RULE CRLJ 43
TAKING OF TESTIMONY

(a) Testimony.

(1) Generally. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute.

(2) Multiple Examinations. When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from the stand; and all objections and offers of proof made during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross examination.

(b) and (c) (Reserved. See ER 103 and 611.)

(d) Oaths of Witnesses.

(1) Administration. The oaths of all witnesses

(i) shall be administered by the judge;
(ii) shall be administered to each witness individually; and
(iii) the witness shall stand while the oath is administered.

(2) Applicability. This rule shall not apply to civil ex parte proceedings, and in such cases the manner of swearing witnesses shall be as each court may prescribe.

(3) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Adverse Party as Witness.

(1) Party or Managing Agent as Adverse Witness. A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association which is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in CR 30(b)(1) to opposing counsel of record. Notices for the attendance of a party or of a managing agent at the trial shall be given not less than 10 days before trial (exclusive of the day of service, Saturdays, Sundays, and court holidays). For good cause shown in the manner prescribed in CR 26(c), the court may make orders for the protection of the party or managing agent to be examined.

(2) Effect of Discovery, etc. A party who has served interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. Matters admitted by an adverse party or managing agent in interrogatory answers, deposition testimony, or trial testimony are not conclusively established and may be rebutted.

(3) Refusal To Attend and Testify; Penalties. If a party or a managing agent refuses to attend and testify before the officer designated to take his deposition or at the trial after notice served as prescribed in CR 30(b)(1), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. This rule shall not be construed:

(i) to compel any person to answer any question where such answer might tend to incriminate him;

(ii) to prevent a party from using a subpoena to compel the attendance of any party or managing agent to give testimony by deposition or at the trial; nor

(iii) to limit the applicability of any other sanctions or penalties provided in CR 37 or otherwise for failure to attend and give testimony.

(g) Attorney as Witness. If any attorney offers himself as a witness on behalf of his client and gives evidence on the merits, he shall not argue the case to the jury, unless by permission of the court.

(h) Recording as Evidence. Whenever the testimony of a witness at a trial or hearing which was recorded is admissible in evidence at a later trial, it may be proved by the recording thereof duly certified by the person who recorded the testimony.

(i) (Reserved. See ER 804.)

(j) Record in Retrial of Nonjury Cases. In the event a cause has been remanded by the court for a new trial or the taking of further testimony, and such cause shall have been tried without a jury, and the testimony in such cause shall have been taken in full and used as the record upon review, either party upon the retrial of such cause or the taking of further testimony therein shall have the right, provided the court shall so order after an application on 10 days' notice to the opposing party or parties, to submit said record as the testimony in said cause upon its second hearing, to the same effect as if the witnesses called by him in the earlier hearing had been called, sworn, and testified in the further hearing; but no party shall be denied the right to submit other or further testimony upon such retrial or further hearing, and the party having the right of cross examination shall have the privilege of subpoenaing any witness whose testimony is contained in such record for further cross examination.

(k) Juror Questions for Witnesses. The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to

such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to witnesses. The court may rephrase or reword questions from jurors to witnesses. The court may refuse on its own motion to allow a particular question from a juror to a witness.

[Adopted effective September 1, 1984; amended effective October 1, 2002; September 1, 2006.]