

A man suffered a broken jaw in a fight with a neighbor that took place when they were both spectators at a soccer match. The man sues the neighbor for personal-injury damages.

Which of the following actions *must* the trial court take if requested by the man?

- A. Exclude nonparty eyewitnesses from the courtroom during the testimony of other witnesses.
- B. Prevent the neighbor's principal eyewitness from testifying, upon a showing that six years ago the witness was convicted of perjury and the conviction has not been the subject of a pardon or annulment.
- C. Refuse to let the neighbor cross-examine the man's medical expert on matters not covered on direct examination of the expert.
- D. Require the production of a writing used before trial to refresh a witness's memory.

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.

Federal Rule of Evidence (FRE) 615—often referred to as "the Rule"—provides that a **court must**, upon a **party's request**, **exclude witnesses** from the courtroom so they cannot hear other witnesses' testimony. A court may also sequester witnesses on its own initiative. However, the Rule **cannot** be used to **exclude**:

parties or their designated representatives

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

persons **authorized by statute** to be present (eg, crime victim)

Here, there is no indication that (1) a party has shown the nonparty eyewitnesses' presence to be essential to its case or (2) those witnesses are authorized by statute to be present. Therefore, the trial court must, at the man's request, remove the witnesses from the courtroom during the testimony of other witnesses.

(Choice B) A witness cannot be prevented from testifying simply because he/she has been convicted of a crime—even perjury. Instead, evidence of that **conviction** may be admitted to impeach the witness.

(Choice C) FRE 611 limits the scope of cross-examination to matters addressed on direct examination or impacting the witness's credibility. But a court has broad discretion to allow questions beyond that scope, so it cannot be *required* to prohibit a cross-examiner from asking questions unrelated to the direct examination.

(Choice D) Under FRE 612, the court *may* order a party to produce a writing that was used before trial to refresh a witness's memory but is not *required* to do so upon another party's request.

Educational objective:

A court must exclude a witness from the courtroom upon a party's request—or may do so on the court's own initiative—unless the witness is (1) a party or its designated representative, (2) a person whose presence is essential to the case, or (3) a person authorized by statute to be present.

References

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

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