that character when dealing with the woman. But the supervisor is not attempting to testify as to the agent's character but rather seeks to establish the company's routine practice.

Educational objective:

Under Federal Rule of Evidence 406, evidence of an organization's routine practice is admissible to prove that the organization acted in accordance with that practice on a particular occasion.

References

Fed. R. Evid. 406 (discussing evidence of habit and routine practice).

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Proving typical response to recurring situation
(FRE 406)

Person's habit



FRE = Federal Rule of Evidence

Business's routine practice



©UWorld