

Impeachment

Impeachment involves an attack on the credibility of a witness, typically through: 1) cross-examination of that witness, 2) the testimony of another person discrediting the witness' testimony, or 3) an impeaching document. It should be noted that, while usually a party will seek to impeach a witness called by the opposing party, it is permissible for a party to impeach its own witness.¹

Impeachment exhibits need not be pre-filed, and the evidentiary issue which the Board most often has to address concerning impeachment is whether an exhibit offered as an impeachment exhibit actually is an impeachment exhibit or whether the party offering it is seeking to do an end run around the pre-filing rule of the Board. Also, it is not unusual for the Board, or the opposing party, to need clarification from the party offering impeachment evidence as to what previously offered evidence is being impeached. If adequate explanation is provided, the impeachment evidence is admitted if otherwise appropriate.

The impeachment techniques most commonly seen by the Board are the following:

a) Bias - This refers to the partiality of a witness, pro or con. It includes interest, prejudice and motive to fabricate.

b) Prior Inconsistent Statements and Acts - These are instances where a witness, on a prior occasion, made a statement or performed an act inconsistent with his or her testimony at a hearing.

c) Specific Contradiction - Instead of testifying to a statement by Witness #1, Witness #2 simply gives contrary testimony to Witness #1's testimony. Specific contradiction probably is the most common technique used in Board hearings on credibility issues.

¹ For guidance, see Vermont Rules of Evidence, Rule 607.

d) Character for Untruthfulness - Instead of attacking a witness's specific testimony in the case, evidence is introduced on the witness's general character trait for untruthfulness. This generally is limited to a character witness testifying to the untruthfulness of the principal witness through reputation or opinion testimony. In giving testimony on the reputation of a witness, it is necessary that the character witness have sufficient familiarity with the reputation of the principal witness in the workplace or the community.²

e) Misperception and Misrecollection - Probably the most common reasons for the differing testimony of persons, who have observed the same incident and are testifying to that incident, are that persons perceive things differently, some persons are more perceptive than others, and persons do not recollect incidents as well with the passage of time.

Rehabilitation after impeachment concerns the supporting of the credibility of a witness after credibility has been attacked. Common methods of rehabilitation are: a) using redirect examination to deny or explain the impeaching fact; b) using prior statements of the witness which are consistent with the witness' testimony at the hearing; c) calling other witnesses to corroborate the testimony of the witness; and d) presenting a character witness to demonstrate the witness's character trait of truthfulness.

² For guidance, see Vermont Rules of Evidence, Rule 608(a).