

**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).]**