Alabama Rules of Evidence

Article VI. Witnesses

Rule 614.

Calling and interrogation of witnesses by court.

(a) *Calling by court.* The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) *Interrogation by court.* The court may interrogate witnesses, whether they were called by the court or by a party.

(c) *Objections.* Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Advisory Committee's Notes

Section (a). Calling by court. Rule 614(a), like its counterpart in the Federal Rules of Evidence, recognizes that the trial judge can call witnesses. Any party can cross-examine any witness called by the judge.

Pre-existing Alabama law has allowed the trial judge to call witnesses. See *Jones v. State*, 292 Ala. 126, 290 So.2d 165 (1974); C. Gamble, McElroy's Alabama Evidence § 445.01 (4th ed. 1991). In calling witnesses, the trial judge is not to show partiality or to indicate an opinion as to the just outcome of the case. See *Kissic v. State*, 266 Ala. 71, 94 So.2d 202 (1957); *Moore v. United States*, 598 F.2d 439 (5th Cir.1979).

Section (b). Interrogation by court. The trial court may question witnesses, whether they have been called by the court or by one of the parties. This rule is adopted without substantial change from Fed.R.Evid. 614(b). This principle historically has been recognized in the common law of both Alabama and the United States as a whole. See 3 J. Wigmore, Wigmore on Evidence § 784 (Chadbourn rev. 1970); *Higginbotham v. State*, 262 Ala. 236, 78 So.2d 637 (1955); C. Gamble, McElroy's Alabama Evidence § 121.04 (4th ed. 1991).

The trial judge may not question a witness in such a way as to indicate partiality for a party or as to indicate the judge's own feelings with regard to the credibility of a witness. To do so is to abandon the proper judicial role, by taking on the profile of an advocate; to do so would be an abuse of discretion and could lead to a reversal on appeal. See, e.g., *Amatucci v. Delaware & Hudson Ry.*, 745 F.2d 180 (2d Cir.1984) (indicating that the judge may not ask irrelevant questions); *Moore v. United States*, 598 F.2d 439 (5th Cir.1979) (the trial judge, after questioning witnesses, should remind jurors that they are the sole factfinders in the case); *United States v. Hickman*, 592 F.2d 931 (6th Cir.1979) (conviction of defendant reversed

where the trial judge interjected himself into the trial proceedings more than 250 times and intimated a disbelief in the story of the defense). See also *Richardson v. State*, 403 So.2d 293 (Ala.Crim.App.), aff'd, 403 So.2d 297 (Ala.1981).

Section (c). Objections. Objecting to the actions of the trial judge, in either calling or questioning witnesses, may prove damaging if done in the presence of the jury. Consequently, section (c), identical to Fed.R.Evid. 614(c), recognizes the right of the objecting party to object either at the time the alleged error is committed or at the next opportunity when the jury is not present. Rule 614(c) thus provides an exception to the general principle that a timely objection must come at the moment of the alleged error. See *Davis v. Southland Corp*., 465 So.2d 397 (Ala.1985).