

### § 18.613

camera, excise any portion not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available in the event of review. If a writing is not produced or delivered pursuant to order under this rule, the judge shall make any order justice requires.

### § 18.613 Prior statements of witnesses.

(a) *Examining witness concerning prior statement.* In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) *Extrinsic evidence of prior inconsistent statement of witness.* Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in § 18.801(d)(2).

### § 18.614 Calling and interrogation of witnesses by judge.

(a) *Calling by the judge.* The judge may, on the judge's 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 the judge.* The judge may interrogate witnesses, whether called by the judge or by a party.

(c) *Objections.* Objections to the calling of witnesses by the judge or to interrogation by the judge must be timely.

### § 18.615 Exclusion of witnesses.

At the request of a party the judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and the judge may make the order of the judge's own motion. This rule does not authorize exclusion of a party who is a natural person, or an officer or employee of a party which is not a natural person

### 29 CFR Subtitle A (7-1-13 Edition)

designated as its representative by its attorney, or a person whose presence is shown by a party to be essential to the presentation of the party's cause.

### OPINIONS AND EXPERT TESTIMONY

### § 18.701 Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

### § 18.702 Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the judge as trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

### § 18.703 Bases of opinion testimony by experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

### § 18.704 Opinion on ultimate issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the judge as trier of fact.

### § 18.705 Disclosure of facts or data underlying expert opinion.

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.