

Carolina Center for Civic Education

Impeaching a Witness

If the cross-examiner believes the witness has made an Improper Invention of Fact under Rule 3.5, the only available remedy in trial is to impeach the witness using the witness's affidavit. Impeachments take two forms: impeachment by contradiction, or impeachment by omission. One suggested procedure for conducting an impeachment is as follows:

Contradiction

Attorney: Chief Rosier, you did not send Officer Carter to SRO training at the Utopia Justice Academy prior to his new assignment at Arcadia High School, did you?

Witness: Yes I did. I know the importance of advanced training for my officers, so of course I sent him to the SRO classes at the Justice Center.

A: Is it your testimony that Officer Carter attended SRO training classes at the Utopia Justice Academy?

W: That's right; I always send my officers for advanced training at the Academy.

A: Chief Rosier, you made a sworn affidavit before coming to court today, didn't you?

A: You knew you could have updated it at any time before today's trial?

A: You knew you had to tell the truth in your affidavit, correct?

A: Isn't it true that in your affidavit you said budget cuts prevented you from sending officers for advanced certification at the Academy?

W: I never said that.

A: Your Honor, at this time I would like to approach Chief Rosier with his/her sworn affidavit for impeachment purposes. Permission to approach opposing counsel and the witness? [show relevant portion of affidavit to opposing counsel before approaching witness]

A: Chief Rosier, this is your sworn affidavit, correct?

A: It is a fair and accurate copy?

A: That is your signature at the end?

A: I want you to read lines 89-91 silently to yourself while I read aloud. [Reading from affidavit]: Line 89: "Officer Carter began working as the SRO at Arcadia High a week after being promoted. Ideally, Carter would have attended two weeks of SRO training at the Utopia Justice Academy prior to beginning the new position, but I had no funds in the budget for such training." Did I read that correctly?

W: Yes. I guess I forgot about that. But I did provide Officer Carter with training manuals to read and contact information for other SROs in the area who could mentor Officer Carter.

A: But you never sent Officer Carter to the two-week long training classes at the Justice Academy, did you?

W: No, I did not.

A: Permission to approach and retrieve the document.

Omission

A: Mr./Ms. Mendoza, you did not realize that Gabriel was using the 3D printer to make a model of a handgun, did you?

W: Yes, I did.

A: Is it your testimony that you knew Gabriel was making a model handgun with the 3D printer?

W: Yes, that's right. He showed it to me after he finished it, before he took it to school. It was clearly not a working gun, so I didn't much about it.

A: Mr./Ms. Mendoza, you made a sworn affidavit before coming to court today, didn't you?

A: You had to include all relevant information, right?

A: You knew you could have updated it at any time before today's trial?

A: You knew you had to tell the truth in your affidavit, correct?

A: Isn't it true that nowhere in your affidavit do you state that you knew Gabriel had made a 3D model gun before he took it to school?

W: I am sure I put that in my affidavit.

A: Your Honor, at this time I would like to approach Mr./Ms. Mendoza with his/her sworn affidavit for impeachment purposes. Permission to approach opposing counsel and the witness? [show relevant portion of affidavit to opposing counsel before approaching witness]

A: Mr./Ms. Mendoza, this is your sworn affidavit, correct?

A: It is a fair and accurate copy?

A: That is your signature at the end?

A: I want you to show me where in that affidavit you mention seeing Gabriel's model gun before he took it to school. Just to remind you, you discuss what Gabriel made with the printer in lines 114 - 124.

W: I guess I forgot to put it in there.

A: Permission to approach and retrieve the document.