

THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. VI]

Order Amending Rule 613 of the Pennsylvania Rules of Evidence; No. 990 Supreme Court Rules Docket

Order

Per Curiam

And Now, this 4th day of September, 2024, upon the recommendation of the Committee on Rules of Evidence; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 613 of the Pennsylvania Rules of Evidence is amended in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2025.

Additions to the rule are shown in bold and are underlined.

Deletions from the rule are shown in bold and brackets.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE VI. WITNESSES

Rule 613. Witness's Prior Inconsistent Statement to Impeach; Witness's Prior Consistent Statement to Rehabilitate.

(a) *Witness's Prior Inconsistent Statement to Impeach.* A witness may be examined concerning a prior inconsistent statement made by the witness to impeach the witness's credibility. The statement need not be shown or its contents disclosed to the witness at that time, but on request, the statement or contents must be shown or disclosed to an adverse party's attorney.

(b) *Extrinsic Evidence of a Witness's Prior Inconsistent Statement.* Unless the interests of justice otherwise require, extrinsic evidence of a witness's prior inconsistent statement is admissible only if, during the examination of the witness,

(1) the statement, if written, is shown to, or if not written, its contents are disclosed to, the witness;

(2) the witness is given an opportunity to explain or deny the making of the statement; and

(3) an adverse party is given an opportunity to question the witness.

This [**paragraph**] **subdivision** does not apply to an opposing party's statement as defined in Rule 803(25).

(c) *Witness's Prior Consistent Statement to Rehabilitate.* Evidence of a witness's prior consistent statement is admissible to rehabilitate the witness's credibility if the opposing party is given an opportunity to cross-examine the witness about the statement and the statement is offered to rebut an express or implied charge of:

(1) fabrication, bias, improper influence or motive, or faulty memory [**and**], **provided that** the statement was made before [**that which has been charged**

existed or] **the alleged fabrication, bias, improper influence or motive, or faulty memory** arose; or

(2) having made a prior inconsistent statement, which the witness has denied or explained, and the consistent statement supports the witness's denial or explanation.

Comment:

Pa.R.E. 613 differs from F.R.E. 613 to clarify its meaning and to conform to Pennsylvania law.

Pa.R.E. 613(a) and (b) are similar to F.R.E. 613(a) and (b), but the headings and the substance make it clear that the [**paragraphs**] **subdivisions** are dealing with the use of an inconsistent statement to impeach. The disclosure requirement in [**paragraph**] **subdivision** (a) is intended to deter sham allegations of the existence of an inconsistent statement.

Pa.R.E. 613(b) differs from F.R.E. 613(b) in that extrinsic evidence of a prior inconsistent statement is not admissible unless the statement is shown or disclosed to the witness during the witness's examination. [**Paragraph**] **Subdivision** (b) is intended to give the witness and the party a fair opportunity to explain or deny the allegation.

To be used for impeachment purposes, an inconsistent statement need not satisfy the requirements of Pa.R.E. 803.1(1)(A)—(C).

F.R.E. 613 does not contain a [**paragraph**] **subdivision** (c); it does not deal with rehabilitation of a witness with a prior consistent statement. Pa.R.E. 613(c) gives a party an opportunity to rehabilitate the witness with a prior consistent statement where there has been an attempt to impeach the witness. In most cases, a witness's prior statement is hearsay, but F.R.E. 801(d)(1)(B) treats some prior consistent statements offered to rebut impeachment as not hearsay.

Pa.R.E. 613(c) is consistent with Pennsylvania law in that the prior consistent statement is admissible, but only to rehabilitate the witness. See *Commonwealth v. Hutchinson*, 556 A.2d 370 (Pa. 1989) (to rebut charge of recent fabrication); *Commonwealth v. Smith*, 540 A.2d 246 (Pa. 1988) (to counter alleged corrupt motive); *Commonwealth v. Swinson*, 626 A.2d 627 (Pa. Super. 1993) (to negate charge of faulty memory); *Commonwealth v. McEachin*, 537 A.2d 883 (Pa. Super. 1988) (to offset implication of improper influence).

Pa.R.E. 613(c)(2) is arguably an extension of Pennsylvania law, but is based on the premise that, when an attempt has been made to impeach a witness with an alleged prior inconsistent statement, a statement consistent with the witness's testimony should be admissible to rehabilitate the witness if it supports the witness's denial or explanation of the alleged inconsistent statement.

[**Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 23, 1999, effective immediately; amended March 10, 2000, effective July 1, 2000; rescinded and replaced January 17, 2013, effective March 18, 2013; amended March 1, 2017, effective April 1, 2017.**

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical amendments to paragraph (b)(3) published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the March 10, 2000 amendments adding “inconsistent” to section (a) published with the Court’s Order at 30 Pa.B. 1645 (March 25, 2000).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court’s Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the March 1, 2017 revision of the Comment published with the Court’s Order at 47 Pa.B. 1627 (March 18, 2017).]

**SUPREME COURT OF PENNSYLVANIA
COMMITTEE ON RULES OF EVIDENCE**

ADOPTION REPORT

Amendment of Pa.R.E. 613

On September 4, 2024, the Supreme Court amended Pa.R.E. 613 to clarify the temporal requirement for prior statements used for rehabilitation.¹ The Committee on Rules of Evidence has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committees, not the Court.

Pennsylvania’s law of evidence has long disfavored witness bolstering with limited exceptions:

As a general rule a statement made by a witness at one time, while admissible to contradict him, is not competent to corroborate or substantiate his present testimony. Were it not otherwise, the door might be opened to the fabrication of evidence. However, there are certain well-recognized exceptions to this general rule: prior declarations of a witness, which are consistent with his present testimony, may be admissible to corroborate his present testimony if it be alleged that the witness’ present testimony is recently fabricated, or if it be claimed that the witness is testifying from corrupt motives.^{1]}

Evidence of consonant statements, if admissible, are admissible only in rebuttal and then only for the purpose of showing that that which the witness now testifies to has not been recently fabricated and not for the purpose of proving the truth of the present testimony.

Commonwealth v. Wilson, 148 A.2d 234, 242 (Pa. 1959) (footnote omitted). These rehabilitative exceptions have been codified in Pa.R.E. 613(c). See, e.g., *Commonwealth v. Montalvo*, 986 A.2d 84, 96 (Pa. 2009).²

Adopted in 1998 and remaining substantively static, Pa.R.E. 613(c) governs the admissibility of a witness’s prior consistent statement to rehabilitate the witness’s credibility after impeachment. Subdivision (c)(1) permits the use of a prior consistent statement to rebut an express or implied charge of fabrication, bias, improper

influence or motive, or faulty memory provided that the prior consistent statement predates the act or event providing motive for the allegedly influenced testimony. Under subdivision (c)(2), there is no temporal condition for using a prior consistent statement to rehabilitate a witness who made a prior inconsistent statement that the witness has denied or explained. See also *Commonwealth v. Harris*, 852 A.2d 1168, 1176 (Pa. 2004).

It was suggested to the Committee that the concluding language of subdivision (c)(1), “before that which has been charged existed or arose,” may not clearly convey that the prior consistent statement must predate the charged fabrication, bias, improper influence or motive, or faulty memory. To more clearly convey this temporal condition, subdivision (c)(1) has been amended by replacing the generic phrase “that which has been charged existed” with the same list that begins the subdivision:

Evidence of a witness’s prior consistent statement is admissible to rehabilitate the witness’s credibility if the opposing party is given an opportunity to cross-examine the witness about the statement and the statement is offered to rebut an express or implied charge of:

(1) fabrication, bias, improper influence or motive, or faulty memory [**and**], **provided that** the statement was made before [**that which has been charged existed or**] **the alleged fabrication, bias, improper influence or motive, or faulty memory** arose[.]

Pa.R.E. 613(c)(1).

The Committee did not publish this proposal for comment as the amendment does not substantively alter the rule. See Pa.R.J.A. 103(a)(3) (permitting adoption of rule without prior publication).

These amendments become effective January 1, 2025.

* * *

The following commentary has been removed from Rule 613:

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[Pa.B. Doc. No. 24-1286. Filed for public inspection September 13, 2024, 9:00 a.m.]

¹ Stylistic amendments have also been made to conform to the Supreme Court of Pennsylvania Style and Rulemaking Guide for Procedural and Evidentiary Rules.

² A line of case law once recognized another bolstering exception without prior impeachment in the context of the sexual assault of a child. However, that practice was apparently discontinued as being inconsistent with Pa.R.E. 613(c). See *Commonwealth v. Bond*, 190 A.3d 664, 696-70 (Pa. Super. 2018); see also *Commonwealth v. Raboin*, 270 A.3d 1158, 2021 WL 6059391 at *4-5 (Pa. Super. 2021) (unpublished opinion).