

Alabama Rules of Evidence

Article VII. Opinions and Expert Testimony

Rule 706.

Court appointed experts.

(a) *Appointment.* The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, if any; the witness's deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) *Compensation.* Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the court shall order that the compensation be paid by the parties in such a proportion as the court may direct, to be paid at such a time as the court directs, and the costs as so ordered may be charged in the same manner as other costs.

(c) *Disclosure of appointment.* The fact that the court has appointed a particular expert witness will not be disclosed to the jury.

(d) *Parties' experts of own selection.* Nothing in this rule limits the parties in calling expert witnesses of their own selection.

Advisory Committee's Notes

Section (a). Appointment. Section (a) recognizes the historic power of the trial court to appoint its own expert witnesses. See *Alabama Great S. R.R. v. Hill*, 90 Ala. 71, 8 So. 90 (1890). Compare J. Sink, *The Unused Power of a Federal Judge to Call His Own Witnesses*, 29 S.Cal.L.Rev. 195 (1956). The committee contemplates that this rule will make impartial experts more accessible to the courts. See Vt.R.Evid. 706 (reporter's notes to the effect that the rule "is a desirable one, providing an antidote to the most commonly noted weakness in the use of expert witnesses – the partisanship of experts chosen by the parties").

The appointment of an expert may be made upon the judge's own motion or upon that of a party. An expert witness appointed by the court is subject to the deposition procedure. All parties have the right to cross-examine such a witness. See Fed.R.Evid. 706 advisory committee's note.

Section (b). Compensation. Expert witnesses appointed by the court are to receive reasonable compensation as set by the court. The compensation should come from any source provided by law. If the law provides no other source for the compensation, then the judge may assess the compensation as costs to be paid by each party in such a proportion as the court deems fair.

Section (c). Disclosure of appointment. The fact that an expert has been appointed by the court is not to be disclosed to the jury. Such disclosure is precluded, whether by the court or by the parties themselves. See *Elliott v. State*, 48 Ala.App. 515, 266 So.2d 318, cert. denied, 289 Ala. 742, 266 So.2d 321 (1972). See also C. Gamble, *McElroy's Alabama Evidence* § 445.01 (4th ed. 1991).

Section (d). Parties' experts of own selection. Like its identical federal counterpart, section (d) provides that the trial court's exercise of its power to appoint and call an expert witness will not limit the parties in calling their own experts.