



Ohio Revised Code

Section 2317.03 Cases in which a party shall not testify.

Effective: August 7, 2007

Legislation: House Bill 53 - 127th General Assembly

A party shall not testify when the adverse party is the guardian or trustee of an incompetent person, or of a child of a deceased person, or is an executor or administrator, or claims or defends as heir, grantee, assignee, devisee, or legatee of a deceased person except:

- (A) As to facts which occurred after the appointment of the guardian or trustee of an incompetent person, and, in the other cases, after the time the decedent, grantor, assignor, or testator died;
- (B) When the action or proceeding relates to a contract made through an agent by a person since deceased, and the agent is competent to testify as a witness, a party may testify on the same subject;
- (C) If a party, or one having a direct interest, testifies to transactions or conversations with another party, the latter may testify as to the same transactions or conversations;
- (D) If a party offers evidence of conversations or admissions of the opposite party, the latter may testify concerning the same conversations or admissions; and, if evidence of declarations against interest made by an incompetent or deceased person has been admitted, then any oral or written declaration made by such incompetent or deceased person concerning the same subject to which any such admitted evidence relates, and which but for this provision would be excluded as self-serving, shall be admitted in evidence if it be proved to the satisfaction of the trial judge that the declaration was made at a time when the declarant was competent to testify, concerning a subject matter in issue, and, when no apparent motive to misrepresent appears;
- (E) In an action or proceeding by or against a partner or joint contractor, the adverse party shall not testify to transactions with, or admissions by, a partner or joint contractor since deceased, unless they were made in the presence of the surviving partner or joint contractor, and this rule applies without regard to the character in which the parties sue or are sued;
- (F) If the claim or defense is founded on a book account, a party may testify that the book is the



party's account book, that it is a book of original entries, that the entries therein were made in the regular course of business by the party personally, a person since deceased, or a disinterested person, and the book is then competent evidence in any case, without regard to the parties, upon like proof by any competent witness;

(G) If after testifying orally, a party dies, the evidence may be proved by either party on a further trial of the case, whereupon the opposite party may testify to the same matters;

(H) If a party dies and the party's deposition is offered in evidence, the opposite party may testify as to all competent matters therein.

This section does not apply to actions for causing death, or actions or proceedings involving the validity of a deed, will or codicil. When a case is plainly within the reason and spirit of this section and sections 2317.01 and 2317.02 of the Revised Code, though not within the strict letter, their principles shall be applied.