

Stipulations of Expected Testimony, Trial Procedure, and Rules of Evidence in a Criminal Trial

Stipulations to Expected Witness Testimony and Documents

The parties in a criminal trial may stipulate or agree to the expected testimony of a witness that will not be able to attend or testify at trial. The parties may also stipulate to the contents of a document that will not be produced at trial. When the parties stipulate to expected witness testimony or to the contents of a document they are not stipulating to the admissibility or factual accuracy of the testimony or document. The non-requesting party may raise an independent evidentiary objection to the contents of the testimony or document. Further, the non-requesting party may introduce rebuttal evidence. The trial judge is required to instruct a jury on the factual element to which the stipulation relates to because factual issues still may remain.

Stipulations to Trial Procedure and Rules

The parties may not only agree upon facts, expected testimony, and documents but may also agree to certain procedure and rules. Often times a prosecutor or defense attorney will stipulate to the authenticity of certain items. Such items that the prosecutor or defense attorney may stipulate to include:

- Authenticity of evidence, especially documentary.
- Experts' qualifications.
- Accuracy of documents or other evidence.
- Admissibility of evidence.

By stipulating to certain items, the non-requesting party waives objecting to any foundational issues, which may have been raised prior to the admission of such items.

The trial courts generally favor stipulations to testimony, evidence, or rules. The reason why many trial courts favor stipulations is for judicial economy. It may save a tremendous amount of time and taxpayer money to permit stipulations to certain items or procedural issues. However, it is within the trial court's discretion to reject any stipulation. Sometimes trial courts do not accept all stipulations that waive foundational requirements.

Enforceability of Stipulations

The trial judge should not reject a proposed stipulation on the basis that the trial judge would have found the evidence to be admissible without the stipulation. Once the trial judge accepts the stipulation, the stipulation is enforced against both parties. In a number of jurisdictions, if the stipulation is accepted during the trial phase it is also deemed accepted during any subsequent phases such as sentencing or appeal. If a manifest injustice would result, the trial judge or subsequent judge may relieve both parties from enforcement of the stipulation. Either party may file a motion to vacate the stipulation. Common instances in which the trial judge may choose not to enforce the stipulation between the parties include:

- Mistake of fact.
- Mistake of law.
- Fraud.
- Misrepresentation.