

Alabama Rules of Evidence

Article VI. Witnesses

Rule 603.

Oath or affirmation.

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so.

Advisory Committee's Notes

Rule 603, under which every witness must declare by oath or affirmation that he or she will testify truthfully, is the same as the corresponding federal rule. See Fed.R.Evid. 603. It supersedes the Alabama statute requiring the oath and affirmation as conditions precedent to giving testimony. Ala. Code 1975, § 12-21-135. Additionally, it supersedes Ala.R.Civ.P. 43(d), which provides that an affirmation may, at least in civil cases, always be given in lieu of an oath. As observed by the drafters of the federal rule: "The rule is designed to afford the flexibility required in dealing with religious adults, atheists, conscientious objectors, mental defectives, and children." See Fed.R.Evid. 603 advisory committee's note.

Alabama's preexisting law regarding the determination of whether a witness understands the nature and obligation of an oath or affirmation continues. Clear federal authority stands for the proposition that it remains for the trial court to determine whether a prospective witness suffers under such an extreme mental deficiency as not to understand the duty to testify truthfully. See, e.g., *United States v. Ramirez*, 871 F.2d 582, 584 (6th Cir.), cert. denied, 493 U.S. 841 (1989) (recognizing that "under Rule 603, the inability of a witness to take or comprehend an oath or affirmation will allow the judge to exclude that person's testimony"); *United States v. Lightly*, 677 F.2d 1027, 1028 (4th Cir.1982); *United States v. Odum*, 736 F.2d 104, 112 (4th Cir.1984). Compare C. Gamble, McElroy's Alabama Evidence §§ 94.02, 94.03 (4th ed. 1991). Even Dean McCormick's treatise contains this observation: "[A] defect of capacity could be so great that one could not understand the concept of truth-telling duties under Rule 603 or would not be capable of having firsthand knowledge under Rule 602." E. Cleary, McCormick on Evidence § 45, at 104 n.5 (3d ed. 1984). While recognizing that a witness might be so mentally deficient as not to understand the taking of an oath or an affirmation under Rule 603, Judge Weinstein suggests that such a witness might more appropriately be kept off the stand upon the grounds of irrelevancy. J. Weinstein & M. Berger, Weinstein's Evidence ¶ 603[01] (1990).