

Rule 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.
(Amended effective January 1, 1990.)

Committee Comment - 1977

It has been settled for some time in Minnesota that absent surprise, a party cannot impeach his own witness. The Minnesota Court has recognized that attorneys must take their witnesses where they find them and cannot always vouch for their credibility, but has followed the rule in an effort to avoid subjecting the jury to hearsay statements, ostensibly admitted for impeachment purposes. State v. Saporen, 205 Minn. 358, 285 N.W. 898 (1939); Selover v. Bryant, 54 Minn. 434, 438, 439, 56 N.W. 58, 59 (1893). The Court has used the surprise doctrine as a means for screening those cases in which a prior inconsistent statement is improperly being offered to prejudice the jury with hearsay from the case where the introduction of the prior statement is essential to a fair presentation of the claims.

Not only has the application of the rule resulted in technical distinctions but occasionally operates to deprive the trier of fact of valuable, relevant evidence. A witness with firsthand knowledge might not be called by either party, or if a witness does testify the rule may preclude impeachment to place the testimony in proper perspective. Such results are inconsistent with the principles of these evidentiary rules as expressed in Rule 102.

Some intrusions on the traditional rule have already been implemented in civil cases by Minn. R. Civ. P. 43.02 and by the operation of the Sixth Amendment Confrontation Clause in criminal cases. Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). It was the committee's belief that the "surprise doctrine" no longer was justified. Consequently, it is recommended that the proposed rule be adopted, bringing Minnesota into conformity with the modern trend.