

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' 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' findings, if any; the witness' 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. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the Fifth Amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

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

(Amended effective January 1, 1990.)

Committee Comment - 1977

This rule implements Rule 614 setting up the appropriate procedure to be used in calling an expert as a court witness. By recommending this rule the committee did not intend to encourage the use of court appointed expert witnesses. In the appropriate case, a trial judge might find that the use of a court expert would be necessary to a fair, expeditious, and inexpensive proceeding. See e.g., Minnesota Statutes 1974, section 176.391, clause (2), which provides for the appointment of impartial experts in Workmen's Compensation proceedings.

However, court experts pose a potential danger. Particularly in a jury trial such an expert might unfairly tip the balance in the adversary process. The rule provides for ample opportunity for the parties to provide the court with the necessary information with which to make the decision whether to call an expert as a court witness.