

SUPREME COURT OF PENNSYLVANIA

In re: Order Amending Rules 803.1 and 804, and Approving the Revision of the Comment to Rule 613 of the Pennsylvania of Pennsylvania Rules of Evidence

In re Order Amending Rules 803.1 and 804 · Decided March 1, 2017

SUMMARY

This document contains a Pennsylvania Supreme Court order amending Pennsylvania Rules of Evidence 803.1 and 804 and approving revisions to the Comment to Rule 613. The amendments address prior inconsistent and consistent statements, recorded recollections, declarant unavailability, and related hearsay exceptions.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
JURISDICTION	Pennsylvania
DECIDED	March 1, 2017
DISPOSITION	approved
PROCEDURAL POSTURE	The Supreme Court of Pennsylvania exercised its rulemaking authority to amend Rules 803.1 and 804 and revise the Comment to Rule 613 of the Pennsylvania Rules of Evidence.
PRECEDENTIAL VALUE	Rulemaking order promulgating amendments to the Pennsylvania Rules of Evidence; the adopted rules are authoritative within Pennsylvania.

TOPICS

hearsay

impeachment

evidence

PRACTICE AREAS

Evidence

Appellate and judicial rulemaking

QUESTIONS PRESENTED

1. Whether Rule 613 should be revised to clarify the requirements for using prior inconsistent statements for impeachment and prior consistent statements for rehabilitation.

2. Whether Rule 803.1 should be amended to revise the treatment of prior inconsistent statements, recorded recollections, and statements by declarant-witnesses claiming inability to remember.
3. Whether Rule 804 should be amended to address unavailability based on claimed memory loss and related hearsay exceptions.

HOLDINGS

1. A witness may be examined about a prior inconsistent statement to impeach credibility without initially showing or disclosing the statement to the witness, but on request the statement or its contents must be shown or disclosed to the adverse party's attorney. Extrinsic evidence of the statement generally is admissible only after the witness is shown the written statement or told its contents, is given an opportunity to explain or deny making it, and the adverse party is given an opportunity to question the witness.
2. A prior consistent statement is admissible to rehabilitate a witness's credibility when the opposing party has an opportunity to cross-examine the witness about the statement and the statement is offered to rebut an express or implied charge of fabrication, bias, improper influence or motive, faulty memory, or a prior inconsistent statement that the witness has denied or explained.
3. A prior inconsistent statement of a declarant-witness who testifies and is subject to cross-examination is not excluded by the hearsay rule when it was made under oath in a qualifying proceeding, is a writing signed and adopted by the declarant, or is a verbatim contemporaneous electronic recording of an oral statement.
4. A recorded recollection may be admitted when the declarant-witness once knew the matter but cannot now recall it sufficiently, made or adopted the record while the matter was fresh, and testifies that the record accurately reflects the witness's knowledge at the time it was made.
5. A prior statement by a declarant-witness who testifies to an inability to remember the subject matter may qualify as a hearsay exception if the claimed inability is not credible and the statement satisfies the specified oath, signed-writing, or verbatim contemporaneous electronic-recording requirements. A credible inability to remember may instead establish unavailability under Rule 804(a)(3), subject to the recorded-recollection exception when applicable.

KEY QUOTATIONS

“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” (Rule 613(c))

“The purpose of this hearsay exception is to protect against the “turncoat witness” who once provided a statement, but now seeks to deprive the use of this evidence at trial.” (Rule 803.1(4))

FACTUAL BACKGROUND

The court considered revisions to Pennsylvania evidentiary rules governing prior inconsistent statements, prior consistent statements, recorded recollections, statements by declarants claiming inability to remember, and

hearsay exceptions applicable when a declarant is unavailable. The revisions were intended in part to clarify Pennsylvania law and the relationship between the Pennsylvania and Federal Rules of Evidence.

PROCEDURAL HISTORY

The opinion is a per curiam rulemaking order rather than an adversarial appeal. The court adopted amendments dated March 1, 2017, with an effective date of April 1, 2017.

DISPOSITION

approved

CASES CITED

- Commonwealth v. Hutchinson, 521 Pa. 482, 556 A.2d 370 (Pa. 1989)
- Commonwealth v. Smith, 518 Pa. 15, 540 A.2d 246 (Pa. 1988)
- Commonwealth v. Swinson, 426 Pa. Super. 167, 626 A.2d 627 (Pa. Super. 1993)
- Commonwealth v. McEachin, 371 Pa. Super. 188, 537 A.2d 883 (Pa. Super. 1988)
- Commonwealth v. Romero, 722 A.2d 1014, 1017-1018 (Pa. 1999)
- Commonwealth v. Brady, 510 Pa. 123, 507 A.2d 66 (Pa. 1986)
- Commonwealth v. Lively, 530 Pa. 464, 610 A.2d 7 (Pa. 1992)
- Commonwealth v. Wilson, 550 Pa. 518, 707 A.2d 1114 (Pa. 1998)
- Commonwealth v. Ly, 528 Pa. 523, 599 A.2d 613 (Pa. 1991)
- Commonwealth v. Cargo, 498 Pa. 5, 444 A.2d 639 (Pa. 1982)
- Commonwealth v. Hanible, 30 A.3d 426, 445 n. 15 (Pa. 2011)
- In re McClain's Estate, 481 Pa. 435, 392 A.2d 1371 (Pa. 1978)
- Commonwealth v. Bazemore, 531 Pa. 582, 614 A.2d 684 (Pa. 1992)
- Crawford v. Washington, 541 U.S. 36 (2004)

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